Written Comments on the Case of *Geraguyn Khorhurd Patgamavorakan Akumb v. Armenia*

A Submission from the Open Society Justice Initiative to the European Court of Human Rights

October 2006

OPEN SOCIETY
JUSTICE INITIATIVE

Application no. 11721/04
GERAGUYN KHORHURD PATGAMAVORAKAN AKUMB v. ARMENIA

WRITTEN COMMENTS OF THE OPEN SOCIETY JUSTICE INITIATIVE

Pursuant to leave granted on September 6, 2006 by the President of the Chamber, acting under Rule 44 § 2 of the Rules of Court, the Open Society Justice Initiative hereby submits its written comments on the legal principles that should govern the resolution of the issues presented by this case.

RELEVANT PRINCIPLES

1. By way of context, this case involves the alleged failure of an Armenian election authority to provide to the Applicant organization information related to its decision-making processes, as well as data pertaining to the campaign contributions and expenses of certain political parties. The basic legal issue raised by the case is whether Article 10 of the Convention grants individuals and other persons a general right of access to information held by public authorities. The present comments address the status of the right to information in European and international law; its close connection to the rights to freedom of expression and democratic participation; and comparative laws and practices on access to election-related information.

A. The Right to Information is Well-Established in International Law and Practice

1. Right to Information in European Law and Practice

2. The recognition of a right of access to information held by public authorities is well supported by state practice and international law. In the European context, the Council of Europe adopted its first recommendation on the right of access more than twenty years ago.[1] In 2002, the Committee of Ministers adopted a new recommendation providing for a right to access official documents in the following terms:

> Member states should guarantee the right of everyone to have access, on request, to official documents held by the public authorities. This principle should apply without discrimination on any ground, including national origin.[2]

The preamble to this 2002 Recommendation notes that access to official documents "allows the public … to form a critical opinion on the state of the society in which they live and on the authorities that govern them," and enhances informed participation in public affairs. The Council of Europe is currently in the process of developing a treaty or other binding instrument, which would recognize an individual right of access to official documents.[3]

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[1] The 1981 recommendation provides that "[e]veryone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities …." *Recommendation (81) 19 on Access to Information Held by Public Authorities*, adopted by the Council of Ministers on November 25, 1981.

[2] *Recommendation (2002)2 on Access to Official Documents*, February 21, 2002, para. III (emphasis added).

[3] In May 2005, the Committee of Ministers tasked a group of experts with "drafting a free-standing legally binding instrument establishing the principles on access to official documents." Decision No. CM/866/04052005.

3. In the 25-member European Union, the Charter of Fundamental Rights grants a right of access to documents held by Union institutions to "[a]ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State."[4] Considering that the Charter is based on the constitutional traditions of the member states, the inclusion of the right of access to information therein suggests that this right has not only become ubiquitous, but is widely perceived as a basic right on the European continent. State practice confirms this conclusion: some thirty-nine Council of Europe member states recognize a constitutional and/or statutory right of access to state-held information, and have adopted access to information laws to secure its practical implementation.[5] Worldwide, more than sixty-five countries have adopted such legal regimes. At least seventeen Council of Europe member states have granted the right of access constitutional status by including it in their bills of rights, or by adopting equivalent constitutional obligations for public authorities, thus formally recognizing the right's essential role in the proper functioning of a democratic system.[6]

4. These developments notwithstanding, this Court has not as yet construed Article 10 or other provisions of the European Convention on Human Rights as providing for a right of general access to government information.[7] Until recently, the Court had only recognized a right to state-held information under circumstances in which the denial of information affects the enjoyment of other Convention rights, such as the right to respect for private and family life, under Article 8 of the Convention. In *Guerra v. Italy*, a case brought by individuals living near a chemical factory in relation to the failure of the Italian authorities to inform them about the risks of potentially devastating accidents, the Court held that, under such circumstances, Article 8 imposed on states a positive obligation to inform. Failure to do so had left the applicants unable to assess the risks and make informed decisions about living near the hazardous facility.[8]

5. As noted, the Court did not consider Article 10 to be applicable in *Guerra* or earlier cases addressing access to information. In *Guerra*, the Court ruled, in language similar to that employed in the earlier cases, that

> [the] freedom to receive information, referred to in paragraph 1 of Article 10 of the Convention, "basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to him" .... That freedom cannot be

[4] *Charter of Fundamental Rights of the European Union*, December 7, 2000, art. 42. The Charter is not legally binding but can be invoked by EU and national courts.

