# European Court of Human Rights: Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v. Austria

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In a new judgment on the right of access to public documents, the Strasbourg Court has further clarified and expanded the scope of the application of Article 10 of the Convention. The applicant in this case is an NGO, the Austrian association for the preservation, strengthening and creation of an economically sound agricultural and forestry land ownership (OVESSG). In 2005 the association twice requested the Tyrol Real Property Transaction Commission, which is responsible for approving agricultural and forest land transactions, to provide OVESSG with the decisions the Commission had issued over a certain period of time, eventually in an anonymised form. OVESSG indicated that it would reimburse the resulting costs. However, the association's requests were refused on the ground that they did not fall within the scope of the Tyrol Access to Information Act. Moreover, even if the request did fall within its scope, pursuant to the Act an authority did not have the duty to provide the requested information if doing so would require so much resources that its functioning would be affected and would jeopardise the fulfilment of the Commission's other tasks. The association's complaints to the Administrative Court and the Constitutional Court were rejected. OVESSG then complained in Strasbourg that its right to receive information, guaranteed by Article 10 of the Convention, had been violated.

The Court considers that the refusal to give OVESSG access to the requested documents amounted to an interference with its rights under Article 10, as the association was involved in the legitimate gathering of information of public interest with the aim of contributing to public debate. As it was accepted that the refusal was prescribed by law, based on the Tyrol Access to Information Act, and that it pursued the legitimate aim of the protection of the rights of others, the Court had next to decide whether the refusal to grant access to the documents was justified, which means, in the terms of Article 10§ 2,being necessary in a democratic society. The Court refers to the development in its case law regarding Article 10 and access to information. It recalls that it has held that the right to receive information cannot be construed as imposing on a State positive obligations to collect and disseminate information of its own motion. However, the Court noted that it had recently advanced towards a broader interpretation of the notion of the freedom to receive information and thereby towards the recognition

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of a right of access to information. The Court also refers to its case-law stating that the most careful scrutiny was called for when authorities enjoying an information monopoly interfered with the exercise of the function of a social watchdog (see Társaság a Szabadságjogokért v. Hungary, (IRIS 2009-7/1) and Youth Initiative for Human Rights v. Serbia, (IRIS 2013-8/1)).

The Court finds that the Tyrol Real Property Transaction Commission had not given sufficient reasons to justify its refusal to grant OVESSG access to the requested documents. The European Court observes that in contrast with similar authorities in other regions in Austria, the Tyrol regional authority had chosen not to publish its decisions and thus, by its own choice, held an information monopoly. The unconditional refusal by the Tyrol Real Property Transaction Commission thus made it impossible for OVESSG to carry out its research in respect of one of the nine Austrian Länder, namely Tyrol, and to participate in a meaningful manner in the legislative process concerning amendments to real property transaction law in Tyrol. The Court therefore concludes that the interference with the applicant association's right to freedom of expression and information cannot be regarded as having been necessary in a democratic society. In a 6-1 vote it found a violation of Article 10 of the Convention.

***Judgment by the European Court of Human Rights (First Section), case of Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v. Austria, Appl. No. 39534/07 of 28 November 2013***

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