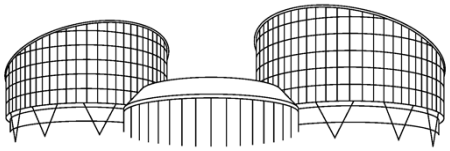

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ZÖLDI v. HUNGARY

(Application no. 49049/18)

JUDGMENT

Art 10 • Freedom to receive and impart information • Refusal of journalist's request for information relating to the identity of grant recipients of two foundations created by the Hungarian National Bank • Significant public interest in access to the data requested • Interest in protection of grant recipients' names not of such a nature and degree to warrant engaging Art 8 and bringing it into play balancing exercise with applicant's Art 10 rights • Absence of legal provision allowing for the disclosure of grant recipients' identity resulting in domestic authorities being barred from performing any balancing exercise • Failure to adduce sufficient reasons for the necessity of the interference • Fair balance not struck between competing interests at stake

Prepared by the Registry. Does not bind the Court.

STRASBOURG

4 April 2024

FINAL

04/07/2024

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

In the case of Zöldi v. Hungary,

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

Marko Bošnjak*, President*,
Alena Poláčková,
Lətif Hüseynov,
Péter Paczolay,
Ivana Jelić,
Erik Wennerström,
Raffaele Sabato*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 49049/18) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Ms Blanka Zöldi ("the applicant"), on 10 October 2018;

the decision to give notice to the Hungarian Government ("the Government") of the complaint concerning Article 10 of the Convention;

the parties' observations;

Having deliberated in private on 12 March 2024,

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

INTRODUCTION

1. The case concerns the unsuccessful efforts by the applicant, a journalist, to obtain information relating to the finances of two foundations created by the Hungarian National Bank. The applicant relies on Article 10 of the Convention.

THE FACTS

2. The applicant was born in 1990 and lives in Hosszúhetény. She was represented by Mr D.A. Karsai, a lawyer practising in Budapest.

3. The Government were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. Between 2013 and 2014 the Hungarian National Bank set up six foundations to support education, research, knowledge sharing and related activities in several fields, mainly in economics. The Hungarian National Bank, which is a fully State-owned entity, has endowed the foundations with a significant amount of funds and property. The purpose behind the creation of these foundations and their expenditures remained at the forefront of public discussion for years since they concerned the use of public funds. The foundations received several freedom-of-information requests from

journalists inquiring about their spending, aiming to ensure transparency. Many allegations were published in opposition media that the foundations in fact served the purpose of "privatisation" of public funds.

6. The applicant is an investigative journalist.

7. On 25 February 2015 she requested certain items of information from two of the foundations established by the Hungarian National Bank (namely, the *Pallas Athéné Geopolitikai Alapítvány* – "PAGEO" and the *Pallas Athéné Domus Scientiae Alapítvány* – "PADS"). The applicant's freedom-of-information request concerned calls for proposals issued by these foundations, with a view to funding PhD scholarships, researcher mobility, conferences, publications, and research programmes. The applicant asked, *inter alia*, for the names of the persons who had obtained grants through each call for proposals, the amount of money received by them and the subsidised activities. She intended to write an article based on the information obtained.

8. The foundations refused to disclose the requested information and the applicant sought judicial review of those decisions.

9. On 1 December 2015, in the judicial review of PAGEO's decision, the Budapest High Court, as far as relevant for the present application, granted the applicant's claim. It ordered the foundation to disclose to her, among other items of information, the identity of the successful grant recipients in the various calls for funding, the amounts received by them and the funded activities. On appeal, the Budapest Court of Appeal partly reversed that judgment and rejected the applicant's claim with regard to the disclosure of the names of the grant recipients. The Court of Appeal found that under section 3 (6) of Act no. CXII of 2011 on Informational Self-determination and Freedom of Information ("the Data Protection Act", see paragraph 14 below), disclosure of the personal data requested by the applicant would have been possible only by virtue of a specific legislative provision authorising such disclosure. In the absence of such a provision, the applicant's claim could not be granted.