[5] *See* David Banisar, *Freedom of Information Around the World 2006: A Global Survey of Access to Government Records Laws*, at www.freedominfo.org. These laws provide for a general, unconditional right to access state-held information or documents, as opposed to a right of access that depends upon a showing of a personal or legal interest in the relevant administrative process.

[6] *Id*. This group represents a diverse mix of both new and older democracies; it includes: Albania, Austria, Belgium, Bulgaria, the Czech Republic, Estonia, Finland, Greece, Hungary, Moldova, Norway, Poland, Portugal, Romania, Slovakia, Spain, and Sweden.

[7] Article 10 provides, in the relevant part, that "[e]veryone 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 authorities and regardless of frontiers."

[8] *Guerra and Others v. Italy*, Judgment of February 19, 1998. The Court found that similar positive obligations existed in *Gaskin v. United Kingdom*, Judgment of July 7, 1989 (involving refused access to case records to an adult who had been in the care of the local authorities as a child); and *McGinley and Egan v. United Kingdom*, Judgment of June 9, 1998 (involving refused access to records regarding the potential health hazards resulting from nuclear radiation tests to which the applicants had been exposed while serving in the British army).

construed as imposing on a State, in circumstances such as those of the present case, positive obligations to collect and disseminate information of its own motion.[9]

6. In a July 2006 admissibility decision, however, the Fifth Section of the Court, in an apparent departure from the *Guerra* line of cases, held that Article 10 did grant the applicant, a Czech environmental group, a right of access to documents regarding the design and construction of a nuclear reactor.[10] The *Sdruženi* Court referred to the *Guerra* and *Roche* precedents, and noted that "it is difficult to deduce from the Convention a general right of access to data and documents of an administrative nature." This notwithstanding, the Court proceeded to hold that, under the circumstances of the case – in which the applicant was a party to an administrative proceeding reviewing the environmental impact of the reactor – the rejection of the applicant's request for information amounted to an interference with "its right to receive information" under Article 10.[11] Such an interference ought to be subjected to the usual test of paragraph 2 of Article 10, which allows for restrictions of the right to receive information in order to protect certain enumerated interests, such as national security, public safety, or the rights of others. As in other contexts, the Members States enjoy a certain margin of appreciation in striking the balance between the right to information and protected interests.[12]

7. The *Sdruženi* Court recognized an independent Article 10 right to receive documents held by public authorities, which does not rely on any other Convention rights or interests. It nevertheless stopped short of defining the contours of this right, or reconciling its holding with the Court's prior case law. The current case gives the Court a renewed opportunity to clarify these aspects of its jurisprudence, in line with the clear trends of European and international law.

2. Right to Information in International Law and Practice

8. European states and supranational entities are not alone in recognizing a right to information. The Inter-American human rights system is probably the most advanced in guaranteeing, at a regional level, the right of the public to access information in the hands of the government. The African human rights mechanism has also confirmed the global trend toward acceptance of the right as a basic individual and collective entitlement.

9. The Inter-American Court of Human Rights acknowledged early on that the rights of listeners and receivers of information and ideas are on the same footing as the rights of the speaker: "For the average citizen it is at least as important to know the opinion of others or to have access to information generally as is the very right to impart his own opinion."[13] In 2000, the Inter-American Commission on Human Rights, the Court's auxiliary body, expressly recognized that "access to information held by the state is a

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[9] *Guerra*, para. 53 (references omitted, emphasis added). *See also Roche v. United Kingdom*, a case similar to *McGinley,* where a unanimous Grand Chamber again held Article 10 to be inapplicable, noting that "it [saw] no reason not to apply this established jurisprudence." Judgment of October 19, 2005.

