European Court of Human Rights: Case of Sdruženi Jihočeské Matky v. Czech Republic

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The European Court of Human Rights has, on several occasions, recognised “the right of the public to be properly informed” and “the right to receive information”, but until recently the Court was very reluctant to derive from Article 10 of the European Convention on Human Rights a right to have access to public or administrative documents. In the cases of Leander v. Sweden (1987), Gaskin v. United Kingdom (1989) and Sîrbu v. Moldova (2004)), the Strasbourg Court has indeed recognised “that the public has a right to receive information as a corollary of the specific function of journalists, which is to impart information and ideas on matters of public interest”. However, the Court was of the opinion that the freedom to receive information basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to that person. It was decided in these cases that the freedom to receive information as guaranteed by Article 10 could not be construed as imposing on a State a positive obligation to disseminate information or to disclose information to the public.

In a recent decision (10 July 2006) on an application’s admissibility, the European Court of Human Rights has, for the first time, applied Article 10 of the Convention in a case where a request for access to administrative documents was refused by the authorities. The case concerns a refusal to grant an ecological NGO access to documents and plans regarding a nuclear power station in Temelin, Czech Republic. Although the Court is of the opinion that there has not been a breach of Article 10, it explicitly recognised that the refusal by the Czech authorities is to be considered as an interference with the right to receive information as guaranteed by Article 10 of the Convention. Hence, the refusal must meet the conditions set out in Article 10 para. 2. In the case of Sdruženi Jihočeské Matky v. Czech Republic, the Court refers to its traditional case law, emphasising that the freedom to receive information “aims largely at forbidding a State to prevent a person from receiving information which others would like to have or can consent to provide”. The Court is also of the opinion that it is difficult to derive from Article 10 a general right to have access to administrative documents, The Court, however, recognises that the refusal to grant access to administrative documents, *in casu* relating to a nuclear power station, is to be considered as an interference in the applicant’s right to receive information. Because the Czech authorities have reasoned in a pertinent and sufficient manner the refusal to grant access to the

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requested documents, the Court is of the opinion that there has been no breach of Article 10 para. 2 of the Convention in this case. The refusal was justified in the interest of protecting the rights of others (industrial secrets), national security (risk of terrorist attacks) and public health. The Court also emphasised that the request to have access to essentially technical information about the nuclear power station did not reflect a matter of public interest. For these reasons, it was obvious that there had not been an infringement of Article 10 of the Convention, thus, the Court declared the application inadmissible.

The ruling in the case of Sdruženi Jihočeské Matky is nonetheless important as it contains an explicit and undeniable recognition of the application of Article 10 in cases of a rejection of a request for access to public or administrative documents. The right to access administrative documents is not an absolute one and can indeed be restricted under the conditions of Article 10 para. 2, which implies that such a rejection must be prescribed by law, have a legitimate aim and must be necessary in a democratic society. The Court's decision of 10 July 2006 gives additional support and opens new perspectives for citizens, journalists and NGOs for accessing administrative documents in matters of public interest.

Décision de la Cour européenne des Droits de l'Homme (cinquième section), affaire Sdruženi Jihočeské Matky c. République tchèque, requête n° 19101/03 du 10 juillet 2006

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Decision by the European Court of Human Rights (Fifth Section), case of Sdruženi Jihočeské Matky v. Czech Republic, Application no. 19101/03 of 10 July 2006

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