10. On 7 December 2015, in the judicial review of PADS's decision, the Budapest High Court granted the applicant's claim except for her request to order the disclosure of the grant recipients' names, allowing the foundation to anonymise the names. It found that those names were neither 'data of public interest' nor 'data subject to disclosure in the public interest' within the meaning of the Data Protection Act (see paragraph 14 below), and therefore disclosure was not required by the Act. The court also noted that in its view the protection of personal data took precedence over the right to transparency in the use of public funds. That decision was upheld on appeal. The Budapest Court of Appeal emphasised that, in deciding the case, the question whether the legislation allowed for the accessibility of the data in question in the public interest had to be given decisive importance. The court recognised the public interest in the disclosure of the data requested; nevertheless, it emphasised that in the absence of a specific legal basis, it was

not possible for the names of the successful applicants to be released as "data subject to disclosure in the public interest".

11. The applicant lodged constitutional complaints against these decisions. The Constitutional Court adopted its decision in the two cases on 10 April 2018. It rejected the applicant's request for the ordinary court decisions to be quashed and dismissed her request to have certain parts of the Data Protection Act annulled. However, it found that the legislature had failed to comply with its duty to implement Article 39 § (2) of the Fundamental Law providing for the transparency of public funds. It ordered the legislature to remedy this omission by 30 September 2018.

12. On 2 July 2019 Parliament complied with the Constitutional Court's decision by adopting Act no. LXVI of 2019 amending section 1 of Act no. CLXXXI of 2007 on the Transparency of Subsidies Awarded from Public Funds. The amendment entered into force on 10 July 2019.

RELEVANT LEGAL FRAMEWORK

13. The relevant parts of the Fundamental Law, as in force at the material time, provided as follows:

Article VI

"(2) Everyone shall have the right to the protection of his or her personal data, and also to have access to and to disseminate data of public interest.

..."

Article 39

"(2) Every organisation managing public funds shall be obliged to account publicly for the management of those funds. Public funds and national assets shall be managed in accordance with the principles of transparency and integrity in public life. Data relating to public funds or to national assets shall be recognised as data of public interest."

14. The relevant provisions of Act no. CXII of 2011 on Informational Self-determination and Freedom of Information ("the Data Protection Act"), as in force at the material time, read as follows:

3. Definitions
Section 3

"Personal data: data relating to the data subject, in particular the name and identification number of the data subject, and also one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity, and [any] conclusions drawn from the data concerning the data subject.

...

Data of public interest (*közérdekű adat* hereinafter 'public-interest data'): information or data other than personal data, recorded in any mode or form, processed by an entity

or individual performing State or local government responsibilities or other public tasks defined by legislation, concerning their activities or generated in the course of performing their public tasks, irrespective of the method of processing or its independent or collective nature; in particular, data concerning the scope of authority of the entity or individual, their competence, organisational structure, professional activity and the evaluation of such activities, including their efficiency, the type of data held and the legislation regulating their operations, as well as data concerning financial management and concluded contracts.

Data subject to disclosure in the public interest (*közérdekből nyilvános adat*): data, other than public-interest data, disclosure of or access to which is provided for by the law, in the public interest.

..."

ACCESS TO DATA OF PUBLIC INTEREST
21. General Rules Concerning Access to Data of Public Interest
Section 26

"(1) Bodies or individuals performing State or local government tasks, as well as other public tasks defined in legislation (hereinafter jointly referred to as a 'body performing public tasks') must ensure access to public-interest data and data subject to disclosure in the public interest in their control to anyone requesting such data, with the exception of cases defined in this Act.

..."

Section 27

"(3) Any data that is related to the central budget, the budget of a local government, the allocation of European Union financial assistance, any subsidies and allowances in which the budget is involved, the management, processing, use, and allocation and restriction of central and local government assets, and the acquisition of any rights in connection with such assets shall be deemed information of public interest, and as such shall not be deemed business secrets, nor shall any data that other specific legislation classifies - in the public interest - as public information. Such publication, however, shall not include any data pertaining to protected know-how that, if made public, would be unreasonably detrimental for the business operation to which it is related, provided that withholding such information shall not interfere with the availability of, and access to, information of public interest.

(3a) Any natural or legal person, or unincorporated business association entering into a financial or business relationship with a subsystem of the central budget shall, upon request, supply information to any member of the general public in connection with that relationship, which is deemed public under subsection (3). The obligation referred to above may be satisfied by the public disclosure of information of public interest, or, if the information requested has previously been made public electronically, by way of reference to the public source where the data is available.

..."

22. Demand for Access to Data of Public Interest
Section 28

"(1) Anyone can request access to public-interest data orally, in writing or electronically. The provisions governing access to public-interest data shall also be applicable to access to data subject to disclosure in the public interest.

