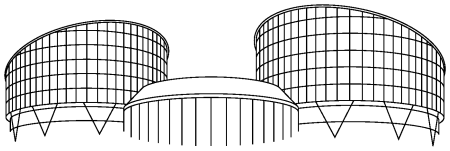

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BUBON v. RUSSIA

(Application no. 63898/09)

JUDGMENT

STRASBOURG

7 February 2017

FINAL

07/05/2017

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bubon v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 17 January 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 63898/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Konstantin Vladimirovich Bubon ("the applicant"), on 11 October 2009.

2. The applicant was represented by Mr A. Tuzov, a lawyer practising in the Khabarovsk Region. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged that the authorities had denied him access to the information necessary for his scientific research.

4. On 1 July 2010 the application was communicated to the Government.

5. The parties submitted written observations on the admissibility and merits of the application. In addition, written submissions were received from the Open Society Justice Initiative and the Helsinki Foundation for Human Rights, organisations which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is a lawyer who also writes articles for various Russian law journals and online legal information databases and networks.

7. According to the applicant, his work usually requires extensive scientific research, including in the field of law enforcement in the Khabarovsk Region. He supported his assertion with copies of contracts with well-known Russian publishing houses and owners of a number of legal magazines, including one supervised by the Secretariat of the President of the Russian Federation. Under the contracts he undertook the task of writing articles on specific topics of legal and social interest.

8. Having received an assignment to write an article on prostitution and the fight against it in the Khabarovsk Region, on 12 May 2009 the applicant wrote to the head of the Khabarovsk Region police department by registered letter, asking for statistical data for his research. The relevant parts read:

> "[I am] interested in [receiving] information for the period between 2000 and 2009, in particular:
>
> - [information on] the number of people found administratively liable under Article 6.11 of the ... Code of Administrative Offences (prostitution), with a breakdown by sex, residence (residents of the Khabarovsk Region or visitors), nationality (nationals of the Russian Federation, foreigners or stateless persons) and the year [of the offence];
> - [information on] the number of criminal cases instituted during the above-mentioned period under Articles 241, 242, 242.1 [and] 127.1 (cases related to sexual exploitation) of the ... Criminal Code, with a breakdown of the specific Articles ... and the year [the case was opened];
> - [information on] the number of individuals found criminally liable under Articles 241, 242, 242.1 [and] 127.1 ... of the ... Criminal Code, with a breakdown by sex, age, educational background, permanent residence (residents of the Khabarovsk Region or visitors), nationality and period [in which the crime was committed];
> - general information on sentences imposed on individuals found criminally liable under Articles 241, 242, 242.1 [and] 127.1 ... of the ... Criminal Code - the types of sentences and in how many cases they were imposed, and the years [they were imposed].
>
> ...
>
> [I] stress that I do not need any specific personal information about individuals found administratively or criminally liable; [I only need] general statistical information for writing a scientific article."

9. It appears from an acknowledgement of receipt that the letter reached the Khabarovsk Region police department on 25 May 2009.

10. Under Russian law, State officials must provide a reply to letters from individuals within thirty days. In the absence of any response, on 26 June 2009 the applicant lodged a claim with the Tsentralniy District Court of Khabarovsk ("the District Court"), complaining that the police authorities had failed to provide him with the information he had requested and requesting for access. Relying on the Information Act (see below) and Article 10 of the Convention, he argued that the officials' implied refusal to provide him with the information had been unlawful as he had not asked for access to any confidential personal information, State secrets or information related to internal police working methods. He claimed that his request had related purely to statistical data of a general nature collected by the Information Centre of the Khabarovsk Region police department (hereinafter "the Information Centre").

11. On 18 July 2009 the applicant received a letter from the head of the Information Centre, notifying him that information as specific as he had asked for could only be collected on production of a written order issued by a deputy Minister of Internal Affairs, a head of a regional or municipal police department or their divisions or a prosecutor or investigator from a prosecutor's office. The Information Centre did not collect such information at the request of private individuals. General statistical data summarised by the Information Centre was provided to the Federal Service of State Statistics and in particular its regional office for the Khabarovsk Region, to whom the applicant could apply for the statistical data.

