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

FIFTH SECTION

DECISION

Application no. 2703/12
GEORGIAN YOUNG LAWYERS' ASSOCIATION
against Georgia

The European Court of Human Rights (Fifth Section), sitting on 19 January 2021 as a Chamber composed of:

Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Jovan Ilievski,
Lado Chanturia,
Ivana Jelić, *judges,*

and Martina Keller, *Deputy Section Registrar,*

Having regard to the above application lodged on 4 January 2012,

Having regard to the observations submitted by the Government of Georgia ("the Government") and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Georgian Young Lawyers' Association (GYLA), is a non-governmental organisation registered under Georgian law in 1994. It was represented before the Court by Ms N. Katsitadze and Ms N. Jomarjidze, lawyers practising in Tbilisi.

2. The Georgian Government ("the Government") were represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 15 June 2009 a picketing action in front of the Tbilisi police headquarters was dispersed by police forces. The dispersal resulted in a clash between law-enforcement officers and protesters, and several people

on both sides received injuries of various levels of severity ("the incident of 15 June 2009").

5. On 16 June 2009 the Ministry of the Interior ("the Ministry") issued an official public statement that nine police officers had received disciplinary sanctions – varying from a reprimand to suspension from official duties – for actions committed during the incident of 15 June 2009. The Ministry also publicly apologised to journalists who had been covering the picketing for hindrances caused by the police actions.

6. On the same day, 16 June 2009, the applicant association asked the Ministry to provide it with the names of the nine police officers who had received the disciplinary sanctions. It did not give any reasons in the request as to why it needed that information.

7. On 18 June 2009 the applicant association issued a public statement, welcoming the disciplinary sanctioning of the police officers responsible for the excessive use of force during the incident of 15 June 2009 and emphasising the need to launch a criminal investigation into the incident.

8. As no reply followed to the applicant's request of 16 June 2009 (see paragraph 6 above), on 28 July 2009 it lodged an administrative complaint with the Ministry. Without explaining as to why it wished to know the names of the sanctioned police officers, the applicant referred to its right under Article 37 § 1 of the General Administrative Code ("the GAC", see paragraph 19 below) to have unfettered access to public information.

9. By a decision of 20 August 2009 the Ministry rejected the applicant's administrative complaint, stating that the names of the sanctioned officers constituted personal data which, pursuant to Article 27(1) of the GAC (see paragraph 18 below), could not be made public without the consent of the individuals concerned, as well as for security considerations. More specifically, given the circumstances surrounding the incident of 15 June 2009, there was a legitimate need to protect the police officers from possible retaliation by third parties.

10. On 22 October 2009 the applicant brought a court action against the Ministry, requesting that its decision of 20 August 2009 be set aside as ill-founded. The statement of claim did not contain an explanation as to what the purpose of the information request was. The applicant association exclusively argued about the following two issues – that the ministerial decision of 20 August 2009 had allegedly been delivered in breach of certain administrative-procedural rules and that the identity of the sanctioned police officers should be treated as public information.

11. As confirmed by the minutes of the court hearings held between 13 October to 24 November 2010, apart from referring repeatedly to its right to have unfettered access to public information, the applicant did not explain in its oral pleadings either as to why it wished to know the identity of the sanctioned police officers.

12. By a judgment of 3 December 2010 the Tbilisi City Court dismissed the applicant's action as ill-founded. It upheld the Ministry's position that the identity of the sanctioned police officers clearly constituted personal data and that its disclosure had not been possible without the consent of the individuals concerned, pursuant to Article 41 § 2 of the Constitution and Articles 27(1), 37 § 2 and 44 § 1 of the GAC (see paragraphs 16 and 18-20 below). Furthermore, the court stated that the applicant had not explained why the knowledge of the officers' identity was important for it.

