European Court of Human Rights: *Avramchuk v. Ukraine* and *Eastern Ukrainian Centre for Public Initiatives v. Ukraine*

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The European Court of Human Rights (ECtHR) has once again been requested to evaluate the justification by the Ukrainian authorities of their refusal to give access to administrative documents to journalists or other public watchdogs (see also IRIS 2020-4:1/7 and IRIS 2020-5:1/24). In two judgments of 5 October 2023, the ECtHR made clear that the protection of privacy or personal data cannot be an absolute exception to the right of access to public or administrative documents under Article 10 of the European Convention on Human Rights (ECHR). In both judgments the ECtHR found that the Ukrainian authorities made no pertinent attempt to balance the interests of a journalist and an NGO in having access to information of public interest under Article 10 ECHR and the need to protect the rights of private persons under Article 8 ECHR. In both cases, the ECtHR found a violation of the right to freedom of expression and information under Article 10 ECHR.

The applicant in the first case, Kateryna Sergiyivna Avramchuk, is a journalist working for the Internet media outlet *Ukrainska Pravda* (Ukrainian Truth). In 2012 she requested the Parliament of Ukraine to provide her with information about the number of apartments, paid for out of the state budget, which were allocated to the sitting members of parliament and the price and surface area of these apartments. She also asked for the names of the MPs who had received said apartments.

The head of the Parliamentary Secretariat informed Avramchuk that a total of fifteen apartments of different surface areas had been allocated to MPs, but that their names could not be provided, as this constituted confidential information about a person and could not be disseminated without that person’s consent. Avramchuk challenged that refusal before the courts, complaining that she had received an incomplete reply to her request for information. She stated that it was important to know the names of the MPs who had received the housing in order for the public to be able to control such a large budgetary expenditure. She referred to a set of legal provisions, pursuant to which information about public expenditure and the use of state property could not be restricted, in particular the names of persons receiving such property. She also argued that a three-part test for restricting access to information had not been applied. The Kyiv City Administrative Court however dismissed her request, confirming that the data

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about a person, including one's name, address and financial status, was confidential information and could not be disseminated without that person's consent. Her appeal before the Kyiv Administrative Court of Appeal also failed.

Avramchuk logded an application with the ECtHR, complaining that the interference with her freedom of expression had not been in accordance with the law and that the domestic courts had failed to protect her right of access to documents of public interest, held by the authorities as guaranteed under Article 10 ECHR (see IRIS 2017-1/1). She also argued that section 6(2) of the Ukrainian Law on Access to Public Information contained a three-part test quite similar to that under paragraph 2 of Article 10 ECHR, which provided for the balancing of conflicting interests. Neither the Parliamentary Secretariat nor the domestic courts had applied that test, but rather simply referred to the allegedly confidential nature of the information sought. Furthermore, section 6(5) of the Law on Access to Public Information provided that access to information about the use of budgetary funds and state property, including access to copies of documents with the names of persons to whom such property had been transferred, could not be limited.

The ECtHR observed that the domestic courts gave only very succinct reasons for their refusal, essentially endorsing those advanced by the Parliamentary Secretariat with reference to the Constitutional Court's decision of 2012, which qualified any information about a person as confidential (see also *Centre for Democracy and the Rule of Law v. Ukraine*, IRIS 2020-5:1/24). The ECtHR found that the domestic courts had disregarded the journalist's persistent arguments based on a set of legal provisions on access to public documents. In particular, no explanation was given as to why section 6(5) of the Law on Access to Public Information or its three-part test had not been applied. This also led to the courts making no attempt to balance the potential interests involved, that is, the journalist's interest in having access to information of public interest and the need to protect the rights of private persons. Therefore the ECtHR found that the reasons adduced to justify the interference were not sufficient, and that, consequently, the interference was not "necessary in a democratic society". There has accordingly been a violation of Article 10 ECHR.

In a judgment on the same day, 5 October 2023, the ECtHR found another violation of Article 10 ECHR, after a refusal by the Ukrainian authorities to give access to public documents about urban planning, at the request of an NGO. According to the ECtHR the domestic courts made no attempt to weigh up the potential interests involved, namely that of the need to protect sensitive information on urban planning on the one hand, and the public interest in having access to open information and the applicant NGO's rights under Article 10 on the other. Therefore, in this case the ECtHR also found that the reasons adduced to justify the refusal were not sufficient, and that, consequently, the interference with the NGO's right of access to public documents was not "necessary in a

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democratic society". Hence also in the case of *Eastern Ukrainian Centre for Public Initiatives v. Ukraine* the ECtHR found a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, Fifth Section, sitting as a Committee, in the case of Avramchuk v. Ukraine, Application No. 65906/13, 5 October 2023

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Judgment by the European Court of Human Rights, Fifth Section, sitting as a Committee, in the case of Eastern Ukrainian Centre for Public Initiatives v. Ukraine, Application Nos. 18036/13 and 13 others, 5 October 2023.

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