12. On 19 July 2009 the applicant wrote to the Khabarovsk Region Service of State Statistics (hereinafter "the Statistics Service") by registered letter, asking for the statistical data for his research.

13. On 23 July 2009 the head of the Statistics Service replied, stating that specific statistical information on the fight against prostitution had never been provided by the Khabarovsk Regional police department.

14. The applicant filed copies of his letters from the Information Centre and Statistics Service with the District Court.

15. On 4 August 2009 it dismissed the applicant's claim on the grounds that the Information Centre was not authorised to process data requests from private individuals. Under domestic law, the Statistics Service was tasked with dissemination of official statistical data on a broad variety of subjects, including those falling within the applicant's field of interest. It also noted that the applicant had failed to obtain the information sought from open sources, such as libraries, archives and the Internet. The District Court also stressed that the information requested did not touch upon the applicant's rights and legitimate interests, so the authorities' refusal to grant him access to such information had been lawful and well-founded under section 8(2) of the Information Act.

16. The applicant appealed, arguing, among other things, that the police authorities had exclusive possession of the information sought by him and

that he had no other means, including through assistance from the Statistics Service, of obtaining the necessary data. In addition, he submitted that the fact that his rights and legitimate interests were not affected by the requested information had no bearing on the case as under Russian law, it was not only those directly concerned who were granted access to public information.

17. On 16 September 2009 the Khabarovsk Regional Court upheld the judgment of 4 August 2009. Relying on section 8(2) of the Information Act, it concluded that the authorities were not obliged to provide the applicant with the information as it did not touch upon his rights and legitimate interests.

II. RELEVANT DOMESTIC LAW

18. The relevant provisions of the Information Act (Federal Law no. 149-FZ of 27 July 2006 "On Information, Information Technology and the Protection of Information") read:

Section 8 – Right of access to information

"1. Citizens (individuals) and organisations (legal entities) are entitled to search for and receive any information in any form and from any source provided that the requirements of this [Act] and other federal laws are respected.

2. A citizen (an individual) is entitled to receive information directly affecting his rights and freedoms from State bodies, municipal authorities and their officials in accordance with the procedure established by the law of the Russian Federation.

...

4. Access may not be restricted to:

(1) legal acts affecting the rights, freedoms and obligations of individuals and citizens, as well as identifying legal status of organisations and the authority of State bodies [and] municipal authorities;

(2) environmental information;

(3) information on the activities of State bodies and municipal authorities, as well as on the use of budgetary funds (except information constituting State or official secrets);

(4) information collected in the open funds of libraries, museums and archives, as well as in State, municipal and other information systems created or designed to provide such information to citizens (individuals) and organisations;

(5) other information the restriction of access to which is not permitted by federal law.

5. State bodies and municipal authorities are required to provide access to information about their activities ... in compliance with federal laws, laws of the constituent elements of the Russian Federation and legal acts of municipal authorities. A person wishing to obtain access to such information is under no obligation to explain why it is required.

6. Decisions and actions (inaction) of State bodies and municipal authorities, public associations, officials violating the right of access to information are amenable to appeal before a higher authority, a higher-ranking official or a court.

...

8. Information is provided free of charge [concerning]:

(1) the activities of State bodies and municipal authorities when the information has been posted on information and telecommunications networks;

(2) the rights and obligations established by the law of the Russian Federation of the person concerned;

(3) [any] other information established by law.

9. A State body or municipal authority may only impose a fee for providing information on its activities in cases and on the terms established by federal law."

Section 9 – Restrictions on access to information

"1. Federal law lays down restrictions on access to information to protect constitutional order, morals, health, the rights and lawful interests of others, for ensuring national defence and security of the State.

2. It is mandatory to keep information confidential, access to which is restricted by federal law.

3. Protection of information constituting State secrets shall be carried out in accordance with the law of the Russian Federation on State secrets.

4. Federal law lays down the conditions for classifying information as trade, official or other secrets, [and lays down] an obligation to keep such information confidential and [establish] responsibility for its disclosure..."

III. RELEVANT INTERNATIONAL LAW

19. On 21 February 2002 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2002)2 on access to official documents (hereinafter "the Recommendation"). The relevant provisions read:

I. Definitions

"For the purposes of this recommendation:

...

"official documents" shall mean all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation."