[10] *Sdruženi Jihočeské Matky v. Czech Republic*, Decision of July 10, 2006 (Admissibility).

[11] *Id*., at 10. In the French original: "Dans ces conditions, la Cour admet que le rejet de ladite demande a constitué une ingérence au droit de la requérante de recevoir des informations."

[12] *Id*., at 11. The Court held that, under the facts of the case, the refusal of the Czech authorities to provide the requested information was justified on the grounds of public safety and commercial confidentiality. In addition, the requested data were not sufficiently relevant to the administrative proceedings at stake.

[13] *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, November 13, 1985, para. 32.

fundamental right of every individual."[14] The Commission affirmed that position in the 2005 case of *Claude Reyes et al v. Chile*, holding that Article 13 of the American Convention on Human Rights includes a right of access to public information, which "places a positive obligation on governments to provide such information to civil society."[15]

10. In September 2006, upon referral of the case by the Commission, the Inter-American Court issued a landmark judgment that confirmed and expanded upon the Commission's ruling in the following terms:

> … the Court concludes that article 13 of the Convention, which specifically establishes the rights to "seek" and "receive" "information," protects the right of all persons to request access to information held by the State, with the exceptions permitted by the restrictions regime of the Convention. As a result, this article supports the right of persons to receive such information and the positive obligation on the State to supply it, so that the person may have access to the information or receive a reasoned response when, for any of the motives permitted by the Convention, the State may limit access to it in the specific case. The said information should be provided without a need to demonstrate a direct interest in obtaining it, or personal harm, except in cases where a legitimate restriction applies. Disclosure to one person, in turn, allows it [the information] to circulate in society in such a way that it can be known, obtained, and evaluated. In this way, the right to freedom of thought and expression contemplates protection of the right of access to information in the State's possession….[16]

The Court underscored the "indispensable" presumption in a democratic society that "all information is accessible," subject only to restrictions that can be imposed, under paragraph 2 of Article 13, on a case-by-case basis.[17]

11. At the level of state practice, at least twelve countries in the Americas have adopted national access to information laws,[18] while eight others are currently considering similar draft legislation. The general acceptance of the right to information in the Americas is apparent from the Organization of American States (OAS) General Assembly resolutions which recognize states' obligation to "respect and promote respect for everyone's access to public information," deemed to be "a requisite for the very exercise of democracy."[19]

12. The right to information has also been expressly recognized by the African Commission on Human and Peoples' Rights. The Commission has not yet had an opportunity to decide, in its adjudication procedure, whether the Banjul Charter grants a right of access

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[14] *Inter-American Declaration of Principles on Freedom of Expression*, adopted at the Commission's 108th regular session, October 19, 2000, para. 4.

[15] Case No. 12.108 *Claude Reyes et al v. Chile*, Commission Application of July 8, 2005, para 69. Article 13 of the American Convention provides: "Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers…."

[16] *Claude Reyes et al v. Chile,* Judgment of September 19, 2006, para. 77 (unofficial translation). Pending official translation of the judgment into English, the Spanish original is available at: http://www.corteidh.or.cr/casos.cfm?idCaso=245.

[17] *Id*., para. 92. Article 13.2 of the American Convention allows restrictions to the right of freedom of expression "to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals."

[18] Antigua and Barbuda, Belize, Canada, Colombia, the Dominican Republic, Ecuador, Jamaica, Mexico, Panama, Peru, Trinidad and Tobago, and the United States of America. *See* David Banisar, *Freedom of Information Survey 2006*.