13. The applicant appealed. As can be seen from the statement of appeal and the hearing records, in the appeal proceedings the applicant limited its arguments to stating that, in general, the identity of public officials should not, as a matter of principle, be kept confidential, and that the names of the police officers who were subjected to the disciplinary proceedings should be disclosed not merely out of curiosity but as a piece of information of public-interest. It did not elaborate on the latter point any further.

14. By a judgment of 16 February 2011 the Tbilisi Court of Appeal dismissed the applicant's appeal as ill-founded and upheld in full the lower court's assessment of the relevant legal issues and matters of fact.

15. By a final decision of 30 May 2011 the Supreme Court rejected as inadmissible the applicant's appeal on points of law in which the latter had been complaining about the lower courts' allegedly erroneous reading of the relevant provisions of the GAC. The decision was served on the applicant on 4 July 2011.

RELEVANT LEGAL FRAMEWORK

16. The relevant provision from the Constitution of Georgia, as its text stood at the material time, read as follows:

Article 41

> "2. Information contained in official records pertaining to the health, the finances or other private matters of an individual shall not be made available to anyone without the prior consent of the individual in question, except as determined by law, when doing so is necessary to safeguard national security or public safety, or the health, rights and freedoms of others."

17. Under Article 2 of the GAC, not all types of information collected and stored by a public authority were considered to be "public information". More specifically, under Article 2 (m), information collected or stored by a public authority was considered "classified" if it contained either "personal data about third parties" or if it related to a "commercial or State secret".

18. Pursuant to Article $27^{(1)}$ of the GAC, only the individual concerned could decide what part of the personal data about him or her stored in public records had to be treated with the requisite confidentiality and in what respect – unless legislation provided otherwise.

19. Article 37 of the GAC concerned the right of access to "public information". The relevant part of that provision read as follows:

Article 37 – Request to access public information

"1. Everybody has the right to access public information, regardless of the form in which [it] has been stored. ...

2. An application to access public information shall be submitted in writing. ... If such an application may result in the disclosure of classified information, it shall be accompanied by a certified consent from the third party concerned. ..."

20. Article 44 of the GAC, which concerned disclosure of "personal data" by a public authority, read as follows:

Article 44 – Confidentiality of personal data

"1. A public body is not allowed to disclose personal data about a third person unless that person has consented to the disclosure or there exists a court decision ordering the disclosure based on legislation. Personal data concerning high-ranking State officials [თანამდებობის პირები] are not covered by the said protection. ..."

COMPLAINT

21. The applicant association complained under Article 10 of the Convention that the Ministry of the Interior had denied it access to information which it considered to be of general public interest.

THE LAW

22. Article 10 of the Convention reads, insofar as relevant, as follows:

"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

23. The Government raised three objections as to the admissibility of the application under Article 35 of the Convention. Firstly, they suggested in substance that Article 10 § 1 of the Convention was not applicable in the particular circumstances of the case, because the information that had been sought by the applicant was not essential to the exercise of any of its rights related to freedom of expression. The non-disclosure of the names of the

police officers could not be said to have deprived the applicant of a possibility to contribute to the public debate associated with the incident of 15 June 2009. Secondly, in so far as that provision might nevertheless apply, the Government argued that the application was manifestly ill-founded, because the applicant failed to show that there had been interference with Article 10 § 1. Thus, it had never explained at the domestic level what exactly the purpose of its information request was. Nor had it sufficiently elaborated before the domestic authorities on the question of why the personal data of police officers ought to be considered as information of public-interest nature. Thirdly, the Government submitted that the applicant had not suffered a significant disadvantage, reiterating their argument that the Ministry's denial to disclose the solicited information had not hindered the applicant from expressing its opinions on the matter. The Government also emphasised that the non-disclosure of the relevant personal data had been lawful and served the aim of protecting the police officers from unwarranted aggression. All in all, the Government requested the Court to reject the application as inadmissible either under sub-paragraph (a) of Article 35 § 3 of the Convention, for being incompatible *ratione materiae* or manifestly ill-founded, or under its sub-paragraph (b), because the alleged violation under Article 10 did not attain a minimum level of severity to warrant consideration by the Court.

