European Court of Human Rights: Boris Antonov Mitov and others v. Bulgaria

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A decision of 28 February 2023 of the European Court of Human Rights (ECtHR) dealt with an interesting claim made by a group of Bulgarian journalists in order to achieve Internet access to all non-anonymised judgments of the Supreme Administrative court, including all scanned documents. The journalists based their claim on the right to freedom of expression and information as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). By a majority decision, the ECtHR declared the application inadmissible on the grounds that it was not for the ECtHR to make abstract pronouncements on how, and how quickly, a national court should provide access to the documents in its case files and to anonymise its judgments and decisions when publishing them on the Internet.

The applicants were eight journalists from various Bulgarian media outlets specialising in reporting on matters relating to the judiciary. They were also members of an association whose work focused on optimising the work of the judiciary and the administration, and protecting human and civil rights. In 2016, they sought judicial review against a set of internal rules for the redaction of personal data in documents published on the Supreme Administrative Court's online database. The journalists were in particular aggrieved that the September 2016 rules for anonymisation of personal data in the online documents of the court had, in their view, been defined too broadly, and that the rules excluded all scanned documents from online publication on the Supreme Administrative Court's website. In May 2018, the Supreme Administrative Court found that the rules did not affect the journalists' rights or legal interests. They did not hamper the applicants from reporting on matters of public interest. The rules were only meant to protect personal data, and could not be seen as being in breach of the constitutional rights to freedom of expression and to seek, receive and disseminate information. In June 2018, the president of the Supreme Administrative Court confirmed and fine-tuned some of the anonymisation rules. The hearing records, judgments and decisions published on the court's website would be redacted and some personal data would be anonymised. Some types of data, such as the names of public authorities, legal entities, political parties, associations, notaries and the media, would not be redacted. And since scanned case material could not be redacted, it would not be made available online. In the meantime, in 2017, an amendment to the Judiciary Act came into force,

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introducing an exception to the requirement for immediate publication of judgments. The amendment stated that judicial decisions in criminal cases which convicted and sentenced someone or which finally upheld convictions and sentences would only be published online after the prosecuting authorities had informed the relevant court that steps had been taken to enforce them.

The journalists lodged an application with the ECtHR, complaining under Article 10 ECHR about (a) the anonymisation rules laid down by the President of the Supreme Administrative Court and (b) the legislative amendment introducing a deferred-publication rule for certain criminal judgments. They argued that the anonymisation rules had limited their freedom of expression since they obstructed free access to information about cases and thus reporting on matters of public interest, while that information – in particular that featuring in the scanned case material – could not be obtained from other sources. They also clarified that they often reported on high-profile criminal cases and that the deferred-publication rule impeded them from doing so properly.

The ECtHR refered to its Grand Chamber case law Magyar Helsinki Bizottság v. Hungary of 8 November 2016 (IRIS 2017-1/1) in which it recognised that if access to information is instrumental for the exercise of the right to freedom of expression of the person seeking to obtain that information, Article 10 ECtHR may confer a right to access information held by the authorities or oblige them to impart such information. The relevant criteria in such cases are (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 is ready and available. Those points are to be assessed in the light of the particular circumstances of each case.

The ECtHR was of the opinion that in the applicants' case, however, there were no particular circumstances, as the complaint did not concern a specific piece of information or even a defined category of information held by a public authority. The journalists were aggrieved by the impossibility of accessing on the Internet all scanned case material available in the database of the Bulgarian Supreme Administrative Court and the anonymised parts of all of that court’s judgments and decisions. Although the ECtHR found that the applicants’ role as “public watchdogs” reporting on issues of public interest was not in doubt, it considered their claims as “entirely abstract”. Furthermore, it could not be said that all judicial review and other cases heard by the Bulgarian Supreme Administrative Court concerned matters of public interest, and that all information relating to those cases related, without distinction, to such matters. The ECtHR also observed that if the documents and information in question were to be made freely available on the Internet, they would inevitably be available not only to the journalists, but also to any member of the public. The ECtHR concluded that it was not in a position to find that the information to which the journalists claimed not

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to have access was instrumental for the exercise of their right to freedom of expression, and that it was not for the ECtHR to make abstract pronouncements on how a national court should provide access to the documents in its case files and anonymise its judgments and decisions when publishing them on the Internet. The ECtHR also found that it was not within its competence to make abstract pronouncements on how quickly national courts should publish their judgments on the Internet.

For these reasons the ECtHR found that Article 10 ECHR did not apply in this case and that the complaint of the eight Bulgarian journalists was to be rejected as being incompatible *ratione materiae* with the provisions of the ECHR. Therefore it declared the application inadmissible.

Decision by the European Court of Human Rights, Third Section, in the case of Boris Antonov Mitov and others v. Bulgaria, Application no. 80857/17, 28 February 2023 (notified on 23 March 2023)

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