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

SECOND SECTION

DECISION

Application no. 27790/18
ASSOCIATION GONG
against Croatia

The European Court of Human Rights (Second Section), sitting on 11 July 2023 as a Committee composed of:

Pauliine Koskelo*, President*,
Lorraine Schembri Orland,
Davor Derenčinović*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 27790/18) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 7 June 2018 by a non-governmental organisation registered under Croatian law, Association Gong ("the applicant NGO"), who was represented by Ms N. Labavić, a lawyer practising in Zagreb;

the decision to give notice of the complaints concerning access to information and fairness of proceedings to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the domestic authorities' refusal to provide the applicant NGO with a copy of an agreement concluded between the Government and a foreign private law firm which was classified as "confidential".

2. On 27 July 2011 the Government concluded an agreement with a private law firm based in the United States of America ("the US"). By that agreement, the law firm undertook to provide legal services to Croatia in

connection with the appellate proceedings pending against two Croatian Army generals before the International Criminal Tribunal for the former Yugoslavia ("the ICTY"). The agreement was classified by the Government as "confidential".

3. On 5 August 2011 the law firm reported the agreement to the US Department of Justice, as required by the US Foreign Agents Registration Act. The agreement, that is, the law firm's offer signed by the Croatian Minister of Justice, specifying the legal service, persons in charge of providing it, duration of the agreement, fees per month, provisions in the event of dispute, and containing a reference to the firm's standard terms of engagement, was thereafter published on the US Department of Justice's website.

4. On 16 November 2012 the ICTY Appeals Chamber acquitted the Croatian Army generals. On the same day the Croatian Ministry of Justice published on its website information about the cost of the Croatian Army generals' defence in the entire proceedings before the ICTY which had been financed from the State budget.

5. On 1 July 2013 the applicant NGO sought to obtain from the Government a copy of the agreement concluded with the US-based private law firm (see paragraph 2 above).

6. Prior to taking a decision, the Government requested the opinion of the Office of the National Security Council and of the Government's body in charge of coordinating internal politics. Both authorities concluded that the reasons for which that agreement had been declared confidential still prevailed and that its disclosure could cause harm to the values protected under section 6 of the Croatian Data Secrecy Act, notably Croatia's vital interests – international relations. On 29 August 2013 the Government refused to provide the applicant NGO with the requested copy of the agreement.

7. In an appeal to the Commissioner for Information, the applicant NGO submitted, *inter alia*, that disclosing the agreement was necessary for ensuring transparency and public scrutiny of the Government's dealings and spending of public resources. It noted that the impugned agreement and the law firm's additional documents had already been published on the US Department of Justice's website and contended that there had therefore been no reason for the Government to deny access to it.

8. On 10 April 2014 the Commissioner for Information inspected the agreement and held that it should be disclosed, emphasising the importance of transparency and the right of the public to know the price the Government had agreed to pay for the law firm's services. The Commissioner noted that the appeal proceedings before the ICTY had ended and that the law firm's offer signed by the Croatian Minster of Justice had already been publicly available.

9. In an administrative action against the Commissioner's decision the Government contended, *inter alia*, that the information about the amount of monthly fees Croatia undertook to pay to the law firm had already been publicly available (see paragraph 3 above). On 5 November 2014 the High Administrative Court quashed the Commissioner's decision. It agreed with the Government that in the circumstances the continued classification of the agreement was justified.

10. On 21 November 2017 the Constitutional Court found the denial of access to the agreement lawful and proportionate to the legitimate aim pursued.

11. Before the Court the applicant NGO complained, under Article 10 of the Convention, that the Government's refusal to disclose the agreement had amounted to a breach of its right to access information of public interest and that the domestic courts had failed to properly scrutinise the refusal in light of the Convention criteria.

