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

FIFTH SECTION

DECISION

Application no. 70287/11
Friedrich WEBER
against Germany

The European Court of Human Rights (Fifth Section), sitting on 6 January 2015 as a Committee composed of:

Boštjan M. Zupančič, *President,*
Angelika Nußberger,
Vincent A. De Gaetano, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 12 October 2011,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Friedrich Weber, is a German national, who was born in 1937 and lives in Köln.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarized as follows.

3. On 25 October 2003 the applicant requested the municipal administration of the City of Wuppertal to compile for him a list of payments made from the municipal budget to political parties, parliamentary groups and political foundations in the years 2000, 2001 and 2002. He also requested information on payments made to political parties by holding companies owned by the city. He made this request under Section 4 § 1 North-Rhine/Westphalia Press Act ("the NRW Press Act").

4. He claimed that he was entitled to such information as he was a representative of the press, namely an editor and publisher of the magazine "Rundfunk-Berichte" and the information service under the same name.

5. In addition to the City of Wuppertal, he had sent similar requests to 200 other cities, some of which complied with his request whilst others indicated that all expenditure of public local authorities or publicly owned companies was published in publicly accessible budget reports and balance sheets, online or in another form.

6. On 29 October 2003 the municipal authority refused the applicant's request on the ground that filtering the data out of the existing balance sheets and compiling it would involve a considerable amount of work. Moreover, the applicant was not member of the press and therefore not entitled to such a service.

7. On 29 October 2003 and 8 March 2004 the applicant lodged an administrative appeal against the decision.

8. On 22 March 2004 the Mayor of Wuppertal, acting as appeal authority, declared the appeal admissible but ill-founded. Relying on the NRW Press Act, he declined to recognize the applicant's status as a representative of the press because his magazine was not listed in any established databases on existing newspapers and magazines in Germany. Furthermore, apart from one article published on his webpage there was no indication whatsoever that the applicant distributed his publications to a wider audience and thereby contributed to shaping public opinion. He noted that the applicant could make an application under the North-Rhine/Westphalia Freedom of Information Act ("the NRW Freedom of Information Act") which would involve having to cover any costs incurred.

9. On 20 April 2004 the applicant filed a claim before the Düsseldorf Administrative Court, requesting it to order the municipal authorities to provide the requested compilation. He maintained that he should be recognized as a member of the press. He submitted several printouts of his current publication and indicated that in previous years the print run had been at over a thousand copies, mainly distributed by fax. Among other issues he had written on the structures of the public broadcasting institutions and the influence of politicians within these institutions.

10. The Mayor of Wuppertal, representing the municipal authorities, claimed that the applicant was not a member of the press. Even assuming that he was member of the press, to fulfil the applicant's request would go beyond any reasonable dimension of information provision. Essentially, the applicant was asking the authority to carry out a critical research by reviewing balance sheets and categorizing all payments out of the budgets of the city and all city owned companies.

11. During the proceedings, the administrative court requested the applicant to provide copies of previous publications and details of the recipients of the distribution. The applicant provided copies of a few, mainly one or two pages in length. He claimed that most publications had been lost. He claimed that he sent his publications directly from his

computer by fax to the recipients but refused to submit any information on their identity, claiming that he had no obligation to disclose it.

12. On 25 May 2005 the Düsseldorf Administrative Court refused the applicant's claim as his publication could not be considered a print product and therefore, not a press publication. Hence he could not enjoy the right to receive the requested information under Section 4 § 1 of the NRW Press Act. Furthermore, his request could not be interpreted as a request for information under the NRW Freedom of Information Act.

13. Upon the applicant's appeal, on 30 June 2008 the Nordrhein-Westfalen Administrative Court of Appeal confirmed this decision on the grounds that his publications so far could not be considered press publications. Based on the applicant's submissions, there was no evidence that he intended to distribute publications to a wider audience.

14. On 2 April 2009 the Federal Administrative Court refused to admit an appeal in this matter, indicating that the applicant had failed to establish the fundamental significance of the legal matter.

15. On 26 April 2011 the Federal Constitutional Court refused to accept the applicant's Constitutional Complaint for decision.

B. Relevant domestic law

1. The Press Act NRW

16. The Press Act NRW (*Pressegesetz NRW*) has been in force with minor modifications since 27 November 2001. The relevant provisions of the Act read as follows:

> "Section 3
>
> The press fulfils its public function in particular through collecting and disseminating news and comments, and through criticising or otherwise participating in the process of shaping public opinion.
>
> Section 4
>
> (1) The public authorities have the obligation to provide representatives of the press with the necessary information to carry out their public function.
>
> (2) This right to information does not exist if:
>
> 1. by its exercise the proper conduct of ongoing proceedings could be thwarted, hindered, delayed or jeopardized, or
>
> 2. provisions in the area of confidentiality conflict with it, or
>
> 3. an overwhelming public interest or a private interest worth protecting would be violated, or
>
> 4. the extent of it would exceed any reasonable dimension."

2. The Freedom of Information Act NRW

17. The Freedom of Information Act NRW (*Informationsfreiheitsgesetz NRW*) has been in force with minor modifications since 27 November 2001. The relevant provisions of the Act read as follows:

> "Section 4
>
> (1) In accordance with this law, every individual has a right vis-à-vis the authorities referred to in Section 2 to have access to information which the authorities are holding.
>
> (...)
>
> (5) The request can be denied if the information has already been provided to the applicant or if the applicant is able to obtain the information from available public sources in a reasonable manner.
>
> Section 11
>
> (1) For official acts which are based on this legislation, fees will be charged. The refusal of a request to access to information is free of charge."

