

Applicants in Georgian cases did not meet the conditions for the right of access to publicly held information

In today's Chamber judgment¹ in the case of [Studio Monitori and Others v. Georgia](#) (applications nos. 44920/09 and 8942/10) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 10 (right to freedom of expression) of the European Convention on Human Rights.

The case concerned complaints about being denied access to information of public interest.

The Court noted that the 2016 case of *Magyar Helsinki Bizottság v. Hungary* had set down principles on how requests to access publicly held information might be protected by the right to freedom of expression under Article 10. Four criteria were relevant when considering whether there was a right of access to information or an obligation on an authority to disclose.

The applicants in the first case had not met the criteria: they had not explained why they needed the information, failing to show why it had been needed for the exercise of their freedom to receive and impart information. Indeed, they had been able to finish a journalistic project they were working on without it.

The applicant in the second application had likewise not explained why he needed the information. Nor had he shown how his role in society or the public interest of the information he had requested had met other criteria set down by the Court.

Principal facts

The applicants in application 44920/09 are Studio Monitori, which carries out investigative journalism, and a Georgian national, Nino Zuriashvili, born in 1968, who is an investigative journalist. The applicant in application 8942/10 is Georgian national Mamuka Nozadze, born in 1974.

Ms Zuriashvili is a journalist and a founding member of Studio Monitori. In 2007 she asked Khashuri District Court registry for access to a file on a criminal case, giving no reasons for her request. The registry rejected it, citing provisions on classified investigative information and the need for consent by the man who had been convicted in the case to release his personal information.

Ms Zuriashvili went to court over the registry's refusal, relying on her right of access to information of public interest. She lost the case at three levels of jurisdiction, the final rejection coming from the Supreme Court in June 2008.

Mr Nozadze was a practising lawyer who was convicted of fraud in March 2006 for stealing a client's money that had been given to him for a bail payment in criminal proceedings. While in prison he asked the registry of Tbilisi City Court in October 2007 to send him a copy of all the court orders concerning the imposition of pre-trial preventive measures in six criminal cases. He did not specify why he was interested in that particular information.

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.

After the registry provided him only with the operative parts of the decisions in the six cases, he went to court to obtain the orders in full, relying on the right to unfettered access to public information. The courts rejected his claim, the Supreme Court handing down the final judgment on an appeal on points of law in July 2009.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicants complained that the domestic judicial authorities had denied them access to information of general public interest.

The application was lodged with the European Court of Human Rights on 15 August 2009.

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

Síofra O'Leary (Ireland), *President*,
Gabriele Kucsko-Stadlmayer (Austria),
André Potocki (France),
Yonko Grozev (Bulgaria),
Mārtiņš Mits (Latvia),
Lətif Hüseynov (Azerbaijan),
Lado Chanturia (Georgia),

and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

The Court noted that this case was one of the first to test the limits of the right of access to information held by a public authority since it had laid down principles on that question in the Grand Chamber judgment of *Magyar Helsinki Bizottság v. Hungary*.

It reiterated that Article 10 did not confer a right of access to such information or oblige the Government to impart it, however, such a right or obligation could arise where disclosure had been ordered by a court or where access was instrumental to the right to freedom of expression.

The Court had to take account of four criteria when examining whether denial of access to information brought Article 10 into play: the purpose of the information request; the nature of the information requested; the role of the person seeking the information in receiving it and disseminating it to the public; and whether the information was ready and available.

Application 44920/09

The applicants' journalistic roles meant their status was undeniably compatible with the scope of the right to ask for access to State-held information. However, the purpose of their request had not satisfied the first of the four criteria set down in *Magyar Helsinki* as they had failed to specify why they had needed access to the information, even when asked by the registry to do so.

Furthermore, they had been able to finish and publish the investigative project they were working on without the information, in other words, the access had not been instrumental for the effective exercise of their right to freedom of expression. Indeed, the second applicant had acknowledged in court that the material had not been vital, but that she had wanted judicial confirmation of her right to unfettered access to State-held public information.

Application 8942/10

As in the first application, Mr Nozadze had not explained to the court registry why he required the information he had asked for, making it impossible for the Court to accept that receiving it had been instrumental for the effective exercise of his right to freedom of expression. Most importantly, it was

not clear how his role in society satisfied the third criterion of *Magyar Helsinki* as he was neither a journalist nor someone from a “public watchdog”.

Furthermore, he had not clarified to the Court how his receiving information on six criminal cases which were totally unrelated to him could enhance the public’s access to news or facilitate the dissemination of information in the interest of public governance.

The Court was not convinced that the information satisfied the *Magyar Helsinki* public-interest test. Though in principle it was important that court decisions be accessible in some form, the public-interest test for disclosure under Article 10 referred to documents’ specific subject matter.

The applicant had limited his arguments to saying that the court orders had concerned well-known figures. However, that reason alone was not enough to justify full disclosure of court orders concerning ongoing criminal investigations, including parts which did not constitute public information under domestic law, to a third party acting in a private capacity.

The Court concluded that its considerations on the applicability of Article 10 and on the existence of an interference were enough to enable it to find that there had been no violation of the Convention in either of the two applications.

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.