24. The applicant replied that its inability to obtain the names of the sanctioned police officers had constituted an interference with the exercise of its right to freedom of expression. Without the knowledge of that particular information, it was impossible for the applicant, a public watchdog, to contribute to the public debate concerning the incident of 15 June 2009. The public had the right to be aware of the identity of the officers who had used excessive force during the dispersal of the peaceful demonstration in order to be able to monitor the fairness of the relevant disciplinary proceedings. In this connection, the applicant restated a principle in the Court's case-law, according to which whether and to what extent the denial of access to information constituted an interference with an applicant's freedom of expression rights had to be assessed in each individual case and in the light of its particular circumstances (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 172, 8 November 2016). The disclosure of the names of the police officers, it continued, would have allowed the public to scrutinise the approach that the Ministry had taken in relation to the incident of 15 June 2009 and to see, in particular, whether disciplinary sanctions had been imposed on both low-rank and high-rank officials.

25. The applicant also disagreed with the Government's objection relating to the "significant disadvantage" criterion in Article 35 § 3 of the Convention, arguing that the subject matter of the application was not whether the authorities had prevented it from contributing to the public

debate surrounding the incident of 15 June 2009, but the fact that it had been unlawfully denied access to information of public interest. In this connection, it submitted extensive legal arguments, calling into question the reading of the relevant provisions of the GAC by the domestic courts. Finally, the applicant contested the Government's argument that the non-disclosure of the names of the police officers had protected them from violence as a mere conjecture, arguing that actions of civil servants should be kept under permanent public control. All in all, it concluded that the application was not inadmissible on any of the three grounds referred to by the Government and that it should therefore be examined on the merits.

B. The Court's assessment

1. General principles

26. The Court reiterates that Article 10 of the Convention does not confer on the individual a right of access to information held by a public authority nor does it 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 an enforceable court 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. Whether and to what extent the denial of access to information constitutes an interference with an applicant's rights to freedom of expression must be assessed in each individual case and in the light of its particular circumstances (see *Magyar Helsinki Bizottság*, cited above, § 156-57). In order 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 (ibid., §§ 157-70).

2. Application of those principles to the present case

27. The Court reiterates at the outset that the question of the applicability of a Convention right pertains to the Court's jurisdiction *ratione materiae* and the relevant analysis should normally be carried out at the admissibility stage unless there is a particular reason to join this question to the merits (see *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018, and *Studio Monitori and Others v. Georgia*, nos. 44920/09 and 8942/10, § 32, 30 January 2020). It finds that no such particular reasons exist in the present case.

28. Applying the above-mentioned four-criteria test developed in *Magyar Helsinki Bizottság* (cited above), the Court notes, firstly, that the Government have not disputed that the applicant NGO exercised the function of a public watchdog and, therefore, considers that this role was undeniably compatible with the scope of the right to solicit access to State-held information (ibid., §§ 166 and 167).

29. As regards the purpose of the information requests, the Court reiterates that for that criterion to be satisfied it would not be sufficient for an applicant to explain that purpose for the first time in the proceedings before the Court (see *Studio Monitori and Others*, cited above, §§ 40 and 42). It is in the first place before the relevant domestic authorities that the seeker of information must sufficiently explain the exact purpose of the request by specifying, *inter alia*, how his or her particular role in receiving and imparting information to the public is compatible with the nature of the information sought and why access to it is instrumental for the exercise of his or her relevant right to freedom of expression (compare *Centre for Democracy and the Rule of Law v. Ukraine* (dec.), no. 75865/11, §§ 51, 54 and 57-62, 3 March 2020).