..."

Section 29

"(1) The body performing public tasks which processes the data shall ensure access to data of public interest within the shortest possible time, but within a maximum period of fifteen days.

(2) The deadline set in paragraph (1) may be extended once by fifteen days should the request for data concern an extensive and large volume of data. The requesting party must be notified of this within a period of eight days following receipt of the request.

(3) The requesting party is entitled to receive a copy of the documents or a part of the document containing the data, regardless of its mode of storage. The body performing public tasks which processes the data, is entitled to charge a fee for making copies – to the extent of the costs incurred – about which the requesting party must be notified before the request is processed.

..."

Section 30

"(1) Should the document containing public-interest data also contain data that cannot be disclosed to the requesting party, such data must be made unrecognisable in the copy of the document(s).

..."

Section 31

"(1) The requesting party is entitled to apply to the courts should the deadline for the rejection or fulfilment of the request for access to public-interest data, or the deadline extended by the data controller in accordance with Article 29 (2) expire without result, and in addition is entitled to ask for a review of the fee charged for making a copy of the requested documents, if the fee has not yet been paid.

(2) The data controller shall prove the legality of rejection and the reasons for it, and shall justify the fee charged for making a copy.

(3) Litigation against the body performing public tasks must be commenced within a period of thirty days following notification of the rejection of the request, the expiry of the deadline without a response or the expiry of the deadline set for paying the fee charged.

...

(6) The court shall take immediate action."

15. Act no. CLXXXI of 2007 on the Transparency of Subsidies Awarded from Public Funds, as in force at the material time, provided in so far as relevant:

Section 1

"(1) The scope of this Act covers in kind and cash subsidies originating from

(a) the subsystems of public finances,

(b) European Union funds,

(c) other programmes financed under an international agreement,

awarded under an individual decision *via* a tender or outside the tender regime to natural persons, legal persons or other organisations without legal personality, not including condominiums (henceforth together: 'person').

..."

Section 3

"(1) Data not amounting to public-interest data or special data, processed in relation to the tender, or the tender process, or the award decision by a body or person preparing the call for tender, or issuing the call for tender, or preparing the award decision, or taking the award decision shall constitute data subject to disclosure in the public interest.

(2) Access to data mentioned in subsection (1) shall be governed by the statutory provisions pertaining to public-interest data."

16. Section 1 of the same Act, as amended by section 57 of Act no. LXVI of 2019, provides, with effect from 10 July 2019:

"(1) The scope of this Act covers in-kind and cash subsidies originating from

(a) the subsystems of public finances,

(b) European Union funds,

(c) other programmes financed under an international agreement,

(d) a foundation set up by a fully state-owned organisation,

awarded under an individual decision *via* a tender or outside the tender regime to natural persons, legal persons or other organisations without legal personality, not including condominiums (henceforth together: 'person')."

17. Act CXXXIX of 2013 on the Hungarian National Bank ("the MNB Act"), as in force at the material time, provided in so far as relevant:

Section 162

"(2) In accordance with the tasks and primary purpose of the Hungarian National Bank, it may establish a majority-owned business company or establish a foundation."

18. On 31 March 2016, with its decision no. 8/2016. (IV. 6.) AB, the Constitutional Court reviewed an amendment to the MNB Act which would have significantly limited the range of data to be disclosed by the foundations of the Hungarian National Bank. In finding the amendment to be unconstitutional, the Constitutional Court underlined that in view of their public funding and the fact that the National Bank can set up foundations only in harmony with its public tasks and primary objectives (see paragraph 17

above), the foundations "without doubt manage public money and perform a public task."

19. The relevant international material on access to official documents and protection of personal data is outlined in *Magyar Helsinki Bizottság v. Hungary* ([GC], no. 18030/11, §§ 36-43 and 50-63, 8 November 2016).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

20. The applicant complained that her inability to obtain information about the identity of grant recipients of two foundations set up by the Hungarian National Bank had violated her right to freedom of expression, as provided in Article 10 of the Convention, which reads as follows:

> "1. Everyone 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 authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 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. Admissibility

1. Exhaustion of domestic remedies

(a) The parties' arguments

(i) The Government

21. The Government submitted that the applicant had not availed herself of all the available domestic remedies, in that she had failed to submit a new freedom-of-information request to the foundations following the entry into force of the legislative amendments to the Act on the Transparency of Subsidies Awarded from Public Funds.