[19] *See*, inter alia, *Resolution 2121 (XXXV-O/05) on Access to Public Information: Strengthening Democracy*, adopted on May 26, 2005.

to official information. It has nevertheless held that Article 9 of the Charter[20] protects not only the free speech rights of the speaker, but also the rights of those interested in receiving information and ideas. Thus, in a case against Gambia, the Commission held that the politically motivated harassment and intimidation of journalists not only deprived them "of their rights to freely express and disseminate their opinions, but also the public, of the right to information."[21]

13. More recently, the African Commission issued a *Declaration of Principles on Freedom of Expression in Africa*, which contains a comprehensive statement of the principles applicable in this area. Principle IV of the Declaration provides as follows:

    1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
    2. The right to information shall be guaranteed by law in accordance with the following principles: everyone has the right to access information held by public bodies; everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right….[22]

14. The 53-member Commonwealth has also supported the right to information over more than two decades, starting with the 1980 Barbados Communiqué of its Law Ministers.[23] In 1999 the Commonwealth adopted a statement of Freedom of Information Principles, which encouraged its member countries to "regard freedom of information as a legal and enforceable right" and to establish "a presumption in favor of disclosure."[24]

15. This overview of comparative and international law and practice shows that the right of access to government information has become widely accepted in the democratic world, including in the Council of Europe area, as a basic political right. Whether as part of traditional free expression guarantees or as an important entitlement in its own right, it is perceived as an integral and imperative component of the broader right to democratic governance. Indeed, it has become untenable to argue that the public should not have a right to know what their government knows and does, subject only to compelling exceptions.

B. The Right to Information is Closely Connected to Free Speech and Participation Rights

16. The right of access to government information has been closely linked to the broader right to freedom of expression from the outset. The Swedish Freedom of the Press Act of 1766, the world's first access to information law, provides that "[e]very Swedish citizen shall be entitled to have free access to official documents, in order to encourage the free exchange

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[20] Article 9 of the African Charter on Human and Peoples' Rights provides: "1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law."

[21] *Sir Dawda K. Jawara v. The Gambia*, Decision of May 11, 2000, para. 65.

[22] Adopted at the 32nd Ordinary Session, October 17-23, 2002, Banjul, Gambia.

[23] The Communiqué expressed the view that "public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information." *Quoted in* "Promoting Open Government: Commonwealth Principles and Guidelines on the Right to Know," Background Paper for the Commonwealth Expert Group Meeting on the Right to Know and the Promotion of Democracy and Development (London: March 30-31, 1999).

[24] Adopted by the Commonwealth Law Ministers at their May 1999 Meeting, Trinidad and Tobago.

of opinion and the availability of comprehensive information."[25] The United Nations General Assembly decreed, in one of its first resolutions, that the media and other information services should "be given the fullest possible direct access to the activities and official documentation of the Organization."[26]

17. Courts around the world have similarly determined that the right to *receive* information, including information held by the government, is a central and separate element of freedom of expression. This Court has repeatedly held that Article 10 guarantees not only the right of speakers to impart information and ideas, but equally so "the right of the public to be properly informed."[27] In a modern democracy, a significant part of the totality of public information a "properly informed" citizenry requires is in the hands of the state. That body of information is produced, collected and processed using public resources, and it ultimately belongs to the public. The government should be subject to a general obligation to make it available, save when a compelling public or private interest dictates otherwise.

18. It is sometimes argued that Article 10 of the Convention is cast in negative terms – guaranteeing a right "to receive and impart information and ideas without interference by public authority" – which bar the construction of a positive obligation for the states to grant access to their own information. But this textual feature has not prevented the Court from establishing positive state obligations in other contexts of free expression law. For example, in *Ozgur Gundem v. Turkey*, this Court held that the failure of Turkish authorities to take steps to protect a newspaper from attacks by private persons, which had effectively silenced the publication, amounted to a violation of Article 10.[28] The state's obligation to release information in its own possession that properly belongs in the public domain is at least as compelling as the requirement – which this Court, in *Ozgur Gundem*, has already recognized – that the state halt and/or punish private interference with the free flow of information. The state's refusal to provide access amounts to an interference with the free flow of public information, a sphere that clearly includes data held by the state on behalf, and for the benefit, of the citizenry.

