



The Case Law of the European Court of Human Rights (ECHR): the Right of Access to Public Information

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The right to receive information is guaranteed by the European Convention on Human Rights in 47 Member States of the Council of Europe, including Georgia. The case law of the European Court of Human Rights (ECHR) is considered an authoritative international standard regarding the protection of human rights, which the Member States should use in the process of effective implementation of the right of access to public information on the national level. The right of access to public information is closely related to the right to receive information guaranteed by Article 10 of the ECHR. This right allows the public to have an adequate view of and to form a critical opinion on the situations in the state. The right to receive information is not absolute and may be restricted to balancing competing interests in accordance to the circumstances of the case based on the state and public interest.

The case law of the ECHR concerning the right of access to public information is controversial which means different interpretations of Article 10 of the European Convention on Human Rights regarding access to public information. For many years, the ECHR was reluctant to recognize the right of access to public information under the right to receive information guaranteed by Article 10 and impose positive obligation for the state to supply relevant public information and give access to

official documents regarding matters of public interest.¹ The general approach of the European Court of Human Rights was to hold that it was difficult to derive from the European Convention a general right of access to administrative data and documents, but the Court always mentioned that „the freedom to receive information basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to him”² and pointed out that „Article 10 does not confer a person the right to access of information in circumstances such as those of the present case”³, which left a possibility to the ECHR to make different interpretation in the future. In some cases, the ECHR satisfied the request of public information in accordance to Article 8 of the European Convention and stated that the restriction of access to information violated the right to respect for applicants’ private and family life.⁴

The ECHR changed its approach in the case of **Sdruzeni Jiboceske v Czech Republic** decided on 10th July 2006 and defined that the refusal to access to public information was an interference with the right to receive information guaranteed by Article 10. In this case, the Court evaluated of a refusal of the right of access to public documents within the scope of the conditions set forth in Article 10(2) of the Convention and pointed out that “when the requested documents are related to a matter of public interest or an ongoing public debate, the states will be under a strict scrutiny as to whether the reasons invoked to refuse a request for access to such documents were relevant and sufficient.”⁵ The Court decided that the refusal of access to information was justified in the interest of national security, for the protection of the rights of others and for the protection of health in accordance Article 10(2) of the Convention.

The ECHR implicitly recognized the right of access to official documents in the case of **Timpul Info-Magazine and Anghel v Moldova** decided on 27th of November 2007 and pointed out that „particularly strong reasons must be provided for any measure affecting this role of the press and limiting access to information which the public has the right to receive.”⁶ In this case, the Court interpreted that private companies participated in transactions in which considerable public funds are involved should be under a strict scrutiny from the society because of the high public interest in this issue.

¹Leaden v Sweden, 26th of March, 1987; Gaskin v the United Kingdom, 7th of July, 1989; Guera v Italy, 9th of February, 1998; Mc-Ginley and Egan v the United Kingdom, 9th of June, 1998; Odievre v France, 13th of February, 2003; Sirbu and others v Moldova, 15th of June, 2004.

²Leaden v Sweden, 26th of March, 1987, ph.74; Gaskin v the United Kingdom, 7th of July, 1989, ph 52; Guera v Italy, 9th of February, 1998, ph 53.

³Leaden v Sweden, 26th of March, 1987, ph.74; Gaskin v the United Kingdom, 7th of July, 1989, ph 52; Guera v Italy, 9th of February, 1998, ph 53.

⁴ Gaskin v the United Kingdom, 7th of July, 1989 ; Guera v Italy, 9th of February, 1998.

⁵ Sdruzeni Jiboceske v Czech Republic, 10th of July, 2006.

⁶ Timpul Info-Magazine and Anghel v Moldova, 27th of January, 2007, ph. 31.

The ECHR has completed a transition period in the case of **Tarsasag a Szabadsagjogokert v Hungary** on 14th of April 2009 in which the ECHR broadly interpreted Article 10 and implicitly recognized the right of access to official documents. In this case, applicant was a non-governmental organization which requested the complaint presented by the Member of the Parliament to the Constitutional Court concerning the changes in the Criminal Code. The Court pointed out that non-governmental organizations, like media, have the function of social „watchdog” and the state should provide for them to have access to official documents. In this case, the ECHR first time stated the violation of Article 10 regarding the refusal to public information. In 2009, the ECHR underlined the importance of the right of access to public information and emphasized that access to original documentary sources for legitimate historical research was an essential element of the exercise of the right to freedom of expression.⁷

The ECHR pays particular attention to the public interest involved in the disclosure of information. In the case of **Guja v Moldova**, the Court interpreted that “the interest which the public may have in particular information can sometimes be so strong as to override even a legally imposed duty of confidence”⁸ and pointed out that, in such circumstances, journalists, civil servants, activists or staff members of an NGO should not be prosecuted or sanctioned because of a breach of confidentiality or the use of illegally obtained documents.⁹

On the basis of the analysis of the case law of the ECHR, we can conclude that ECHR recognizes the right of access to public information under the scope of the Article 10 of the European Convention on Human Rights and imposes positive obligation for the States to supply relevant information regarding matters of public interest as well as proactively publish it. Accordingly, Georgia, as a member of the Council of Europe, should ensure to make the legislation and its implementation in practice comply with the standards of the ECHR and should effectively implement public interest test in evaluating of disclosure of information by public authorities.

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⁷ Kenedi v Hungary, 26th of May, 2009, ph. 36.

⁸ Guja v Moldova, 12th of February, 2008, ph. 43.

⁹ Peev v Bulgaria, 26th of July, 2007, ph. 72.