(ii) The applicant

22. The applicant disagreed. She argued that it was not reasonable to expect her to resubmit a request to the foundations because, firstly, entering into the same – potentially lengthy and costly – proceedings would have been an unreasonable burden, and secondly, even if she had obtained the requested information, it would have been more than four years after her initial request. By that time, the information would have ceased to be relevant.

(b) The Court's assessment

23. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after the exhaustion of domestic remedies. An applicant is required to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014). However, there is no obligation to have recourse to remedies which are inadequate or ineffective. For a remedy to be effective, it must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II, and, as a recent authority, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 139, 27 November 2023).

24. The Court notes that on 25 February 2015 the applicant requested, under section 28(1) of the Data Protection Act, the disclosure of information concerning several calls for applications published by two foundations for the 2014/15 academic year. When the foundations denied her requests, she initiated judicial review of those decisions, an avenue available to her under section 31 of the Data Protection Act. The courts considered her claim at two levels of jurisdiction but found for the respondents with regards to her requests for the disclosure of the names of the grant recipients (see paragraphs 9 and 10 above). Following the exhaustion of those ordinary remedies, she turned to the Constitutional Court. Her complaint prompted the Constitutional Court to find that the lack of a legislative provision regulating the transparency of public funds distributed by foundations constituted an unconstitutional legislative omission. The Constitutional Court ordered Parliament to remedy that situation by 30 September 2018 (see paragraph 11 above). Parliament amended the Transparency of Subsidies Act, with effect from 10 July 2019 (see paragraph 12 above). The new provision extended the scope of data subject to disclosure in the public interest to subsidies originating from foundations set up by a fully State-owned organisation. The amendment entered into force with an *ex nunc* effect (see paragraph 16 above), and thus did not affect the applicant's original information request.

25. The Government argued that, from that point, the applicant, relying on that new legislation, could have submitted a renewed request, which would have remedied the alleged violation.

26. The Court sees no reason to doubt that such an opportunity was open to the applicant. Changes in the legal environment may have increased her chances of obtaining the information sought, either following the submission of a renewed information request or – in the event of a refusal to disclose the requested information – of a subsequent request for judicial review. Nevertheless, the Court considers that for the purposes of the exhaustion of

domestic remedies, it would have been unreasonable to expect the applicant to resubmit her information request, for the following reasons.

27. The applicant is an investigative journalist who was seeking documents and information in preparation for an article on the finances of two foundations set up by the National Bank. Given the nature of covering issues attracting wide public interest (such as the topic in question), the Court accepts that it was essential for the applicant to obtain the information sought in a speedy manner in order to ensure its relevance for her readership. Indeed, the purpose of the information request was to enable her to promptly relay the obtained information to the wider public through the news article she was working on. However, the disclosure of such data ultimately became possible more than four years later. The Court agrees with the applicant on this point and finds that after such a lapse of time the information at issue may have lost all relevance. In the particular circumstances of the present case, therefore, the applicant cannot reasonably have been expected to avail herself of the avenue suggested by the Government.

28. The Court therefore dismisses the Government's objection regarding the exhaustion of domestic remedies.

2. Compatibility ratione materiae *with the provisions of the Convention*

29. While the Government have not raised an objection concerning the applicability of Article 10 of the Convention, the Court considers that it is necessary to address this issue of its own motion (see *Studio Monitori and Others v. Georgia*, nos. 44920/09 and 8942/10, § 32, 30 January 2020, and *Centre for Democracy and the Rule of Law v. Ukraine*, no. 10090/16, § 55, 26 March 2020).

30. In previous similar cases regarding access to information the Court has examined whether the facts of the case raise an issue under Article 10 of the Convention, either at the stage of admissibility, as a matter of jurisdiction, or at the stage of the merits. In the former cases, the Court followed the general principles outlined in *Denisov v. Ukraine* ([GC], no. 76639/11, § 93, 25 September 2018), according to which the question of the applicability of a Convention provision is an issue falling under the Court's jurisdiction *ratione materiae* and that the relevant analysis should be carried out at the admissibility stage, unless there is a particular reason to join this question to the merits (see, in relation to the applicability of Article 8 of the Convention, *Denisov*, cited above, § 93, and, in relation to the applicability of Article 10 of the Convention, *Šeks v. Croatia*, no. 39325/20, § 35, 3 February 2022, and *Namazli v. Azerbaijan* (dec.), no. 28203/10, § 30, 7 June 2022). In the latter cases, the Court adopted the approach taken in *Magyar Helsinki Bizottság v. Hungary* ([GC], no. 18030/11, §§ 71 and 117, 8 November 2016), according to which the question of whether the situation of which an applicant complains falls within the scope of Article 10 is to a large extent linked to the merits of his or her complaint, and examined it under the merits (see *Studio*

Monitori and Others, cited above, § 32, and *Centre for Democracy and the Rule of Law*, cited above, § 55).

