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Landmark decision on freedom of information by the European Court of Human Rights

The Hungarian Civil Liberties Union won a freedom of information case against the Republic of Hungary. For the first time, the right to access to state-held information as part of Article 10 of the European Convention on Human Rights has been formally recognized, as reflected in today's ruling by the European Court of Human Rights. The Strasbourg based Court declared that withholding information needed to participate in public debate on matters of public importance may violate the freedom of expression.

This decision by the ECHR represents the final chapter in the battle that the HCLU has been waging against the Hungarian Constitutional Court for almost 5 years. In 2004, the Constitutional Court denied the HCLU's request for access to a complaint submitted by an MP who was looking to have certain drug-related offences struck from the Criminal code. Because the HCLU is active in the field drug policy advocacy, particularly focused on harm reduction, the NGO wanted to form an opinion on the particulars of the complaint before a decision was handed down. The Constitutional Court denied the HCLU's request, explaining that a complaint pending before the Court could not be made available to uninvolved parties without the approval of its author. The Constitutional Court never consulted the MP. In response, the HCLU pursued the case the Hungarian Supreme Court, where it was dismissed because the complaint was deemed to contain "personal data".

Under Article 10 of the European Convention of Human Rights, the freedom of expression shall include the right to receive and impart information without interference by public authorities. According to the Court's decision, to receive and impart information is a precondition of freedom of expression, since one cannot form a well-founded opinion without knowing the relevant facts. The Court considered the present case "an interference – by virtue of the censorial power of an information monopoly – with the exercise of the functions of a social watchdog."

In the Court's view, the submission of an application for an abstract review of a legislation, especially by a Member of Parliament, undoubtedly constituted a matter of public interest and "it would be fatal for freedom of expression in the sphere of politics if public figures could censor the press and the public debate in the name of their personality rights." The Constitutional Court's monopoly on information amounted to a form of censorship which may result that the media and watchdogs won't be able to play their vital role to provide accurate and reliable information in public debate on matters of legitimate public concern.

The Madrid based Access Info Europe welcomed the decision. "This ruling establishes that public bodies, including parliaments and courts, must make public information that they hold - in particular when the information is needed to conduct a public debate on matters of public importance. Not to do so is a violation of a fundamental human right, the right to ask and the right to know," said Helen Darbishire, Executive Director of Access Info Europe.

"The decision confirms a right already well established in Europe in at least 24 national constitutions and 40 national laws as well as by national court jurisprudence," added Darbishire. "It's a vital right for people who need government information to defend other human rights, fight corruption and participate in decision-making."