

European Court of Human Rights: Zöldi v. Hungary

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Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

The European Court of Human Rights (ECtHR) has delivered an interesting judgment that further clarifies the application of Article 10 of the European Convention on Human Rights (ECHR) on the right to access public documents containing personal data.

Although the ECtHR found that the protection of personal information of grant beneficiaries constituted a legitimate aim for refusing access to such data, it emphasised that the information request by a journalist aiming to contribute to transparency in the allocation of taxpayers' money, clearly satisfied the public interest test.

The ECtHR found that the Hungarian authorities did not adduce sufficient reasons for refusing to disclose the identities of the recipients of grants from two foundations funded by the National Bank.

The case concerns the unsuccessful efforts by an investigative journalist, Ms Blanka Zöldi, to obtain information about the management and allocation of public funds by two foundations in Hungary. Both foundations were created by the Hungarian National Bank, which is a fully State-owned entity. At the time of the request by Zöldi in 2015, criticism was uttered on the foundations as their policy seemed to serve the purpose of "privatisation" of public funds and because of a lack of transparency about the allocation of its grants.

Zöldi asked *inter alia*, for the names of the persons who had obtained grants, the amount of money they received and the subsidised activities. She intended to write an article based on the information obtained. The foundations, however, refused to disclose the requested information and Zöldi sought judicial review of those decisions.

Zöldi succeeded in obtaining the requested information, with the exception however of the disclosure of the names of the recipients of the grants. The courts deciding on the case found that those names were neither 'data of public interest' nor 'data subject to disclosure in the public interest' within the meaning of the Hungarian Data Protection Act, and therefore disclosure was not required by the Act.

Without a specific legal basis, it was not possible for the names of the successful applicants to be released as 'data subject to disclosure in the public interest'. The Constitutional Court in 2018 confirmed these court decisions. However, it found that the legislature had failed to provide sufficient transparency of public funds and it ordered the legislature to remedy this omission.

In 2019, the Hungarian Parliament complied with the Constitutional Court's decision by amending the law on the Transparency of Subsidies Awarded from Public Funds. In the meantime, in 2018, Zöldi had lodged an application with the ECtHR, complaining that her inability to obtain information about the identity of grant recipients of the two foundations set up by the Hungarian National Bank had violated her right to freedom of expression as provided in Article 10 ECHR.

First, the Hungarian Government argued that Zöldi had not availed herself of all the available domestic remedies, in that she had failed to submit a new request to the foundations following the entry into force of the legislative amendments to the Act on the Transparency of Subsidies Awarded from Public Funds.

From that point, Zöldi, relying on that new legislation, could have submitted a renewed request, which would have remedied the alleged violation. The ECtHR agreed that such an opportunity was open to Zöldi and that the changes in the legal environment may have increased her chances of obtaining the information sought. Nevertheless, the ECtHR considers that for the exhaustion of domestic remedies, it would have been unreasonable to expect the journalist to resubmit her information request.

The ECtHR pointed out that Zöldi is an investigative journalist seeking documents and information in preparation for an article on the finances of two foundations set up by the National Bank. Given the nature of covering issues attracting wide public interest, the ECtHR accepts that it was essential for her to obtain the information sought quickly in order to ensure its relevance for her readership.

Indeed, the purpose of the information request was to enable her to promptly relay the obtained information to the wider public through the news article she was working on. However, the disclosure of such data ultimately became only possible more than four years later. The ECtHR found that after such a lapse of time the information at issue may have lost all relevance and that Zöldi could not reasonably have been expected to avail herself of the avenue suggested by the Government. The ECtHR therefore dismissed the Government's objection regarding the exhaustion of domestic remedies.

Next, the ECtHR was satisfied that Zöldi, as a journalist, wished to exercise her right to impart information on a matter of public interest and sought access to information that was ready and available, in accordance with the criteria on the applicability of Article 10 ECHR (see *Magyar Helsinki Bizottság v. Hungary*, IRIS

2017-1/1). As the refusal to disclose the identity of the beneficiaries of the grants was considered to be prescribed by law and served the legitimate aim of protecting their rights, including their right to the protection of personal data, the remaining question was whether the restriction on the Zöldi's right of access to information was "necessary in a democratic society".

According to the ECtHR the Hungarian government failed to substantiate how the disclosure of the grant recipients' names would affect the enjoyment of the protection of their private life.

The Court also noted that transparency in the allocation of public funds is an important constitutional principle, and that the Data Protection Act and other legislation such as the Transparency Act provided for the disclosure of data related to the management and allocation of public funds, which can include personal data of people who benefit from them.

Against this background, the persons who had applied for the grants could have expected that their names, as recipients of public money, might be publicly disclosed.

The ECtHR considered therefore that the interests of the protection of the rights of others are not of such a nature and degree as could warrant engaging the application of Article 8 ECHR and bring it into play in a balancing exercise against Zöldi's right to freedom of expression under Article 10 ECHR. Nevertheless the ECtHR continued to assess whether the refusal of disclosure of the names at issue was a proportionate interference with Zöldi's right of access to public documents.

The ECtHR referred to the relevant criteria in the course of such a proportionality assessment: (i) whether the individuals concerned by the information request were public figures of particular prominence; (ii) whether they had themselves exposed the impugned information to public scrutiny; (iii) the degree of potential harm to the individual's privacy in the event of disclosure; (iv) the consequences for the effective exercise of the applicant's freedom of expression in the event of non-disclosure; (v) whether the applicant had put forward reasons for the information request; (vi) the degree of public interest in the matter, and (vii) whether the possibility of a meaningful assessment of the restrictions on the applicant's rights was possible under domestic law and if so, whether such an assessment was carried out by the domestic authorities (see also IRIS 2020-5:1/24).

As there was no indication of the existence of any risk of a potentially harmful impact that disclosure of the grant recipients' names could have had on their privacy, and because Zöldi's request was aimed to contribute as a journalist to transparency in the allocation of taxpayers' money, her request clearly satisfied the public-interest test, contributing to a public debate on a matter of

considerable public interest.

Finally, the ECtHR referred to the Constitutional Court's finding that the legislature had failed to enact laws which would have ensured, as far as possible, a balanced exercise of the two competing fundamental constitutional rights, that is, the right to protection of personal data and the right to access to information in the public interest.

In these circumstances, the ECtHR found that the national authorities adduced no sufficient reasons for the necessity of the interference complained of, as they did not strike a fair balance between the competing interests at stake to ensure the proportionality of the interference. Accordingly, the ECtHR found a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, First Section, in the case Zöldi v. Hungary, Application no. 49049/18, 4 April 2024

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