31. In view of the case-law cited above and given that in the present case there are no particular reasons to join the applicability of Article 10 to the merits, the Court will examine the issue of the applicability before examining the merits of the complaint.

32. As the Court emphasised in *Magyar Helsinki Bizottság* (cited above, § 156), Article 10 does not confer on the individual a right of access to information held by a public authority or oblige the Government to impart such information to the individual. The Court held, however, that such a right or obligation may arise "where access to the information is instrumental for the individual's exercise of his or her right to freedom of expression, in particular, the 'freedom to receive and impart information', and where its denial constitutes an interference with that right" (ibid.).

33. The Court notes that even though the foundations set up by the Hungarian National Bank had separate legal personalities, they were established by a fully State-owned organisation with the use of public funds. The Court also takes note of the findings of the Hungarian Constitutional Court according to which the foundations were performing functions of a public nature (see paragraph 18 above). In light of these, the foundations can be regarded as public authorities for the purposes of assessing whether a right to access to information arises in the circumstances.

34. In determining whether the applicant can claim such a right in the present case, the Court will apply the principles laid down in *Magyar Helsinki Bizottság* (ibid., §§ 149-80) and assess the case in the light of its particular circumstances and having regard to the following criteria: (a) the purpose of the information request; (b) the nature of the information sought; (c) the role of the applicant; and (d) whether the information was ready and available.

35. The purpose of the applicant's information request was to obtain material which she would subsequently use to write an article about the allocation of public funds to individuals through the foundations' public grants. The Court notes the Government's argument that, by virtue of the domestic courts' decisions, the applicant had been refused access only to the names of the grant beneficiaries, and that she could have written the article without that information. The Court is of the view that, considering the scope of the applicant's information request and the subject of the article she was preparing, the issue of the identity of the individuals who benefitted from public funds was one of the three major elements of her investigation, namely which individuals had received public money, for what specific activities, and in what amount. Thus, it can be considered that the information sought was necessary for the exercise of the applicant's freedom of expression, including her freedom to receive and impart information on a specific subject.

36. Furthermore, the information request satisfies the public-interest test. Although, in the absence of a legal provision to that effect, the names of the

grant recipients could not qualify as 'data subject to disclosure in the public interest' under Hungarian law, the public-interest nature of the information sought was quite apparent. The disclosure of the requested data had the potential of contributing to transparency in the allocation of taxpayers' money and to transparency in public life. The setting up and financing of the National Bank's foundations, and their calls for funding applications, were at the centre of public debate at the time of the information request (see paragraph 5 above). The Court cannot ignore either that in the judicial proceedings against PADS, the Budapest Court of Appeal explicitly recognised the significant public interest in access to the data requested (see paragraph 10 above).

37. As to the role of the applicant, she is a journalist who sought access to the information, in order to relay it to the public in her capacity as a "public watchdog" (see *Magyar Helsinki Bizottság*, cited above, §§ 164-68; *Mikiashvili and Others v. Georgia* (dec.), nos. 18865/11 and 51865/11, § 49, 19 January 2021; and *Saure v. Germany* (dec.), no. 6106/16, § 35, 19 October 2021).

38. Lastly, it has not been disputed between the parties that the impugned information was ready and available.

39. Weighing these aspects, the Court is satisfied that the applicant wished to exercise her right to impart information on a matter of public interest and sought access to information to that end under Article 10 of the Convention (see *Yuriy Chumak v. Ukraine*, no. 23897/10, § 33, 18 March 2021; *Šeks*, cited above, § 43; and *Saure v. Germany (no. 2)*, no. 6091/16, § 39, 28 March 2023). Article 10 thus being applicable, the application is not incompatible *ratione materiae* with the provisions of the Convention.

