European Court of Human Rights: Magyar Helsinki Bizottság v. Hungary

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Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

On 8 November 2016, the Grand Chamber of the European Court of Human Rights (ECtHR) delivered a landmark judgment on the right of access to public documents. It found that the Hungarian authorities' refusal to provide the Hungarian Helsinki Committee, Magyar Helsinki Bizottság (MHB), with information relating to the work of ex officio defence counsels was in breach of Article 10 of the European Convention on Human Rights (ECHR), which guarantees the right to freedom of expression. The Court noted that the information requested from the police by MHB was necessary for it to complete the study on the functioning of the public defenders' system MHB was conducting in its capacity as a non-governmental human-rights organisation, with a view to contributing to discussion on an issue of obvious public interest. In the Court's view, by denying MHB access to the requested information the Hungarian authorities had impaired the NGO's exercise of its freedom to receive and impart information, in a manner striking at the very substance of its Article 10 rights. The Grand Chamber's judgment is a victory for journalists, bloggers, academics, and NGOs, who rely on access to public documents in order to conduct investigations as part of their role as "public watchdogs".

Article 10 ECHR stipulates that "everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers (…)". This article does not mention a right of access to public documents, nor a right to seek information. Neither is there a self-standing right of access to State-held information under the ECHR, nor a corresponding obligation for public authorities to disclose such information. Nonetheless, since 2009 the Court in its case law recognises that such a right or obligation may be instrumental and necessary for effective protection of the rights under Article 10 (see Társaság a Szabadságjogokért v. Hungary (IRIS 2009-7/1), Kenedi v. Hungary (IRIS 2009-7:Extra), Gillberg v. Sweden (IRIS 2011-1/1 and 2012-6/1), Youth Initiative for Human Rights v. Serbia (IRIS 2013-8/1), Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines Wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v. Austria (IRIS 2014-2/2) and Roşiianu v. Romania (IRIS 2014-8/4)). Apart from these developments in its case law, the Court also referred to national and international sources of law recognising a right of access to public documents. This lead the Court to consider a right of access to

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information as a crucial instrument for the exercise of the right to receive and impart information as guaranteed by Article 10 of the Convention: “For the Court, in circumstances where access to information is instrumental for the exercise of the applicant’s right to receive and impart information, its denial may constitute an interference with that right. The principle of securing Convention rights in a practical and effective manner requires an applicant in such a situation to be able to rely on the protection of Article 10 of the Convention”. The Court further concentrated on the role of civil society and participatory democracy, and emphasised that access to public documents by the press and NGOs can contribute to “transparency on the manner of conduct of public affairs and on matters of interest for society as a whole and thereby allows participation in public governance”. It considers “that civil society makes an important contribution to the discussion of public affairs”, and that “the manner in which public watchdogs carry out their activities may have a significant impact on the proper functioning of a democratic society. It is in the interest of democratic society to enable the press to exercise its vital role of “public watchdog” in imparting information on matters of public concern … just as it is to enable NGOs scrutinising the State to do the same thing. Given that accurate information is a tool of their trade, it will often be necessary for persons and organisations exercising watchdog functions to gain access to information in order to perform their role of reporting on matters of public interest. Obstacles created in order to hinder access to information may result in those working in the media or related fields no longer being able to assume their “watchdog” role effectively, and their ability to provide accurate and reliable information may be adversely affected”.

Before Article 10 can come into play, however, the information requested should not only be instrumental for the exercise of the right to freedom of expression: the information to which access is sought must also meet a “public-interest test” for the disclosure to be considered necessary under Article 10. In addition, whether the person seeking access to the information in question does so with a view to informing the public in the capacity of a public “watchdog” and whether the information requested is “ready and available” are also an “important consideration” for the Court.

After finding that the denial to give MHB access to the requested information was an interference with MHB’s rights under Article 10, the Court explained why this amounted to a violation of Article 10. First, it considered that the information requested by MHB was “necessary” for it to exercise its right to freedom of expression. Second, the Court does not find that the privacy rights of the public defenders would have been negatively affected had the MHB’s request for information been granted. Although the information request by MHB concerned personal data, it did not involve information outside the public domain. According to the Court the relevant Hungarian law, as interpreted by the domestic courts, excluded any meaningful assessment of MHB’s freedom-of-expression rights under Article 10. Therefore the Court considered that the arguments advanced by

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the Hungarian Government, although relevant, were not sufficient to show that the interference complained of was “necessary in a democratic society”. By 15 votes to two the Grand Chamber comes to the conclusion that there has been a violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights, Grand Chamber, case of Magyar Helsinki Bizottság v. Hungary, Application no. 18030/11, 8 November 2016

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