19. That "leap of interpretation" has come naturally to numerous courts in Europe and elsewhere that have upheld a right of access to government information, whether as part of free speech and participation rights or as a stand-alone guarantee. Thus, the French Conseil d'Etat held in 2002 that the right of access to administrative documents is among "the fundamental guarantees granted to citizens for the exercise of their public liberties," in the meaning of Article 34 of the French Constitution.[29]

20. The Hungarian Constitutional Court ruled in 1992 that freedom of information is a fundamental right essential for citizen oversight:

> The publicity and accessibility of data of public interest is a fundamental right guaranteed by the Constitution, which also happens to arise directly from it. Free access to information of public interest promotes democratic values in elected bodies, the executive power, and public administration by enabling people to check the lawfulness and efficiency of their operations.

[25] Ch. 2, art. 1 (adopted in 1766 & 1949, amended in 1976).

[26] *Resolution 13(I) on the Organization of the Secretariat*, adopted on February 1, 1946, Annex I, para. 3.

[27] *Sunday Times v. United Kingdom (no. 1)*, Judgment of April 26, 1979, para. 66.

[28] Judgment of March 16, 2000, paras. 44-45.

[29] *Ullmann,* Judgment of April 29, 2002, No. 228830, para. 2. Constitutional Article 34 provides that "civic rights and the fundamental guarantees granted to citizens for the exercise of their public liberties" can only be regulated by an act (loi) of Parliament.

> Because of the complexity of the civic sphere, the citizens' sway over administrative decisions and the management of public affairs cannot be effective unless public authorities are willing to disclose pertinent information.[30]

In 1994, the Hungarian Court struck down a state secrets law, ruling that it imposed impermissible restrictions on the right to information. In so doing, the Court found that free access to data of public interest, including those held by the state, is one of the preconditions for the exercise of the right to free expression.[31]

21. The Supreme Court of India addressed the issue as early as 1982 in a case involving the government's refusal to release intra-agency correspondence regarding transfers and dismissals of judges. Recognizing a "right to know which seems implicit in the right of free speech and expression," the Indian Court reasoned that,

> [w]here a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of government. … The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State.[32]

22. The Constitutional Court of (South) Korea reached a similar conclusion in a 1989 case involving a municipal office's unjustified refusal to grant the applicant access to certain real estate records he had requested. The Korean Court argued that unhindered access to state-held information was essential to the "free formation of ideas," which is itself a pre-condition for the realization of genuine freedom of expression and communication.[33] This and subsequent freedom of information decisions of the Korean Court influenced the legislature to adopt in 1996 a comprehensive access to information law.[34]

23. The Constitutional Court of Colombia has elaborated on the nature of the right to information since the 1991 Constitution of Colombia established that "all persons have a right to access public documents" (art. 74). In the jurisprudence of the Colombian Court, the fundamental right of access is closely related to the right of free expression as "it is undeniable that the guarantee of the free flow of information requires access to public documents."[35]

24. Comparative doctrine and jurisprudence have established that the right to information is also a precondition for the exercise of the basic rights of political participation and representation, guaranteed inter alia by Article 3 of Protocol No. 1 to the Convention, which requires contracting parties to "hold free elections … under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

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[30] Decision 32/1992 (V.29) AB, at 183-184 (*as translated by* the Office of the Hungarian Parliamentary Commissioner for Data Protection and Freedom of Information).

[31] Decision 34/1994 (VI.24) AB.

[32] *S.P. Gupta v. Union of India* [1982] AIR (SC) 149, at 232. India adopted a Right to Information Act in June 2005.

[33] *Forests Survey Inspection Request* Case, 1 KCCR 176 (September 4, 1989). A summary of the judgment is available at http://www.ccourt.go.kr/english/decision.htm.

[34] Disclosure of Information by Public Agencies Act (no. 5242), December 31, 1996.