3. Conclusion

40. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

41. The applicant submitted that based on the principles set out in *Magyar Helsinki Bizottság* (cited above), there had been an interference with her right to freedom of expression. Even though such interference had been based on law, it was verging on arbitrariness, as domestic legislation had not allowed for the assessment of the necessity and proportionality of the restriction on that right. No balancing of the competing rights (the applicant's right of access to information and the grant recipients' right to the protection of personal data) could have taken place in the domestic proceedings. In

addition, the Constitutional Court had established that the legal environment had resulted in a situation which contravened the Fundamental Law. This in itself indicated that her right of access to information had been violated.

(b) The Government

42. The Government submitted that the interference had been prescribed by law, served the legitimate aim of the protection of the rights of others and had been temporary, in that it had lasted only until the legislature responded to the newly emerged social need by amending the applicable legal regulations. As of 10 July 2019, the applicant could have submitted a renewed request for the information she sought. In any case, the applicant had already been granted access to sufficient information to enable her to perform her watchdog function and to contribute to the public debate on the use of public funds.

2. The Court's assessment

43. In view of its finding that the applicant's information request was compatible *ratione materiae* with Article 10 of the Convention (see paragraph 39 above), the Court considers that by denying the applicant access to the requested information, the domestic authorities interfered with her rights under Article 10 § 1 of the Convention.

44. Such an interference will only be justified under Article 10 § 2 of the Convention if it was "prescribed by law", pursued one or more legitimate aims set out in that provision, and was "necessary in a democratic society".

45. As to the lawfulness of the interference, the impugned refusals to grant access to the names of the foundations' grant beneficiaries was based on the provisions of the Data Protection Act, namely the combined reading of sections 3 (5), 3 (6) and 26 of that Act (see paragraph 14 above) by the domestic courts. It can therefore be considered lawful.

46. Concerning the legitimate aim of the measure, the Court notes the Government's argument that the restriction on the applicant's right served the legitimate aim of protecting the rights of others (guaranteeing the grant beneficiaries' right to protection of personal data), and it sees no reason to hold otherwise.

47. The question remains whether the restriction on the applicant's right of access to information was "necessary in a democratic society". According to the Court's well-established principles in this regard, any restriction to freedom of expression "must be established convincingly" (see among other authorities, *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 100, ECHR 2013; *Delfi AS v. Estonia* [GC], no. 64569/09, § 131, ECHR 2015; and *Magyar Helsinki Bizottság*, cited above, § 187) and must correspond to a "pressing social need". Moreover, it is the Court that is empowered to rule on the compatibility of any restriction with Article 10 of

the Convention. When exercising its supervisory jurisdiction, "what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient' ... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 ..." (ibid.).

48. The Court observes that in the present case the domestic courts refused to order the foundations to disclose the grant recipients' names to the applicant, as they were personal data which could not be disclosed in the absence of a specific legal provision authorising their disclosure (compare, *Magyar Helsinki Bizottság*, cited above, § 188).

49. In deciding whether in the present case the interest in the protection of the grant recipients' names was of such nature and degree as could warrant engaging the application of Article 8 of the Convention, the Court reiterates the considerations it set out in *Magyar Helsinki Bizottság* (cited above, §§ 191-96) and *L.B. v. Hungary* ([GC], no. 36345/16, §§ 102-03, 9 March 2023). The protection of personal data is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life. Article 8 of the Convention thus provides for the right to a form of informational self-determination, allowing individuals to rely on their right to privacy, where their rights under Article 8 are engaged (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 137, 27 June 2017). The Court, in determining whether Article 8 is engaged with regard to certain personal information, has due regard to the specific context (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 67, ECHR 2008; *Magyar Helsinki Bizottság*, cited above, § 193; and *L.B. v. Hungary*, cited above, § 103). In *Magyar Helsinki Bizottság*, the Court found that a person's reasonable expectations as to privacy might be a significant factor in assessing whether a person's private life is concerned by measures effected outside that person's home or private premises (see *Magyar Helsinki Bizottság*, cited above, § 193). The Court also had regard to the nature of the data in question and the potential effect of the information's disclosure on the private life of the persons concerned.