30. In the present case, the Court observes that the applicant never clarified before either the Ministry or the domestic courts why the disclosure of the identity of the sanctioned police officers was necessary for the exercise of its freedom to receive and impart information to others. The only reason given was the statement made in the appeal proceedings that the identity of public officials should not, as a matter of principle, be kept confidential, and that the names of the police officers who were subjected to the disciplinary proceedings was a piece of information of public-interest(see paragraphs 6-15 above). The Court considers that the latter statement was too general and did not provide the court of appeal with sufficient elements to enable it to assess the weight to be given to the competing interests at stake (compare *Studio Monitori and Others*, cited above, §§ 40 and 42, and contrast *Centre for Democracy and the Rule of Law v. Ukraine*, no. 10090/16, §§ 13-19 and 97, 26 March 2020; and *Cangı v. Turkey*, no. 24973/15, § 32, 29 January 2019).

31. As to the "nature of the information sought", the Court reiterates that the information to which access is sought must meet a public-interest test which, according to its general definition, exists where disclosure provides transparency on the manner of conduct of public affairs and on matters of interest for society as a whole and thereby allows participation in public governance by the general public. What might constitute a subject of public interest will moreover depend on the circumstances of each case (see, for instance, *Magyar Helsinki Bizottság*, cited above, § 162).

32. In the present case, on the one hand, the Court acknowledges that the police dispersal of the street demonstrators, especially since it degenerated into violent clashes, can be treated as a subject capable of giving rise to a

public controversy (see *Sioutis v. Greece* (dec.), no. 16393/14, § 28, 29 August 2017). Consequently, the domestic authorities' response to the incident of 15 June 2009 – namely the initiation of the disciplinary proceedings against the police officers by the Ministry – is also to be considered as part of the above-mentioned public affair. On the other hand, however, it is clear that the Ministry ensured the requisite transparency on the matter, in accordance with domestic law, when it accounted for the outcome of the disciplinary proceedings in its public statement of 16 June 2009 (see paragraph 5 above). It is worth mentioning that it was the Ministry's statement that facilitated the applicant pursuing the relevant debate in its capacity as a public watchdog (see paragraph 7 above). Consequently, it cannot be said on the basis of the facts of the case that the applicant was in any manner prevented or discouraged by the Ministry from taking a stance on the appropriateness of the authority's response to the incident of 15 June 2009.

33. Furthermore, apart from arguing before the Court that it was important to know whether low rank or high rank police officers had been punished, the applicant association has not clarified how knowledge of the identity of the sanctioned police officers – which was moreover, according to the Supreme Court, a classified piece of information under the domestic law (see paragraphs 12 and 16-20 above) – could be of interest to society as a whole and could enhance either public governance, in general, or the quality of the applicant's involvement in the associated public debate, in particular. If the applicant association had really wished to monitor which police ranks were sanctioned (see paragraph 24 above), it could have requested that information rather than the names of the sanctioned officers (compare *Studio Monitori and Others*, cited above, § 41). There is nothing in the case file before the Court indicating that the public scrutiny of the disciplinary proceedings in question could not have been done without disclosing the identity of the concerned police officers. Nor does it appear that the disclosure of their full names, rather than simply informing about the disciplinary procedure and its outcome, was of such public interest that it could have outweighed the legitimate concerns underlying the refusal of such disclosure (compare "*Wirtschafts-Trend" Zeitschriften-Verlagsgesellschaft mbH v. Austria* (no. 2) (dec.), no. 62746/00, 14 December 2002) and become instrumental to the applicant association's exercise of its Article 10 rights.

34. In the light of the foregoing, the Court finds that the applicant has failed to show that the denial of its request for disclosure of the identity of the sanctioned police officers impaired the exercise of its freedom to receive and impart information in a manner striking at the very substance of their Article 10 rights (see *Centre for Democracy and the Rule of Law*, the decision cited above, § 62). It follows that Article 10 does not apply. The

application must thus be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 (a) and 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 18 February 2021.

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Martina Keller Deputy Registrar	Síofra O'Leary President