[RS] Denial of Access to Information Requires Profound Reasoning

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Slobodan Kremenjak
Živković Samardžić Law Office, Belgrade

On 23 May 2013, the Constitutional Court of Serbia decided that the mere fact that a document is classified and thus labeled as confidential is not sufficient to justify the denial of access to information under the Serbian law on freedom of access to information of public importance.

The Administrative Court had previously found that the request of a journalist filed with the government of the Republic of Serbia was rightfully denied. The journalist worked for TV B92's investigative TV series called "Insider" and requested to be allowed access to the records of the Government's Commission formed to investigate possible omissions in view of the late Prime Minister Zoran Djindjic's security and his assassination in 2003.

The report of the Commission, which said there were many such omissions, was released to the public. However, the documents providing the basis of the report (including the minutes of the Commission's sessions and investigative interviews) remained classified.

The records compiled and acquired in the course of the Commission's work have never been released and have never been used in the trial for the murder of the late Prime Minister. After the trial, the journalist of the "Insider" requested that all records of the Commission be declassified in the interest of the public. However, all she received from the then Government was the report that had been publicly available in the first place. Access to the minutes of the Commission's sessions and the records of the interviews was denied. The Government reasoned this denial by referring to the label "classified" on the documents. The journalist initiated the proceedings for the judicial review of the Government's decision, but the Administrative Court decided that the Government's denial of access was legitimate.

The Constitutional Court of Serbia found that it would be premature to decide that the journalist's right to the freedom of information was violated. It is entirely possible that the secrecy of the documents prevails over the freedom of information. However, the Constitutional Court ruled that the mere fact that a document is labelled "classified" is not sufficient to deny access by the public. The Administrative Court failed to examine whether the classification of the

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document as confidential is founded on a legitimate interest. Neither did the Court analyse whether the interest in confidentiality overrides the right of the public to know. These ommissions constituted a violation of the journalist's right to a fair trial. Thus, the Constitutional Court has clearly found that the lack of the proper balancing test in the judicial and administrative decisions dealing with the right to the freedom of information amounts to the violation of the right to a fair trial. In the decision the Constitutional Court quotes extensively from the case law of the European Court for Human Rights and its judgments of 14 April 2009 (Társaság a Szabadságjogokért v. Hungary; see IRIS 2009-7/1) and of 26 May 2009 (Kenedi v. Hungary; see IRIS 2009-7/104).

Accordingly, these proceedings were referred back to the Administrative Court for a new decision.

Už-1823/2010, 23 May 2013

http://www.ustavni.sud.rs/page/predmet/sr-Cyrl-CS/8954/?NOLAYOUT=1

Constitutional Court's decision of 23 May 2013 (Už-1823/2010)

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