

Access to Documents according to the case-law of the ECtHR

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Article 10 ECHR

- *[The right to freedom of expression] shall include freedom to [...] to receive and impart information and ideas without interference by public authority.*
- Until 2006, it was settled case law of the ECtHR that Article 10 did not provide a right of access to public documents
 - cf Leander vs Schweden; Gaskin vs UK; Guerra et al vs Italy; Sîrbu et al vs Moldova; Roche vs UK

New ECtHR case law – 1/3

- *Sdružení Jihočeské Matky vs Czech Republic*, 10 July 2006:
Refusal of access to public documents examined as an interference with Article 10
- *Társaság a Szabadságjogokért vs. Hungary*, 14 April 2009:
 - Civil right association demanded access to a parliamentarian's complaint lodged at the constitutional court concerning a drug-related criminal statute
 - ECtHR:
 - Not only the press but also NGOs are “public watchdogs”
 - Public watchdogs have right of access to public document if
 - Document concerns matter of public interest
 - Document will be used to contribute to the public debate

New ECtHR case law – 2/3

- *Társaság a Szabadságjogokért vs. Hungary* subsequently confirmed:
 - *Kenedi vs Hungary*, 26 May 2009: Historian working on book on activities of Hungarian security forces in effect, too, is a public watchdog
 - *Youth Initiative For Human Rights vs Serbia*, 25 Sept. 2013: Civil rights NGO has right to receive access to information (number of individuals under electronic surveillance)
 - *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes vs Austria*, 28 Nov. 2013: Requested documents (decisions on civil matters) were not published by gov. authority → difficulty of compliance self-elected

New ECtHR case law – 3/3

- Roșianu vs Rumania, 24 June 2014: Individual journalist, too, is a public watchdog.

Implications for EU Member States

- In Austria: previous national case law on Article 10 ECHR obsolete (still ignorant: Austrian Constitutional Court, 2 Dec. 2011, B3519/05)
- Direct application of new fundamental right of access to document (AtD) through Article 11 EU Charter?
 - only when “implementing EU law” (Article 51 EU Charter):
 - Applies to entire scope of EU law (ECJ C-617/10 - *Åkerberg Fransson*)
 - Includes transposition of EU directives (ECJ C-195/12) & application of implementing national legislation (ECJ C-74/95)
 - Right to AtD applies if access is refused due to data protection, copyright, and soon trade secrets (COM(2013) 813).

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