COMPLAINTS

18. The applicant complained under Articles 6, 10 and 14 of the Convention about the municipal authority's refusal to provide him with the information he requested and the domestic courts' decisions not to recognize his status as a member of the press.

THE LAW

A. Alleged violation of Article 10 of the Convention

19. The applicant complained, in essence under Article 10 of the Convention, that the municipal authorities of the City of Wuppertal had not provided him with specific information concerning payments to political parties, parliamentary groups and political foundations, as well as on payments to political parties from holding companies belonging to the city. Article 10 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."

20. The Court has held that the gathering of information is an essential preparatory step in journalism and an inherent, protected part of press freedom (*Dammann v. Switzerland*, no. 77551/01, § 52, 25 April 2006).

21. The Court also notes that in the past the applicant has published at least a few articles and that he used his website as well as his fax to distribute them. In the present case the applicant's stated aim was to carry out research on the impact of financial transfers from public entities to political parties. The field of research pursued by the applicant can be considered a subject of general interest.

22. The Court has accepted that the function of creating forums for public debate is not limited to the press. That function may also be exercised by non-governmental organizations, the activities of which are an essential element of informed public debate. It therefore concludes that when an NGO draws attention to matters of public interest, it is exercising a public watchdog role of similar importance to that of the press (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 103, ECHR 2013).

23. In *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, 14 April 2009 – which concerned a request for access to information by a non-governmental organization for the purposes of contributing to public debate – the Court noted that it had recently advanced towards a broader interpretation of the notion of the "freedom to receive information" and thereby towards the recognition of a right of access to information (§ 35). Furthermore it drew a parallel to its case-law concerning the freedom of the press, stating that the most careful scrutiny was called for when authorities enjoying an information monopoly interfered with the exercise of the function of a social watchdog (ibid., § 36, with reference to *Chauvy and Others v. France*, no. 64915/01, § 66, ECHR 2004-VI).

24. Independently of the applicant's editorial outcome in the past and the specific numbers and details of the recipients of the distribution, in the present case, the Court notes that the applicant was involved in gathering of information of public interest and assumes the aim of imparting it to the public. In the present matter, the Court does not consider it necessary to decide whether the applicant qualifies as a member of the press or if his work can be considered similar to that of a NGO when it comes to information gathering.

25. The Court assumed a right of access to information in a case where authorities had not published relevant information of considerable public interest in an electronic data base or in any other form (*Österreichische*

Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria, no. 39534/07, § 46, 28 November 2013). Moreover, in the specific context of access to information, the Court has held that the right to receive information basically prohibits a Government from preventing a person from receiving information that others wished or were willing to impart (see *Leander v. Sweden*, 26 March 1987, § 74, Series A no. 116). It has also held that the right to receive information cannot be construed as imposing on a State positive obligations to collect and disseminate information of its own motion (see *Guerra and Others v. Italy*, 19 February 1998, § 53, *Reports of Judgments and Decisions* 1998-I). Therefore, the Court does not consider that a general obligation on the State to provide information in a specific form can be inferred from its case-law under Article 10, particularly when, as in the present case, a considerable amount of work is involved.

26. The Court further observes that there are fundamental differences between the present case and *Társaság a Szabadságjogokért*, a case which concerned a request to be given access to a particular document – a constitutional complaint for the review of certain provisions of the Criminal Code – lodged by a member of parliament. There, the Court had regard to the fact that the information sought was "ready and available" and did not necessitate the collection of any data by the Government (see *Társaság a Szabadságjogokért,* cited above, § 36).

27. Cities list their payments in their budgets prior to the corresponding fiscal years and in corresponding financial statements after its completion. In addition, payments of their companies are listed in their balance sheets for the corresponding years. Even considering that due to the course of time such statements might not all be available online, the Court notes that the applicant could have requested budgets, financial statements and balance sheets of the companies as such. Such information would have put the applicant in a position to carry out his research on the above mentioned topic or he could then have asked for further concrete information. Even if he was not considered a member of the press, the Freedom of Information Act NRW gave him as an individual the right to access to information which the authorities are holding, with the difference that he would have been charged for the necessary costs involved. The Court however notes that the applicant did not even try to obtain any information invoking the Freedom of Information Act NRW. The Court is therefore not in position to determine whether an unspecified fee for the provision of budgets, finance reports and balance sheets of three years would have constituted an inadequate interference of the applicant's right of access to information under the Convention.

28. Consequently, in the present case, regardless of his possible status as member of the press, there has been no interference with the applicant's right to receive and to impart information as enshrined in Article 10 § 1 of the Convention.

29. It follows that this part of the application is inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

B. Other complaints

30. Referring to other articles of the Convention the applicant complained of further aspects related to the above proceedings. He complained under Article 6 § 1 and 14 of the Convention that the refusal of the domestic courts to recognize his status as member of the press amounted to a violation of the guarantee to have a fair hearing within a reasonable time by an independent and impartial tribunal established by law. Furthermore, he claims that he was discriminated.

31. The Court considers that his complaints essentially raise allegations as to the domestic courts' interpretation and application of law to the facts of the case. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of further violations of the Convention. It follows that it is inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 29 January 2015.

Claudia Westerdiek
Registrar

Boštjan M. Zupančič
President