[35] Judgment T-216 of March 8, 2005, para. 17. *See also* Judgment T-473 of 1992.

The Inter-American Court of Human Rights noted in *Claude Reyes* that "access to information held by the State may permit participation in public governance by virtue of the social oversight that can be exercised through such access."[36]

25. The Israeli Supreme Court held, in *Shalit v. Peres*, that the public has a right to be informed of the content of coalition agreements negotiated by political parties participating in an election.[37] Acting in the absence of explicit constitutional or statutory recognition of the right of access, the Israeli Court held that:

> Freedom of public opinion and knowledge of what is happening in the channels of government are an integral part of a democratic regime, which is structured on the constant sharing of information about what is happening in public life with the public itself. Withholding of information is justifiable only in exceptional cases where security of the State or foreign relations may be impaired or where there is a risk of harming some vital public interest.[38]

26. The Supreme Court of the Philippines reached a similar conclusion in a case involving access to information regarding the civil service eligibility of certain individuals:

> The incorporation in the Constitution of a guarantee of access to information of public concern is a recognition of the essentiality of the free flow of ideas and information in a democracy…. In the same way that free discussion enables members of society to cope with the exigencies of their time…, access to information of general interest aids the people in democratic decision-making … by giving them a better perspective of the vital issues confronting the nation.[39]

27. In a democracy, citizens exercise their self-governance rights not only through free and periodic elections, but also through a myriad of other fora and means of influencing and interacting with those responsible for setting public policies. Both direct and indirect participation, during or outside election periods, would be greatly undermined by the lack of a right of access to government information, and the resulting inability to follow and engage in government decision-making. As the three specialized mandates on freedom of expression have noted,

> [i]mplicit in the freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented.[40]

C. Access to Election-Related Information is Widely Guaranteed

28. Access to election-related information – including data on campaign contributions to, and campaign spending by, political parties, whether in the possession of state agencies or the parties themselves – is widely considered to be essential to the integrity of electoral processes in the democratic world. A comprehensive survey of relevant laws and

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[36] *Claude Reyes v. Chile*, para. 86.

[37] 44(3) P.D. 353, H.C. 1601-4/90 [1990].

[38] *Id*., at 214.

[39] *Legaspi v. Civil Service Commission*, 150 S. Ct. Rpts. Ann. 530 (May 29, 1987) (*en banc*) (references omitted).

[40] Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OAS Special Rapporteur on Freedom of Expression and the OSCE Representative on Freedom of the Media, November 26, 1999. *See also* the 2004 Joint Declaration of the three mechanisms, adopted on December 6, 2004, which affirms that "[t]he right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation…."

regulations, carried out in 2003 by the International Institute for Democracy and Electoral Assistance (IDEA), found that, out of the 111 established and emerging democracies surveyed, sixty countries required political parties and/or their donors to disclose campaign contributions and other sources of income. These included, at the time, at least twenty-seven member states of the Council of Europe (not all members were included in the study). Fifty-three of the surveyed countries required disclosure of political party expenditure. With a few exceptions, the information disclosed by the parties, usually to a specialized government agency, can be freely accessed by the general public.[41]

29. Disclosure of party finances, including campaign spending and contributions, serves the important goals of protecting the integrity of the electoral process and enabling voters to make informed choices on election day on the basis of the broadest possible information, including as to the parties and candidates' sources of funding. To further these goals and promote good practices in this area, the Committee of Ministers of the Council of Europe adopted in 2003 a Recommendation on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns. According to the Recommendation, political parties should be required to regularly make public their accounts, or a summary thereof, including records of received donations and all campaign expenditure.[42]

30. The European Union (EU) has adopted similar disclosure conditionality for EU political parties seeking EU funding. Under Article 6 of EU Regulation 2004/2003, an applicant party must, among other conditions:

    a. publish its revenue and expenditure and a statement of its assets and liabilities annually;
    b. declare its sources of funding by providing a list specifying the donors and the donations received from each donor, with the exception of donations not exceeding EUR 500….[43]

