European Court of Human Rights: Youth Initiative for Human Rights v. Serbia

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In its judgment of 25 June 2013, the European Court of Human Rights has recognised more explicitly than ever before the right of access to documents held by public authorities, based on Article 10 of the Convention (right to freedom of expression and information). The judgment also emphasised the importance of NGOs acting in the public interest.

The case concerns an NGO, known as Youth Initiative for Human Rights, that is monitoring the implementation of transitional laws in Serbia with a view to ensuring respect for human rights, democracy and the rule of law. The applicant NGO requested the intelligence agency of Serbia to provide it with some factual information concerning the use of electronic surveillance measures used by that agency in 2005. The agency at first refused the request, relying on the statutory provision applicable to secret information. After an order by the Information Commissioner that the information at issue should be disclosed under the Serbian Freedom of Information Act 2004, the intelligence agency notified the applicant NGO that it did not hold the requested information. Youth Initiative for Human Rights complained in Strasbourg about the refusal to have access to the requested information held by the intelligence agency, notwithstanding a final and binding decision of the Information Commissioner in its favour.

The European Court is of the opinion that as Youth Initiative for Human Rights was obviously involved in the legitimate gathering of information of public interest with the intention of imparting that information to the public and thereby contributing to the public debate, there has been an interference with its right to freedom of expression as guaranteed by Article 10 of the Convention. The Court recalls that the notion of “freedom to receive information” embraces a right of access to information. Although this freedom may be subject to restrictions that can justify certain interferences, the Court emphasises that such restrictions ought to be in accordance with domestic law. The Court is of the opinion that the refusal to provide access to public documents did not meet the criterion as being prescribed by law. It refers to the fact that the intelligence agency indeed informed the applicant NGO that it did not hold the information requested, but for the Court it is obvious that this “response is unpersuasive in view of the nature of that information (the number of people subjected to electronic surveillance by that agency in 2005) and the agency’s initial response”. The Court comes to the conclusion that the “obstinate reluctance of the intelligence agency of Serbia to

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comply with the order of the Information Commissioner" was in defiance of domestic law and tantamount to arbitrariness, and that accordingly there has been a violation of Article 10 of the Convention. It is interesting to note that the Court reiterates in robust terms that an NGO can play a role as important as that of the press in a democratic society: "when a non-governmental organisation is involved in matters of public interest, such as the present applicant, it is exercising a role as a public watchdog of similar importance to that of the press". Finally, as a measure under Article 46 of the Convention, the Court ordered the Serbian State to ensure, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the intelligence agency of Serbia to provide the applicant NGO with the information requested.

Judgment by the European Court of Human Rights (Second section), case of Youth Initiative for Human Rights v. Serbia, Appl. nr. 48135/06 of 25 June 2013

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