Studio Monitori and Others v. Georgia

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In a case about access to information, the European Court of Human Rights (ECtHR) clarified that the right to freedom of expression and information, as guaranteed by Article 10 of the European Convention on Human Rights (ECHR), is only applicable when a set of conditions are fulfilled. The case of *Studio Monitori and Others v. Georgia* is one of the cases following the judgment of the Grand Chamber in *Magyar Helsinki Bizottság v. Hungary* (IRIS 2017-1/1) to test the limits of the right of access to public documents and the applicability of Article 10 ECHR (see also *Bubon v. Russia*, 7 February, 2017, and *Cangi v. Turkey*, 29 January, 2019 and the decisions in *Dimitris Sioutis v. Greece*, 29 August, 2017 and *Gennadiy Vladimirovich Tokarev v. Ukraine*, 21 January, 2020). The most important consequence of the judgment in *Studio Monitori and Others v. Georgia* is that NGOs, journalists or other public watchdogs requesting access to public documents have to motivate and clarify that access to the documents they are applying for is instrumental for their journalistic reporting and that the requested documents contain information of public interest. If these conditions are not fulfilled, Article 10 ECHR does not cover a right of access to information, which leaves the national authorities the discretionary power to determine at domestic level the scope and limits of the right of access to public documents, without scrutiny by the ECtHR.

In *Studio Monitori and Others v. Georgia,* the first applicant is a non-governmental organisation (NGO) established with the aim of conducting journalistic investigations into matters of public interest. The second applicant is a journalist and one of the founding members of the organisation. The third applicant is a lawyer. They all complained that the domestic judicial authorities had denied them access to specific criminal case files and court decisions, which amounted to a violation of their right of access to public documents under Article 10 ECHR. The initial and crucial question before the ECtHR was whether there had been an interference with the applicants' rights under Article 10 ECHR.

In a general consideration, the ECtHR reiterated that Article 10 ECHR "does not confer on the individual a right of access to information held by a public authority nor oblige the government to impart such information to the individual. However, such a right or obligation may arise, [...] in circumstances where access to the information is instrumental for the individual's exercise of his or her right to freedom of expression." Referring to its Grand Chamber judgment in the *Magyar*

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Helsinki Bizottság case, the ECtHR considered that whether and to what extent the denial of access to information constitutes an interference with an applicant's right to freedom of expression under Article 10 "must be assessed in each individual case and in the light of its particular circumstances." This assessment includes the following criteria: (a) the purpose of the information request; (b) the nature of the information sought; (c) the particular role of the seeker of the information in receiving and imparting it to the public; and (d) whether the information was ready and available.

With regard to the NGO and the journalist, the ECtHR confirmed that their journalistic role "was undeniably compatible with the scope of the right to solicit access to state-held information", but it observed that "the purpose of their information request cannot be said to have satisfied the relevant criterion under Article 10 ECHR." The ECtHR found that, in the relevant domestic proceedings, both applicants had failed to specify the purpose of their request for permission to consult the criminal case file. They had never explained to the relevant court registry why the documents were necessary for the exercise of their freedom to receive and impart information to others. Noting that omission, the domestic authority explicitly invited the applicants to address that gap by clarifying the purpose of their request, while the authority expressed its readiness to reconsider its initial refusal upon receipt of the requisite information from the applicants. However, the NGO and the journalist ignored that opportunity and instead decided to sue the authority for breaching their alleged right to have unrestricted access to state-held information of public interest. The ECtHR further observed that, even in the absence of the information sought, the NGO and the journalist were able to proceed with their journalistic investigation. Indeed, even without waiting for the outcome of the relevant proceedings which they themselves had initiated against the domestic judicial authority, they finalised the investigation and made its results accessible to the public. Therefore, the ECtHR concluded that the access sought by the NGO and the journalist to the relevant criminal case material "was not instrumental for the effective exercise of their right to freedom of expression."

With regard to the application by the lawyer, the ECtHR also observed that he did not explain to the court registry the purpose of his request to obtain a full copy of the relevant court decisions. Therefore, the ECtHR could not accept that the information sought was instrumental for the exercise of the lawyer's right to freedom of expression. Furthermore, it was also unclear how the lawyer's role in society was supposed to satisfy the relevant criterion under Article 10 of the Convention, as he was neither a journalist nor a representative of a "public watchdog". There was no indication of how the lawyer could enhance the public's access to news or facilitate the dissemination of information in the interest of public governance by receiving a copy of detention orders in six criminal cases totally unrelated to him. In addition, the ECtHR was not persuaded either that the

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information solicited from the domestic judicial authority by the lawyer met the relevant public interest test under Article 10 ECHR. The ECtHR did acknowledge explicitly "the significance of the principle that court decisions are to be pronounced publicly and should be, in some form, made accessible to the public in the interest of the good administration of justice and transparency." Nonetheless, it emphasised that the requirement that the information sought meet a public interest test in order to prompt a need for disclosure under Article 10 ECHR is different, as it refers to the specific subject matter of the document, in this case, of the judicial orders. The lawyer limited his arguments to mentioning that the solicited judicial decisions concerned high-profile criminal cases instituted against former high-ranking state officials for corruption offences. The ECtHR, however, found that the reference to the involvement of "well-known public figures" was not in itself sufficient to justify, under Article 10 ECHR, disclosure of a full copy of the relevant judicial orders concerning the ongoing criminal proceedings, adding the consideration that "the public interest is hardly the same as an audience's curiosity."

On the basis of these findings and considerations concerning the question of the applicability of Article 10 ECHR and the existence of an interference under this provision, the ECtHR came to the conclusion that there has been no violation of the applicants' right to freedom of expression and information under Article 10 ECHR.

ECtHR, Fifth section, Studio Monitori and others v. Georgia, Application nos. 44920/09 and 8942/10, 30 January 2020

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