II. Scope

"1. This recommendation concerns only official documents held by public authorities. However, member states should examine, in the light of their domestic law and practice, to what extent the principles of this recommendation could be applied to information held by legislative bodies and judicial authorities..."

III. General principle on access to official documents

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

VI. Processing of requests for access to official documents

"1. A request for access to an official document should be dealt with by any public authority holding the document.

2. Requests for access to official documents should be dealt with on an equal basis..."

20. The Council of Europe Convention on Access to Official Documents opened for signature on 18 June 2009. The relevant provisions read:

Article 1 – General provisions

"1. The principles set out hereafter should be understood without prejudice to those domestic laws and regulations and to international treaties which recognise a wider right of access to official documents.

2. For the purposes of this Convention:

...

b. "official documents" means all information recorded in any form, drawn up or received and held by public authorities.

Article 2 – Right of access to official documents

"1. Each Party shall guarantee the right of everyone, without discrimination on any ground, to have access, on request, to official documents held by public authorities.

2. Each Party shall take the necessary measures in its domestic law to give effect to the provisions for access to official documents set out in this Convention..."

Article 5 – Processing of requests for access to official documents

"1. The public authority shall help the applicant, as far as reasonably possible, to identify the requested official document.

2. A request for access to an official document shall be dealt with by any public authority holding the document. If the public authority does not hold the requested official document or if it is not authorised to process that request, it shall, wherever possible, refer the application or the applicant to the competent public authority..."

21. The convention has not yet entered into force. Russia has not signed or ratified it.

THE LAW

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

22. The applicant complained that the authorities had denied him access to the information necessary for his scientific research. He relied on Article 10 of the Convention, the relevant parts of which read:

> "1. Everyone has the right to freedom of expression. This right shall include freedom ... to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. The parties' submissions

1. The Government

23. The Government denied that there had been an interference with the applicant's right under Article 10 of the Convention. In particular, they argued that the domestic authorities had not had the information sought by the applicant. According to the Government, Russian law required information centres to prepare crime statistics reports by processing statistical data cards. Data cards differed in type and covered a wide range of information related to a specific crime committed. The data processing carried out by the information centres was predominantly manual and not all information from the data cards was processed. Only selected types of crimes and parameters were included in crime statistics reports.

24. With respect to the first part of the applicant's request for information, the Government submitted that the authorities only calculated the total number of persons found administratively liable for prostitution and transferred that information to the information centres. The specific parameters requested by the applicant (the offenders' sex, residence, nationality and the year of the offence) were not taken into account.

25. With respect to the second and third parts of the applicant's request, the Government observed that the statistical reports produced by the information centres did not include data on the number of criminal cases instituted and individuals found guilty under Articles 241, 242, 242.1 and 127.1 (cases related to sexual exploitation) of the Criminal Code. There was no breakdown by the offenders' sex, age, level of education, residence, nationality or the year of the offence.

26. In addition, the Government noted with respect to Article 127.1 of the Criminal Code that crimes based on criminal intent to carry out sexual exploitation were not regularly recorded in statistical data cards and thus that parameter was also not taken into account in statistical reports. They stressed that crime statistics reports formed by the information centres were published on the official websites of the Ministry of Interior and Federal State Statistics Service without any omissions.

27. Turning to the final part of the applicant's request, the Government submitted that the Judicial Department of the Supreme Court collected information on sentences. The applicant had thus failed to apply to the public authority which actually held the information sought.

2. The applicant

28. The applicant insisted that the authorities had had the necessary information. Referring to internal police instructions on statistical data collection, he also claimed that statistical data cards produced by the relevant authorities (for example investigators) and collected by the information centres contained all the parameters asked for by him. He alleged that the information centres calculated those parameters to form crime statistics reports.

29. The applicant also submitted that the crime statistics reports available on the official websites of the Ministry of Interior and Federal State Statistics Service did not correspond to his needs.

30. In the alternative, the applicant argued that even if the authorities had not had every item of information he had requested, they should have provided him with all the relevant data they had.

3. The third parties' comments

(a) Helsinki Foundation for Human Rights (HFHR)

31. The HFHR submitted that the right of access to public information was an element of international and national legal systems of human rights protection.

