European Court of Human Rights: Case of Kenedi v. Hungary

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In May 2009, the Court confirmed once more the applicability of the right to freedom of expression and information guaranteed under Article 10 of the Convention to matters of access to official documents. The case concerns the attempt by a historian, Mr. János Kenedi, to have access to certain documents deposited at the Ministry of the Interior regarding the functioning of the State Security Services in Hungary in the 1960s. Mr Kenedi, who had previously published several books on the functioning of secret services in totalitarian regimes, complained to the European Court about the Hungarian authorities' protracted reluctance to enforce a court order granting him unrestricted access to these documents. For several years Kenedi tried to get access to the relevant information from the Ministry, but to no avail. After continued refusals, he obtained domestic court orders to enforce access. The Ministry, however, continued to obstruct him, for example by requiring that Kenedi sign a declaration of confidentiality. Kenedi refused, among other reasons because the Court order had not mentioned confidentiality as a requirement. At the time of the proceedings in Strasbourg, Kenedi still had not been granted access to all the documents he had requested.

The European Court held unanimously that there had been a violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights, on account of the excessive length of the proceedings - over ten years - that Mr Kenedi had launched so as to gain and enforce his access to documents concerning the Hungarian secret services. Article 10 (freedom of expression and information) was also violated in the Court's view. It reiterated that "access to original documentary sources for legitimate historical research was an essential element of the exercise of the applicant's right to freedom of expression". The Court noted that Mr Kenedi had obtained a court judgment granting him access to the documents in question, while the domestic courts had repeatedly found in his favour in the ensuing enforcement proceedings. The administrative authorities had persistently resisted their obligation to comply with the domestic judgment, thus hindering Mr Kenedi's access to documents he needed to write his study. The Court concluded that the authorities had acted arbitrarily and in defiance of domestic law. Their obstructive actions had also led to the finding of a violation of Article 6 § 1 of the Convention. The Court held, therefore, that the authorities had misused their powers by delaying Mr Kenedi in the exercise of his right to freedom

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of expression, in violation of Article 10.

Finally, Article 13 ECHR (effective remedy) had also been violated, since the Hungarian system did not provide for an effective way of remedying the violation of Mr Kenedi's freedom of expression in this situation. The Court found that the procedure available in Hungary at the time and designed to remedy the violation of Mr Kenedi's Article 10 rights had proven ineffective. There had, therefore, been a violation of Article 13, in conjunction with Article 10 of the Convention.

Again, the Court does not formulate a general right of access to (official) documents. The Court is however of the opinion that the granting of access was necessary for the applicant to accomplish the publication of a historical study. The Court noted that the intended publication fell within the applicant's freedom of expression, as guaranteed by Article 10 of the Convention.

Judgment by the European Court of Human Rights (Second Section), case of Kenedi v. Hungary, Application no. 31475/05, 26 May 2009

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