



## Regional authority's complete refusal to grant NGO access to official documents was unjustified

In today's Chamber judgment in the case of [Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v. Austria](#) (application no. 39534/07), which is not final<sup>1</sup>, the European Court of Human Rights held, by a majority, that there had been:

**a violation of 10 (right to receive information) of the European Convention on Human Rights, and**

**no violation of Article 13 (right to an effective remedy).**

The case concerned the refusal by a regional authority of a non-governmental organisation's request for access to documents concerning agricultural and forest land transactions.

The Court found that the regional authority, which had chosen not to publish its decisions and thus, by its own choice, held an information monopoly, had not given sufficient reasons to justify its complete refusal to grant the association access to the requested documents.

### Principal facts

The applicant, *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes*, is an association registered in Austria and based in Vienna. Its aim is to research the impact of transfers of ownership of agricultural and forest land on society and to give opinions on draft laws.

In 2005 the association twice requested the Tyrol Real Property Transaction Commission, which is responsible for approving agricultural and forest land transactions under the Tyrol Real Property Transactions Act, to provide the association with the decisions it had issued over a certain period of time (since January 2005 and since January 2000, respectively) in anonymised form. The association indicated that it would reimburse the resulting costs. Both requests were refused. The Commission's second decision, of October 2005, stated that the request did not fall within the scope of the Tyrol Access to Information Act, as had been argued by the applicant association. Moreover, even if the request did fall within its scope, pursuant to the Act an authority did not have the duty to provide the requested information if doing so would require so many resources that its functioning would be affected.

The applicant association complained to both the Constitutional Court and the Administrative Court. The latter rejected the complaint, declaring that it did not have jurisdiction. The Constitutional Court initially declined to deal with the case, for lack of prospects of success and because the matter was not excluded from the Administrative Court's jurisdiction. Following a subsequent application by the applicant association, seeking a ruling on the negative conflict of jurisdiction between the two

<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

courts, the Constitutional Court issued a decision stating that it was competent to decide the matter. In a decision on the merits on 2 December 2011, the Constitutional Court rejected the complaint.

## Complaints, procedure and composition of the Court

The applicant association complained that the refusal of the Tyrol Real Property Transaction Commission to grant the association access to its decisions was in breach of Article 10 (right to receive information). Relying on Article 13 (right to an effective remedy), the applicant association further complained that it did not have an effective remedy in respect of that complaint.

The application was lodged with the European Court of Human Rights on 24 August 2007.

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

Isabelle **Berro-Lefèvre** (Monaco), *President*,  
Elisabeth **Steiner** (Austria),  
Khanlar **Hajiyev** (Azerbaijan),  
Mirjana **Lazarova Trajkovska** (“The former Yugoslav Republic of Macedonia”),  
Julia **Laffranque** (Estonia),  
Linos-Alexandre **Sicilianos** (Greece),  
Erik **Møse** (Norway),

and also Søren **Nielsen**, *Section Registrar*.

## Decision of the Court

### Article 10

The Court observed that the Tyrol Real Property Transactions Act, under which the Real Property Transaction Commission had been created, pursued subjects of general interest, namely preserving land for agriculture and forestry use and avoiding the proliferation of second homes. The applicant association had therefore been involved in the legitimate gathering of information of public interest. Consequently, the refusal of the association’s request to be provided with the Commission’s decisions had constituted an interference with its right to receive information under Article 10.

The Court was satisfied that the Commission’s refusal to provide the applicant association with the decisions had been “prescribed by law” within the meaning of Article 10, in that the Commission had relied on the relevant provisions of the Tyrol Access to Information Act. The court also agreed with the Austrian Government that the interference with the applicant’s association’s rights had pursued the legitimate aim of the protection of the rights of others.

Concerning the question of whether the reasons given by the Austrian authorities for refusing the applicant association’s request had been relevant and sufficient in the circumstances, the Court considered in particular the argument that granting the request would have required substantial resources and thus would have jeopardised the Commission’s work. It noted, however, that the refusal had been unconditional, although the association had proposed to reimburse the costs arising from the production and mailing of the requested copies.

Moreover, given that the Commission was a public authority deciding disputes over civil rights, the Court found it striking that none of its decisions were being published, for example in an electronic database. Consequently, much of the difficulty anticipated by the Commission, which would result from providing the association with copies of numerous decisions, had been caused by its own choice not to publish any of its decisions. The Court further noted that the applicant association received anonymised copies of the equivalent decisions from the Real Property Commissions of all other Austrian regions without any particular difficulties.

In conclusion, the Court found that the reasons on which the Austrian authorities had based its refusal of the association's request had been relevant but not sufficient. While it was not for the Court to establish in which manner the Commission should have granted the association access to its decisions, it found that a complete refusal had been disproportionate to the legitimate aim pursued. The Commission, which, by its own choice, held an information monopoly in respect of its decisions, had thus made it impossible for the applicant association to carry out its research in respect of one of the nine Austrian *Länder* and to participate in a meaningful manner in the legislative process concerning the amendments being proposed to real property transaction law in the Tyrol.

There had accordingly been a violation of Article 10.

### Article 13

The Court observed that the Austrian Constitutional Court had set aside its previous decision, by which it had refused to deal with the case, and had then decided on the applicant association's complaint. The Court was therefore satisfied that the association had had an effective remedy in respect of its complaint under Article 10. There had accordingly been no violation of Article 13.

### Just satisfaction (Article 41)

The applicant association did not claim any compensation for pecuniary or non-pecuniary damage. The Court held that Austria was to pay the applicant association 7,500 euros (EUR) in respect of costs and expenses.

## Separate opinion

Judge Møse expressed a partly dissenting opinion, which is annexed to the judgment.

*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.