Case of Studio Monitori and others v. Georgia

Summary

The European Court of Human Rights found no violation of freedom of expression when Georgian authorities refused to disclose criminal case files to the journalist, as the latter did not specify the purpose of the information request. Moreover, the court held that since a journalist could proceed and finalize investigation, without denied information, the information in question, was not instrumental for the effective exercise of their freedom-of-expression rights. Concerning the second application, the Strasbourg Court held that the applicant was neither journalist nor public watchdog and thus, while requesting state-held information, he could not enjoy protection under article 10 of the Convention.

Facts:

There were 3 applicants in case of Studio Monitori and others v. Georgia. The first applicant is an NGO established for conducting journalistic investigations into matters of public interest. The second applicant is a journalist and one of its founding members. In 2007 the second applicant, acting on behalf of the first applicant, asked the registry of the Khashuri District Court to give her access to a case file concerning an unrelated criminal case brought against a certain T.E, and in which he had been convicted. She did not give any reasons for her request and briefly indicated that she intended to photocopy and photograph the criminal case material stored in the archives of the court registry.

By a decision of 3 August 2007, the court registry declined the second applicants request stating that: a) respective case file contained certain classified investigative information, public disclosure of which was strictly prohibited under article 5 (1) and (2) of the Special Investigative Activities Act of 30 April 1999; b) the requested case file contained personal data about T.E., as well as other parties to the criminal proceedings in question, and disclosure of that information needed their consent under the article Article 37 (2) of the General Administrative Code. Besides, the court registry asked the applicant to clarify precisely which information she needed to get and for what purpose, stating that it would review its decision upon receipt of the requested information.

The second applicant did not provide any further clarification and instead, on 14 September 2007, lodged a court action against the registry’s decision, requesting its annulment. In her claim, she did not explain the purpose of her request to access the criminal case file in question. At the hearing, the second applicant briefly mentioned that she needed access to the criminal case file for a journalistic investigation project, without giving any details about the project in question. She rather stressed that the decision of the registry was based on an erroneous interpretation of the legislation and had unlawfully restricted her right of access to information of public interest guaranteed by Article 37 (1) of the General Administrative Code. The latter provision states: “1. Everybody has the right to access public information, regardless of the form in which [it] has been stored. ...”.

By a judgment of 12 December 2007, the Borjomi District Court dismissed the second applicant's action as ill-founded and confirmed that the court registry’s disputed decision was based on a correct interpretation of the law. The second applicant appealed. At the hearing before the Tbilisi Court of Appeal on 12 June 2008, the applicant stated that she is no longer in need of the requested criminal case file, since the journalistic investigation was already terminated, and the results were published. However, she highlighted that it was important to her to create a legal precedent that would acknowledge the significance of the right to have unrestricted access to information of public interest. The criminal case file, according to the second applicant, is public information, and anyone seeking it should have access under Article 37 (1) of the General Administrative Code. The Tbilisi Court of Appeal dismissed the applicant’s claim and upheld the lower court's judgment. Later, the Supreme Court of Georgia declared the applicant's claim inadmissible and terminated the proceedings.

The third applicant was a practicing lawyer in Georgia. On 22 March 2006, he was convicted of fraud for stealing money entrusted to him by a client to secure bail in criminal proceedings.

On 11 October 2007, the third applicant, while still in prison, requested a copy of all the court orders concerning the imposition of pre-trial preventive measures in six distinct and unrelated criminal cases. He did not specify why he was interested in that particular information. On 10 October 2007, the registry of the Tbilisi City Court sent the third applicant a copy of the operative parts of the relevant court orders, stating that, according to the criminal procedure code, only the operative parts of detention orders could be disclosed. On 1 November 2007, the third applicant brought a court action against the registry of the Tbilisi City Court, claiming that the rejection of his request by the court registry violated his right under Article 37 (1) of the General Administrative Code to have unfettered access to public information. On 19 December 2008, the Tbilisi Court of Appeal dismissed the third applicant’s action as ill-founded. The Court emphasized that according to Article 3 (2) and (3) of the General Administrative Code Article 37 (1) did not apply to the judiciary within the framework of the administration of justice. Later, The Supreme Court rejected an appeal on points of law lodged by the third applicant, terminating the proceedings.

Subsequently, all three applicants applied to the European Court of Human Rights, alleging that their right to freedom of expression under Article 10 ECHR had been violated by the denial of access to the information sought.

Overview

On January 30, 2020, the European Court of Human Rights delivered unanimous judgment.

