European Court of Human Rights: Judgment underscores public interest in transparency in administration of criminal law

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Tarlach McGonagle
Institute for Information Law (IViR), University of Amsterdam

The European Court of Human Rights (Third Section) held unanimously in a judgment of 4 March 2025 that there had been a violation of Articles 10 and 13 of the European Convention on Human Rights (ECHR) in the case of *Girginova v. Bulgaria*. The case arose from the refusal of a journalist's request to the Sofia City Court to access to its reasons for acquitting a former Minister of Internal Affairs in a criminal case against him. The former minister had been accused of failing to supervise the serious misuse of covert surveillance technology by his subordinates at the Ministry. The criminal case was classified and heard behind closed doors; the reasons for the acquittal were not published.

The roots of the case lie in a complaint that staff at the Ministry of Internal Affairs had engaged in widespread unlawful covert surveillance of politicians, judges and business persons while a previous government had been in power. The complaint was passed on to the prosecuting authorities. This led to three heads of unit at the Ministry of Internal Affairs being charged under the Bulgarian Criminal Code with misconduct in public office by a person subject to military law. The prosecuting authorities subsequently found evidence that led them to also charge the former Minister with knowingly allowing his subordinates to commit an offence relating to their public duties.

While the case against the four accused was being prepared, the Bulgarian Parliament amended a relevant provision of the Bulgarian Criminal Code. The amendment changed the criteria for liability for offences against military law: henceforth, public officials could only be liable for such offences if they were committed in certain circumstances, such as during wartime, active service or in the context of foreign missions or operations. The Sofia City Court subsequently acquitted all four accused. The presiding judge informed the media outside the courtroom that the amendment was one of the reasons for the acquittal, but did not give further details as the case was classified and the judgment was not rendered public.

Ms. Girginova, a journalist working for an online media organisation specialising in matters concerning the judiciary, sought access to the reasoning in the Sofia City Court's judgment. Her request was turned down because the reasons for the

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judgment contained classified information: the case concerned not only evidence gathered through “special means of surveillance”, but also general and technical details of how such means were used. The entire case file was classified as “secret”, which meant it did not fall under the general rule that all judicial decisions are to be published on the court’s website. The applicant sought judicial review of the refusal, but the refusal was upheld by the national courts, including on appeal.

When considering the admissibility of the case, the European Court of Human Rights recalled that Article 10 of the Convention does not explicitly guarantee a right of access to information, but that such a right can arise pursuant to a court order or “if access to the information is instrumental for the exercise of the right to freedom of expression of the person seeking it” (*Magyar Helsinki Bizottság v. Hungary* [GC], IRIS 2017-1:1/1). It then applied the four criteria developed in its *Magyar Helsinki Bizottság* judgment to the facts of the case:

1. Purpose of the information request: there was a “proper journalistic purpose” (seeking the information was a preparatory step for reporting on the justice system) and it is part of the duties and responsibilities of journalists to scrutinise the judicial system for the general public (as it would not be “practical” to expect the general public to “directly” scrutinize the judicial system).

2. Nature of the information sought: there was a very strong public interest in transparency and accountability surrounding the requested information, which concerned the reasons for acquittal of a former minister for failing to supervise the misuse of covert surveillance equipment and how the prosecuting authorities and the courts dealt with those criminal charges.

3. Role of the seeker of the information: the seeker was a journalist, contributing to the important role of the media in ensuring the availability of information about criminal proceedings.

4. Whether the information was ready and available: this was the case as the information was contained in a single document.

The Court considered the merits of the application under Articles 10 and 13 ECHR. In its assessment under Article 10, the Court accepted – with some hesitation – that the interference with the applicant’s right to freedom of expression was prescribed by law. It accepted, more readily, that the legitimate aim of the interference fell within “the interests of national security” (Article 10(2), ECHR). The crux of the assessment was whether the interference was necessary in a democratic society. The Court underscored the public interest in questions concerning the functioning of the justice system and the value of publicising judgments for maintaining public confidence in the courts and for helping to ensure a fair trial. It added that reasoned judgments can be safeguards against

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the maladministration of justice. The public interest in the present case was particularly strong, given that it involved the refusal to disclose reasons for the acquittal of a senior member of government of serious offences. This high-profile case could moreover be situated in a broader pattern of scandals around the misuse of special means of surveillance. Notwithstanding the national security concerns, the Court held that "wholly concealing the judgment from the public" could not be justified. The Court countenanced other less far-reaching solutions, such as the classification of the judgment in part only, or its publication in redacted form.

The Court also held that the Bulgarian authorities had failed to provide the applicant with an effective remedy under Article 13 ECHR.

Girginova v. Bulgaria, no. 4326/18, 4 March 2025 ECLI:CE:ECHR:2025:0304JUD000432618

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