



In the European Court of Human Rights

Application No. 11519/20

BETWEEN:

Regards Citoyens

Applicant

v.

France

Respondent Government

THIRD-PARTY INTERVENTION

**ARTICLE 19: Global Campaign for Free Expression
Access Info Europe**

Submitted on 3 November 2022

INTRODUCTION

1. This third-party intervention is submitted by ARTICLE 19: Global Campaign for Free Expression, Access Info Europe, FOI Austria, Access to Information Programme Bulgaria, Gong (Croatia), Vouliwatch (Greece), K-Monitor (Hungary), Daphne Caruana Galizia Foundation (Malta), Watchdog Poland, Funky Citizens (Romania), Campaign FOI Scotland, and Ostro (Slovenia), jointly the Interveners. The Interveners welcome the opportunity to intervene as a third-party in this case, by the leave of the President of the Court, which was granted on 13 October 2022, pursuant to Rule 44 (3) of the Rules of Court. This submission does not address the facts or merits of the applicant's case.
2. The Interveners believe that the present case - concerning access to information about the expenses of the Members of the Parliament - provides the Court with the opportunity to set an important precedent for developing standards on access to information on expenses of elected representatives in legislative bodies within the Member States of the Council of Europe and on the right to request information from the legislative branch of the Government. In these submissions, the Interveners address the following:
 - (i) Illustrate the importance of accessing information related to expenses and how the right of access to information plays a fundamental role in ensuring openness, accountability and transparency of public bodies involved in the legislative processes; and
 - (ii) Provide an overview of how the right of access to information related to expenses of its elected members is provided for in international and comparative standards and practices in the Council of Europe Member States and other countries; and
 - (iii) Based on the foregoing, analyse how the legality and necessity of interference with the right of access to information should be assessed in the present case.

SUBMISSION

- i. **The importance of accessing information related to expenses and transparency of legislative bodies**

The right of access to information encompasses information held by legislative bodies

3. The right of access to information is a fundamental component of the right to freedom of expression, as enshrined in international human rights treaties, including Article 10 of the European Convention on Human Rights (the

Convention).¹ The UN Human Rights Committee in General Comment 34 has specified that information includes “records held by public bodies” which include all branches of the State: executive, legislative and judicial.² For all these public bodies, States should ensure the possibility of making requests to which end they should “enact the necessary procedures” such as freedom of information laws, with “procedures should provide for the timely processing of requests for information”.³ General Comment 34 further adds that, in order to give effect to the right, States Parties should “proactively put information in the public domain” as well as “making every effort to ensure easy, prompt, effective and practical access to such information”.⁴

4. In January 2022, a report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on access to information held by public bodies emphasised how “the obligation to provide access to information applies to the executive, legislative and judicial branches of government, and extends to all organs of the State, including all de facto entities and private entities carrying out elements of governmental functions.”⁵
5. A State’s obligation to ensure the right of access to information is also included in the UN Convention against Corruption (UNCAC) which qualifies access to information as a core element of fighting corruption and requires States to make information available about their activities and to engage with civil society.⁶ It requires States to take measures to enhance the transparency of their public administration including adopting procedures facilitating public access to information “on the organization, functioning and decision-making processes” of its public administration; to guarantee public participation by “respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption” and “ensuring that the public has effective access to information”.⁷
6. In Europe, the right to access to public documents has been specifically recognised in Europe through the adoption of the Council of Europe Convention on Access to Official Documents (Tromsø Convention).⁸ The Tromsø Convention considers that the exercise of the right to access to official documents provides (i) a source of information for the public; (ii) helps the public to form an opinion on the state of society and on public authorities; (iii) fosters the integrity,

¹ European Court of Human Rights (ECtHR), *Magyar Helsinki Bizottság v. Hungary*, App No. 18030/11, 8 November 2016 (GC), para 42.

² UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, para 7.

³ *Ibid.*, para 19.

⁴ *Ibid.*, paras 18 and 19.

⁵ OHCHR, Report of the Office of the UN High Commissioner for Human Rights, A/HRC/49/38, 10 January 2022, para 23.

⁶ UN General Assembly, UN Convention Against Corruption, 31 October 2003, A/58/422.

⁷ *Ibid.*, Articles 10 and 13.

⁸ Council of Europe Convention on Access to Official Documents (CETS No. 205), 18 June 2019.

efficiency, effectiveness and accountability of public authorities, so helping affirm their legitimacy.⁹ It further stresses that all official documents are in principle public and can be withheld subject only to the protection of other rights and legitimate interests.

7. Under the Tromsø Convention, “official documents” are defined as “all information recorded in any form, drawn up or received and held by public authorities;” while “public authorities” include “government and administration at national, regional and local level” as well as “legislative and judicial authorities as they perform administrative functions according to national law.”¹⁰ As noted by the Explanatory Memorandum: “It is a very wide definition: ‘official documents’ are considered to be any information drafted or received and held by public authorities that is recorded on any sort of physical medium whatever be its form or format (written texts, information recorded on a sound or audiovisual tape, photographs, emails, information stored in electronic format such as electronic databases, etc.).”¹¹
8. Similarly, the European Court of Human Rights (the Court or ECtHR) has also stated the right of NGOs to have access to State-held information in order to discharge their obligations as public watchdogs, that is, to impart information and ideas is a corollary of the public’s right to receive information on issues of public concern.¹²
9. In the European Union (EU), access to documents of all EU institutions, bodies and agencies is established as a right for all citizens and residents in the Treaty on the Functioning of the European Union (TFEU)¹³ and with the mechanisms for requesting information developed in Regulation 1049/2001.¹⁴ This right of access includes to the documents held by the European Parliament - the legislative branch. The underlying premise of these standards is the recognition that openness of public institutions “enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater

⁹ *Ibid.*, Preamble.