The underlying issue before the Court was whether the denial to access state-held information amounted to an interference with the applicants' right to freedom of expression under Article 10 of the Convention.

At the outset of the judgment, the Court reiterated that Article 10 of the Convention does not confer on the individual a right to 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, firstly, where disclosure of the information has been imposed by a judicial order which has gained legal force and, secondly, in circumstances where access to the information is instrumental for the individual’s exercise of his or her right to freedom of expression.”[para. 39] The Court referred to Grand Chamber judgment in Magyar Helsinki Bizottság v. Hungary and stated whether and to what extent the denial of access to information constitutes an interference with an applicant’s freedom‑of‑expression rights must be assessed in each case and the light of its particular circumstances. The Court pointed out that to determine whether Article 10 can be said to apply to a public authority’s refusal to disclose information, the situation must be assessed in the light of 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.

Concerning the first two applicants (the NGO – Studio Monitori and its co-founder journalist) the Court noted that their journalistic role was certainly compatible with the scope of the right to solicit access to State‑held information. However, the Court went that the purpose of their information request did not satisfy the relevant criterion under Article 10 of the Convention since in the domestic proceedings, the applicants failed to specify the purpose of their request to get to the criminal case file. The Court drew particular attention to the fact that the applicants never explained to the court registry why the documents were necessary for the exercise of their freedom to receive and impart information to others, even though the registry made it clear that it would reconsider its decision after receipt of clarification. The applicants, however, 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 Court restated that Article 10 of the Convention does not confer on individuals an absolute right to access State‑held information. Besides that, the Court observed that since the applicants were able to proceed and finalize their journalistic investigation, without waiting the outcome of proceedings they initiated against domestic judicial body, the relevant criminal case material was not instrumental for the effective exercise of their freedom of expression.

As regards to the third applicant, the lawyer, he just like the first two applicants did not take a trouble to explain to the authorities the purpose of his request to obtain a full copy of the relevant court decisions, which made it impossible for the Court to accept that the information sought was instrumental for the exercise of his freedom-of-expression rights. Most importantly, the Court observed that the third applicant was neither a journalist nor a representative of a “public watchdog” and he failed to explain to the Court how he could enhance, by receiving a copy of detention orders in six criminal cases totally unrelated to him, the public’s access to news or facilitate the dissemination of information in the interest of public governance. Moreover, the Court Court was not persuaded that the information solicited from the domestic judicial authority by the third applicant met the relevant public‑interest test under Article 10 of the Convention. The Court pointed out that the third applicant 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. However, the Court considered that the fact that the accused in those cases were well‑known public figures was not in itself sufficient to justify, under Article 10, disclosure of a full copy of the relevant judicial orders concerning the ongoing criminal proceedings, including the parts which did not constitute public information according to the domestic law applicable at the material time, to a third party acting in a purely private capacity. The Court noted that “the public interest is hardly the same as an audience’s curiosity”. [para. 42]

Based on the foregoing considerations the ECtHR, unanimously, concluded that there has been no violation of Article 10 of the convention concerning either of the two applications.

Decision Direction

The judgment of the ECtHR contracts the protection of freedom of expression in several ways: a) according to the judgment, access to state-held information is a luxury only for the journalists and other public watchdogs, excluding ordinary people, acting on private capacity. Here, the Court distinguishes the role of journalists and other representatives of public watchdog, as they enhance the public’s access to news or facilitate the dissemination of information in the interest of public governance. However, it cannot be denied that today, social media is one of the most common platforms of dissemination of the information and there is no trouble for the “private person” to distribute the news and reach out to the large audience; b) The journalists and other representatives of public watchdog must specify the purpose of information request and explain to the authorities why the documents were necessary for the exercise of their freedom to receive and impart information to others; c) according to the judgment, if a journalist can proceed and finalize investigation, without denied information, then it could be concluded that the information in question, was not instrumental for the effective exercise of their freedom-of-expression rights.

This case can be compared with judgment of the Constitutional Court of Georgia in Media Development Fund and Institute for Development of Freedom of Information v. The Parliament of Georgia, where the Court held unconstitutional the laws prohibiting person’s access to the full text (including personal information) of court decisions delivered within the scope of a public hearing by Common Courts of Georgia.

See the case analysis at the following link: <https://globalfreedomofexpression.columbia.edu/cases/media-development-fund-and-institute-for-development-of-freedom-of-information-v-the-parliament-of-georgia/>