12. It also complained, under Article 6 of the Convention, that it had not had a fair hearing in that the domestic courts had failed to make a proper assessment of the case and duly address the main factual and legal arguments.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 10 of the Convention

13. In order to establish whether Article 10 is applicable in the present case, the Court must determine whether receiving a copy of the requested agreement was instrumental for the applicant NGO's exercise of its right to freedom of expression, in particular the freedom "to receive and impart information" and whether its denial constituted an interference with that right. In so doing, the Court must assess the situation in the light of the particular circumstances of the case and having regard to the cumulative four-criteria test laid down in *Magyar Helsinki Bizottság v. Hungary* ([GC], no. 18030/11, §§ 149-170, 8 November 2016): (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 (see also *Saure v. Germany* (dec.), no. 6106/16, § 34, 19 October 2021).

14. The Court notes, firstly, that the applicant NGO, an association promoting citizen participation in political processes, institutional transparency and anti-corruption initiatives, solicited access to State-held information in order to inform the public in its capacity of "public watchdog" (compare, for instance, *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, § 27, 14 April 2009). The Court also notes that the information sought, that is, a copy of the agreement between the Government and the US-based private law firm, was ready and available.

15. As to the criterion of the "nature of the information sought", the Court reiterates that the information to which access is sought must meet a public-interest test. According to its general definition, a need for disclosure exists where disclosure provides transparency on the 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 *Magyar Helsinki Bizottság*, cited above, §§ 161-62).

16. In that connection the Court notes that information about the Government concluding a contract with a US-based private law firm for legal assistance in the appellate proceedings against two Croatian Army generals before the ICTY was obviously of interest for the Croatian society as a whole, not least because the outcome of those proceedings was a matter of great significance for Croatia and its affairs. In addition, the disclosure of fees Croatia undertook to pay to the law firm in exchange for legal services undoubtedly provided transparency on the conduct of public affairs and spending of public resources.

17. However, it is uncontested that the information in question was from the outset available to the general public and known to the applicant NGO. The law firm's offer signed by the Croatian Minster of Justice specifying the service requested, conditions under which it would be provided, and monthly fees remained published on the US Department of Justice's website and thus within the public domain (see paragraph 3 above). There is nothing to indicate that a public debate on the matter – the fact that the Government concluded a contract with a US-based private law firm to provide legal services in connection with the appellate proceedings against Croatian Army generals before the ICTY and the amount of monthly fees they undertook to pay in return – was not possible based on the information which was already publicly available, without disclosing the actual agreement (compare *Georgian Young Lawyers' Association v. Georgia* (dec.), no. 2703/12, §§ 32-33, 19 January 2021 and *Mikiashvili and Others v. Georgia* (dec.), nos. 18865/11 and 51865/11, §§ 53-56, 19 January 2021).

18. The applicant NGO's argument that, without a copy of the agreement, the specification and full scope of the contracted services remained unknown – apart from being made for the first time only in the proceedings before the Court – has not been sufficiently made out for the Court to perceive how exactly, having regard to the information already publicly available, the non-disclosure of the agreement hindered the above public debate.

19. As to the applicant NGO's argument that, without a copy of the agreement, the information regarding the total amount of money paid from the State budget to the US-based law firm remained unknown, the Court notes that such an information in any event was not contained in the agreement, which stipulates the amount of monthly fees and the manner of calculating

additional costs pursuant to the firm's general terms of engagement. If the applicant NGO wished to obtain information about the total amount paid from the State budget to the law firm on the basis of the agreement in question, it could have formulated its request to the Government in such a way.

20. As to the applicant NGO's concern that dismissing this case would lead to further restrictions on access to information for Croatian citizens, the Court reiterates that each case before it is decided in the light of its particular circumstances (see *Magyar Helsinki Bizottság*, cited above, § 157).

21. Accordingly, the cumulative four-criteria test laid down in *Magyar Helsinki Bizottság* (see paragraph 13 above) not being met, it follows that Article 10 of the Convention is not applicable in the present case.

22. This part of the application must therefore be rejected as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Other alleged violations of the Convention

23. The applicant NGO also complained under Article 6 § 1 of the Convention that the domestic courts had failed to make a proper assessment of the case and duly address the main factual and legal arguments.

24. The Court finds no appearance of arbitrariness in the decisions of the domestic courts, which provided sufficient reasons for their findings.

25. It follows that the applicant NGO's complaint under Article 6 § 1 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 14 September 2023.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President