32. With reference to the Court's position in *Sdružení Jihočeské Matky v. the Czech Republic* (no. 19101/03, 10 July 2006) and *Társaság a Szabadságjogokért v. Hungary* (no. 37374/05, 14 April 2009) the HFHR advocated for a broader interpretation of the notion of the freedom to receive information. The HFHR took the view that the right of access to public documents fell within the scope of guarantees set forth in Article 10 § 1 of the Convention and that any decision to restrict access to documents related to a matter of public interest should be subject to a strict scrutiny in accordance with the requirements of Article 10 § 2.

(b) Open Society Justice Initiative (OSJI)

33. The OSJI stressed that the right to receive information was well-recognised in various national and international legal systems. The disclosure of information, including statistical data about the operation of the criminal justice system, contributed not only to democratic accountability in the field of law enforcement, but also to general respect for the rule of law.

34. The OSJI noted that the Court had long recognised a conditional right of access to State-held information in circumstances where failure to provide such information adversely affected the enjoyment of the right to respect for private and family life.

35. The OSJI reiterated that a State could not restrict a person from receiving information that others wished or might be willing to impart. It noted that the Court had recognised a right to receive information held by public authorities, relevant to public debate, irrespective of any personal interest other than an interest to contribute to public debate.

36. In addition, the OSJI submitted with particular respect to statistical information that both raw data and the capabilities needed to generate crime statistics tended to be, by their nature, in the exclusive possession of government agencies, granting them a real monopoly over information in that field. Such monopolies tended to improperly interfere with the free flow of information and ideas.

B. The Court's assessment

1. Admissibility

37. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

38. The relevant general principles were recently summarised by the Court's Grand Chamber in the case of *Magyar Helsinki Bizottság v. Hungary* ([GC], no. 18030/11, §§ 149-180, 8 November 2016).

(b) Application to the present case

i. First three parts of the applicant's request

39. With respect to the first three parts of the applicant's request, in particular information on the number of people found administratively liable

for prostitution, the number of criminal cases instituted and the number of people found liable under Articles 241, 242, 242.1 and 127.1 of the Criminal Code (see paragraph 8 above), the Court observes the following.

40. The fact that the information requested is ready and available constitutes an important criterion in the overall assessment of whether a refusal to provide the information can be regarded as an "interference" with the freedom to "receive and impart information" as protected by Article 10 of the Convention (see *Magyar Helsinki Bizottság*, cited above § 170).

41. Accordingly, the Court has to establish whether in the present case the relevant domestic authorities were in possession of the information asked for by the applicant.

42. It follows from the facts of the case (see paragraph 11 above) and submissions of the parties that although the statistical data cards contained the parameters required by the applicant, only selected parameters were taken into account by the information centres and included in the publicly available crime statistics reports. Those reports, as confirmed by the parties, did not meet the requirements proposed by the applicant.

43. The Court notes that the applicant did not seek access to the statistical data cards or even final statistical reports, which were ready and available. Instead he essentially asked the domestic authorities to process and summarise information using specific parameters.

44. The Court therefore accepts the Government's arguments and concludes that the relevant authorities did not have information as specific as sought by the applicant. The information he was seeking was therefore not only not "ready and available", but did not exist in the form the applicant was looking for.

45. The Court further recalls that Article 10 of the Convention does not impose an obligation to collect information upon the applicant's request, particularly when, as in the present case, a considerable amount of work is involved (see *Weber v. Germany* (dec.), no. 70287/11, §§ 25-28, 6 January 2015). The Court finds that there has been no interference with the applicant's right to receive information as regards the first three parts of the request.

ii. Final part of the applicant's request

46. As regards the final part of the applicant's request concerning general information on sentences imposed on individuals found criminally liable under Articles 241, 242, 242.1 and 127.1 of the Criminal Code, the Court notes that the Government did not deny that the required information existed, but submitted that it was held by the Judicial Department of the Supreme Court (see paragraph 34 above).

47. The Court considers that there was an avenue available to the applicant to access the information, which he failed to use. In these circumstances, it cannot be said that the State interfered with or unduly

restricted his right to receive information (see, *mutatis mutandis*, *McGinley and Egan v. the United Kingdom* (revision), nos. 21825/93 and 23414/94, § 90, ECHR 2000-I).

48. There has accordingly been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 7 February 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Luis López Guerra President