31. Courts in a number of countries have granted citizens broad access to election-related information, sometimes in the absence of any explicit statutory scheme or irrespective of whether the requested information is held by the state. In the above-referenced *Shalit* decision, the Israeli Supreme Court ruled that failure to make public agreements concluded by Knesset factions toward the establishment of a coalition government "can water down the ability of the public to participate in political life."[44]

32. The Indian Supreme Court has produced important case law in this area, as well. In *Common Cause v. Union of India*, the Court held that the Election Commission was authorized to collect information from political parties and their candidates on their electoral spending.[45] In 2002, the Indian Court ruled that voters are entitled to receive detailed information about the background of candidates for election, including their assets and any pending criminal investigations. The Court directed the Election Commission to collect such information from all candidates running for national and state legislatures, and to make it public ahead of the elections.[46]

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[41] IDEA, *Funding of Political Parties and Election Campaigns* (2003), pp. 182, 189-191. IDEA is an intergovernmental organization with member states from all continents, and a mandate to support sustainable democracy worldwide. The cited Handbook is available at: http://www.idea.int/publications/funding_parties/index.cfm.

[42] Recommendation (2003) 4, adopted on April 8, 2003, arts. 10-13.

[43] Regulation (EC) No. 2004/2003 on the Regulations Governing Political Parties At European Level and the Rules Regarding their Funding, adopted by the European Parliament and the Council on November 4, 2003.

[44] *Shalit v. Peres*, at 215.

[45] (1996) 2 SCC 752.

[46] *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 361.

33. The Mexican Electoral Tribunal recently faced a similar party finance question in *Zarate v. Federal Electoral Institute*: namely, whether the public had a right to know the salaries and other income of the national leadership of Mexico's registered parties. Deciding that question in the affirmative, the Tribunal ruled that

> [a]ll Mexican citizens enjoy, in the exercise of their political-electoral rights, a prerogative of receiving information about certain basic aspects of political parties … in order that they can decide whether to vote for [the parties] or not, whether to join them or not, insofar as such decisions form part of the citizen's freedom to choose, which could not be fully exercised if access to such information were denied….[47]

34. In another case on point, a provincial court in Ontario, Canada granted an investigative reporter access to an electronic database of campaign contribution records related to a Toronto municipal election. The Ontario Court held that the public interest served by disclosure of the data – i.e. facilitating the public scrutiny of the democratic election process – was so important that it "clearly outweigh[ed]" any competing interests.[48]

CONCLUSION

35. We have argued that the right of access to information held by public authorities is firmly established in European and international law and practice. Courts and lawmakers throughout the democratic world have determined that the right to receive government information is an integral and separate element of freedom of expression, and, like the right to impart information and ideas, an actual prerequisite for the meaningful exercise of other political rights in a modern democracy. Furthermore, there is a clear trend in the democratic world to consider free access to election-related information, and in particular campaign finance data, as essential to ensuring the integrity of electoral processes and the credibility of the democratic system itself. This Court in *Sdruženi* recognized an Article 10 right to receive information held by public authorities independent of any other Convention rights or interests. We respectfully urge the Court to take the opportunity presented by this case to make clear that Article 10 of the Convention grants individuals and other persons a general right of access to information held by public authorities. This will bring the Court's jurisprudence into line with prevailing European and international law, and clarify for national courts throughout Europe the importance of access to information as a foundation for democratic government.

Respectfully submitted,

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[47] Case SUP-JDC-041/2004, Judgment of September 10, 2004, p. 69.

[48] *Phinjo Gombu* v. *Tom Mitchinson, Assistant Commissioner et al.* (2002), 59 O.R. (3d) 773.

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The Open Society Justice Initiative, an operational program of the Open Society Institute (OSI), pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in the following priority areas: national criminal justice, international justice, freedom of information and expression, and equality and citizenship. Its offices are in Abuja, Budapest, and New York.

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