



## Denial of access to classified presidential records did not breach the Convention

In today's **Chamber judgment**<sup>1</sup> in the case of [Šeks v. Croatia](#) (application no. 39325/20) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned a retired politician's complaint that his request for access to classified presidential records in order to carry out research for a book had been denied on national security grounds.

The Court noted in particular that the President's decision refusing to declassify some of the requested documents had been based on an opinion of a specialised body dealing with national security issues and had ultimately been reviewed and upheld by the Information Commissioner, the High Administrative Court and the Constitutional Court. Moreover, the applicant's request to access documents had for the most part been granted.

It concluded that the interference with the applicant's freedom of access to information had been necessary and proportionate to the important aim of national security and that the subsequent independent domestic review of his request had provided him with sufficient procedural safeguards and remained within the State's wide discretion to decide on such matters.

### Principal facts

The applicant, Vladimir Šeks, is a Croatian national who was born in 1943 and lives in Zagreb (Croatia). He is a retired politician, who previously held high functions in Croatia.

In June 2017 Mr Šeks lodged a request with the Croatian State Archive to have access to 56 documents from the records of the President's Office in the period between 1994 and 1999. He requested access as part of research for a book he was writing on the founding of the Republic of Croatia. The documents were classified as "State secret – strictly confidential".

The President's Office asked the Office of the National Security Council's opinion on declassification. The latter advised that 31 of the documents be declassified, while it considered that the 25 remaining documents could harm the independence, integrity, national security and foreign relations of the country. The President's Office followed that advice.

Mr Šeks appealed to the Information Commissioner, an independent body in charge of protecting, monitoring and promoting the right of access to information. After inspecting the documents in question, she dismissed his appeal in July 2018. She agreed with the conclusion that their declassification could harm national security and foreign relations of the country and did not find the executive's decision to be abusive. She also noted that the applicant had failed to explain in his appeal why his interest in accessing that information would outweigh such crucial public interests.

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](http://www.coe.int/t/dghl/monitoring/execution).

The President's decision refusing to declassify 25 of the documents was ultimately also reviewed and upheld by the High Administrative Court in October 2018 and the Constitutional Court in March 2020.

Mr Šeks' historical book was due to be published in the spring of 2021.

## Complaints, procedure and composition of the Court

Mr Šeks complained that the refusal to declassify the documents had amounted to a breach of his right to receive information under Article 10 (freedom of expression). He also complained under Article 6 § 1 (right to a fair hearing) that he had not had a fair hearing in his case.

The application was lodged with the European Court of Human Rights on 26 August 2020.

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

Péter **Paczolay** (Hungary), *President*,  
Ksenija **Turković** (Croatia),  
Krzysztof **Wojtyczek** (Poland),  
Alena **Poláčková** (Slovakia),  
Raffaele **Sabato** (Italy),  
Lorraine **Schembri Orland** (Malta),  
Ioannis **Ktistakis** (Greece),

and also Renata **Degener**, *Section Registrar*.

## Decision of the Court

### Article 10

First, the Court pointed out that Article 10 was applicable to the applicant's case. It was satisfied that the applicant, as a former politician intending to publish a historical book, had exercised the right to impart information on a matter of public interest and had sought access to information to that end.

The Government argued that the applicant had not suffered any significant disadvantage (under Article 35 § 3 (b) of the Convention) as he had ultimately been able to publish his book. The Court dismissed that objection, bearing in mind what was at stake for the applicant – further research and delays in the publication of his book, which he considered incomplete – as well as the important questions of principle arising in his case.

The parties agreed that the interference with the applicant's freedom of expression had been in accordance with the law – namely section 22 of the Archival Material and Archival Institutions Act. The Court agreed that that interference had pursued the legitimate aims of protecting the independence, integrity and security of Croatia and its foreign relations.

Furthermore, the Court found that the manner in which the domestic authorities had assessed the applicant's request had not been fundamentally flawed or devoid of appropriate procedural safeguards.

In particular, the documents requested by the applicant had been carefully reviewed by the owner of the information (the President's Office), assisted by a specialised advisory body (the Office of the National Security Council), and, for the most part, the applicant's request to access the documents in question had been granted.

Moreover, the President's decision refusing to declassify some of the requested documents had ultimately been reviewed and upheld by the Information Commissioner, the High Administrative Court and the Constitutional Court. In particular, the Information Commissioner, who had inspected

the documents, had at no point disagreed with the opinion of the advisory body or sought to argue otherwise.

Lastly, the Court was aware that in the context of national security the competent authorities could not be expected to give the same amount of details in their reasoning as, for instance, in ordinary civil or administrative cases. Providing detailed reasons for refusing declassification of top-secret documents could easily run counter to the very purpose for which that information had been classified in the first place. Taking into consideration the extent of procedural safeguards provided to the applicant in the present case, the Court was therefore satisfied that the reasons provided by the national authorities for refusing the applicant access to the documents in question had not only been relevant but also, in the circumstances, sufficient.

The Court concluded that the interference with the applicant's freedom of access to information had been necessary and proportionate to the important aim of national security and that the subsequent independent domestic review of his request had remained within the State's wide discretion ("margin of appreciation") to decide on such matters.

There had accordingly been no violation of Article 10 of the Convention.

### Article 6

The Court considered that it had examined the main legal questions raised in the applicant's case and that there was no need to give a separate ruling on the admissibility and merits of his complaint under Article 6.

### Separate opinion

Judge Ktistakis submitted a concurring opinion, which is annexed to the judgment.

*The judgment is available only in English.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHR\\_CEDH](https://twitter.com/ECHR_CEDH).

#### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel.: +33 3 90 21 42 08

**Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)**

Denis Lambert (tel : + 33 3 90 21 41 09)

Inci Ertekin (tel : + 33 3 90 21 55 30)

Neil Connolly (tel : + 33 3 90 21 48 05)

Jane Swift (tel : + 33 3 88 41 29 04)

**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.