



Serbian Intelligence Agency must give access to information it obtained via electronic surveillance

In today's Chamber judgment in the case of [Youth Initiative For Human Rights v. Serbia](#) (application no. 48135/06), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned access to information obtained via electronic surveillance by the Serbian Intelligence Agency.

The Court concluded that the agency's obstinate reluctance to comply with a final and binding order to provide information it had obtained was in defiance of domestic law and was tantamount to being arbitrary.

It further held under **Article 46 (binding force and implementation)** that the most natural way to implement its judgment in this case would be to ensure that the agency provided the applicant NGO with the information it had requested on how many people had been subjected to electronic surveillance in 2005.

Principal facts

The applicant, Youth Initiative for Human Rights, is a non-governmental organisation set up in 2003 and based in Belgrade. It monitors the implementation of transitional laws with a view to ensuring respect for human rights, democracy and the rule of law.

In October the applicant NGO requested that the Serbian Intelligence Agency provide it with information on how many people the agency had subjected to electronic surveillance in 2005.

The agency refused the request, relying on the statutory provision (section 9(5) of the Freedom of Information Act 2004) applicable to secret information.

The applicant NGO then complained to the Information Commissioner, a domestic body set up to ensure observance of the Freedom of Information Act 2004. In December 2005 the Commissioner held that the agency had breached the law and ordered that it make the information available within three days. The Commissioner's decisions are final and binding. The agency's appeal to the Supreme Court was dismissed in April 2006.

In September 2008 the intelligence agency notified the NGO that it did not have the information requested.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) and Article 6 § 1 (right to a fair hearing), the applicant NGO complained that the intelligence agency's refusal to provide it with the information it had requested prevented it from exercising its role as public watchdog.

The application was lodged with the European Court of Human Rights on 29 November 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Peer **Lorenzen** (Denmark),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
Nebojša **Vučinić** (Montenegro),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

The applicant NGO had legitimately requested information of interest to the general public with the intention of disseminating it and contributing to the public debate. The refusal to give access to that information had therefore been an interference with the applicant NGO's right to freedom of expression.

Furthermore, the agency's refusal had not been in accordance with domestic law, as the domestic body set up precisely to ensure that the Freedom of Information Act be observed had examined the case and decided that the information had to be made available. The agency's final response – that it did not have the information – was not persuasive given the nature of the information (the number of people subjected to electronic surveillance in 2005) and the agency's initial refusal on grounds of secrecy.

The Court therefore concluded that the agency's obstinate reluctance to comply with a final and binding order by a domestic body had been in defiance of domestic law and had been tantamount to being arbitrary.

There had accordingly been a violation of Article 10.

Implementation (Article 46)

It was not in principle for the Court to determine what remedial measures might be appropriate. However, the violation found in this case, by its very nature, did not leave any real choice as to the measures required to remedy it. Therefore, the most natural way to implement its judgment in this case would be to ensure that the agency provided the applicant NGO with the information it had requested, namely, how many people had been subjected to electronic surveillance in 2005.

Just satisfaction (Article 41)

The court held that the agency was to provide the applicant NGO with the information it had requested and that that as well as the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage sustained.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.