50. In the case at hand, even though the requested data included the names of the grant beneficiaries, their identities only had relevance as 'recipients' of public money, thus from the aspect of the allocation of public funds (see, *mutatis mutandis*, ibid., § 194). The Government have failed to make any argument, besides referring to State obligations in the area of data protection, as to how the disclosure of their names would affect the grant recipients in the enjoyment of the protection of their private life. Furthermore, the Court also takes note of the fact that transparency in the allocation of public funds is an important constitutional principle, and the Data Protection Act and other legislation such as the Transparency Act provide for the disclosure of data

related to the management and allocation of public funds, which can include personal data of people who benefit from them (see paragraphs 13, 14 and 15 above). Against this background, it would be difficult to argue that the grant recipients – when availing themselves of any of the foundations' calls for applications for funding – could not expect that their names, as recipients of public money, might be publicly disclosed. In the light of these considerations, the Court is therefore of the view that the interests of the protection of the rights of others are not of such a nature and degree as could warrant engaging the application of Article 8 and bring it into play in a balancing exercise against the applicant's right to freedom of expression (ibid., § 196; compare and contrast *Saure (no.2)*, cited above, § 61).

51. Nevertheless, the Court refers to its finding (see paragraph 46 above) that the protection of personal information of grant beneficiaries constitutes a legitimate aim permitting a restriction on freedom of expression under paragraph 2 of Article 10 of the Convention. The question remains whether the means used to protect it were proportionate to the aim sought to be achieved (see *Magyar Helsinki Bizottság*, cited above, § 196, and *Centre for Democracy and the Rule of Law*, cited above, § 116).

52. In previous similar cases, the Court has had regard to various circumstances in the course of the proportionality assessment: (i) whether the individuals concerned by the information request were public figures of particular prominence; (ii) whether they had themselves exposed the impugned information to public scrutiny; (iii) the degree of potential harm to the individuals' privacy in the event of disclosure; (iv) the consequences for the effective exercise of the applicant's freedom of expression in the event of non-disclosure; (v) whether the applicant had put forward reasons for the information request (see *Centre for Democracy and the Rule of Law*, cited above, §§ 117-19, and *Saure (no.2)*, cited above, § 55); (vi) the degree of public interest in the matter; and (vii) whether the possibility of a meaningful assessment of the restrictions on the applicant's rights was possible under domestic law and if so, whether such an assessment was carried out by the domestic authorities (see *Magyar Helsinki Bizottság*, cited above, §§ 197 and 199).

53. In this connection, the Court refers to its previous findings that, irrespective of whether the individuals concerned were private or public figures, they submitted their proposals for a call for applications financed by the State through the two foundations, in a legal environment which provided for transparency in the management and allocation of public funds (see paragraphs 13, 14 and 15 above). Moreover, no submission was made by the Government indicating the existence of any risk of a potentially harmful impact that disclosure of the grant recipients' names could have had on their privacy.

54. Furthermore, the Court wishes to recall that the information request, aiming to contribute to transparency in the allocation of taxpayers' money,

clearly satisfies the public-interest test (see paragraph 36 above). The applicant, a journalist, requested the data in question because she intended to exercise her freedom-of-information and contribute to a public debate on a matter of considerable public interest. Her requests were refused merely because no provision allowing for the disclosure of the identity of the grant recipients existed in the legislation as it then stood. In consequence, the authorities were barred from performing any balancing exercise whatsoever between the applicant's Article 10 rights on the one hand, and the considerations of personality rights and data protection on the other.

55. Moreover, the Constitutional Court subsequently identified an unconstitutional legislative omission, in that the legislature had failed to enact laws which would have ensured, as far as possible, a balanced exercise of the two competing fundamental constitutional rights, that is, the right to protection of personal data and the right to access to information in the public interest.

56. In these circumstances, the Court finds that no sufficient reasons were adduced by the national authorities for the necessity of the interference complained of. The domestic authorities did not strike a fair balance between the competing interests at stake with a view to ensuring the proportionality of the interference.

57. There has accordingly been a violation of Article 10 of the Convention.

II. APLICATION OF ARTICLE 41 OF THE CONVENTION

58. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

59. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

60. The Government contested the claim as excessive.

61. Ruling on an equitable basis, the Court awards the applicant EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

62. The applicant also claimed EUR 3,600 plus VAT in respect of the costs and expenses incurred before the Court. This sum corresponds to eighteen hours of legal work, billable at an hourly rate of EUR 200 plus VAT.

63. The Government contested the claim as excessive.

64. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the full sum claimed.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Marko Bošnjak President