¹⁰ *Ibid.*, Article 1.

¹¹ Explanatory Report – CETS 205 – Access to Official Documents, para 11.

¹² *Magyar Helsinki Bizottság, op.cit.* See also UN Human Rights Committee, *Gauthier v. Canada*, Comm. No. 633/1995, 5 May 1999; *Toktakunov v. Kyrgyzstan*, Comm. No. 1470/2006, 28 March 2011; and *Rafael Rodríguez Castañeda v. Mexico*, Comm.No. 2202/2012, 29 August 2013.

¹³ Consolidated version of the Treaty on the Functioning of the European Union, Part One – Principles Title II - Provisions Having General Application, Article 15 (Ex Article 255 Tec). Article 15 enshrines “the right of access to documents of the Union’s institutions, bodies, offices and agencies, whatever their medium, subject to the principles and conditions to be defined in accordance with this paragraph.

¹⁴ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. According to Article. 2(3), the aim of the Regulation is to give “fullest possible effect to the right of public access to documents”, states that such right extends not only to documents drawn up by EU institutions (the Parliament, the Council and the Commission). Article 3 (a) of the Regulation defines documents as “any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution’s sphere of responsibility.

legitimacy and is more effective and more accountable to the citizen in a democratic system.”¹⁵

10. The Council of Europe has also stressed the importance of transparency in combating corruption. Among the 20 Guiding Principles for the Fight against Corruption, the Committee of Ministers has included the principle “to ensure that the organisation, functioning and decision-making processes of public administrations take into account the need to combat corruption, in particular by ensuring as much transparency as is consistent with the need to achieve effectiveness”.¹⁶

Transparency of the legislative branch as a fundamental principle of open government

11. The Interveners recall that international freedom of expression standards constantly affirm that transparency is a fundamental element of democracy as it allows the general public to really engage and participate in the government's and parliament's decision-making process during the legislative process. Transparency means that information is available about an organisation or actor allowing external actors to monitor the internal workings or performance of that organisation.
12. Transparency and access to information play a key role in ensuring accountability. They ensure that it is possible to check whether public money is spent effectively and efficiently and so strengthen integrity in public office. Transparency of spendings by various public institutions, including legislative bodies, ensures the effective delivery of public services. It helps make sure that taxpayers' money is spent properly. Elected representatives, especially at a time of great pressure on state budgets, are empowered to scrutinise and control spending decisions. The public is entitled to know how money to exercise their functions are spent. Besides, it would sound unfair that they exercise accountability without being held accountable in turn.
13. A request for access to information about the expenses of members of a parliament is therefore important to ensure transparency of the functioning of that legislative body. Information about the expenses of elected representatives clearly relates to the execution of their public mandate and their public activities. Members of parliament should be allocated adequate resources to do their jobs and provide value for money for the taxpayer. This should be done within a framework which is transparent, accountable, and free from suspicion of abuse for personal advantage. Hence, transparency about the use of expenses is important for the accountability, integrity and openness of the government as well as elected representatives.

¹⁵ *Ibid.*, Preamble (2).

¹⁶ Council of Europe, Resolution (97)24 on the Twenty Guiding Principles for the Fight Against Corruption adopted by the Committee of Ministers on 6 November 1997, Principle 9.

14. The importance of transparency of legislative bodies has been confirmed in several standards of the Council of Europe. For instance, the Congress of Local and Regional Authorities hosted by the Council of Europe issued several resolutions addressed to the Committee of Ministers to promote open government standards. These include encompassing a wide range of practices that can promote good governance, encourage better decision-making and reduce corruption.¹⁷ An open government strategy should apply to a wide range of government activities, including law-making and policy-making.
15. Further, the Open Government Partnership (OGP), a multilateral initiative that aims to secure concrete commitments from national and sub-national governments to promote open government, has included “open parliament” as an essential part of open government.¹⁸ OGP recommends that States should ensure, facilitate and promote the right of access to information by, *inter alia*, strengthening the legal framework governing access to information by adopting or improving it, ensuring individuals can access information held by the Parliament and setting up officer responsible for replying to information requests.¹⁹ The OGP Recommendations also specifically mention that Parliaments should “review and further improve the asset declaration required by Members of Parliament and senior parliamentary staff”.²⁰ It follows that access to information related to their expenses should be included as a way to open up parliaments.
16. Transparency of expenses can also prevent corruption of members of the parliament. Here, the Interveners note that the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression (Special Rapporteur on FoE), David Kaye, has emphasised that there should exist a presumption that any information revealing corruption should be released because of the heightened public interest in such information.²¹ As such this information should be accessible to the public, preferably not just based on request but proactively as a part of proactive disclosure.
17. This position has been affirmed by the UN Human Rights Council, in its resolution 44/12, that stressed the fundamental importance of access to information for democratic participation and of combating corruption.²² This position reflects the approach taken in the 2018 guidelines for States on the effective implementation

¹⁷ Resolution 435 (2018) Debated and adopted by the Congress of Local and Regional Authorities on 7 November 2018, 2nd sitting (see Document CG35(2018)14, explanatory memorandum), rapporteur Andreas GALSTER, Germany (L, EPP/CCE).

¹⁸ See OGP, [Open Parliaments Fact Sheet](#). It defines “open parliament” as one that encourages transparency, participation and accountability throughout the legislative process.

¹⁹ See [Parliaments in OGP – Recommendations](#).

²⁰ *Ibid.*

²¹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression David Kaye, A/72/350, 2017.

²² Human Rights Council, Resolution adopted on 16 July 2020, A/HRC/RES/44/12.

of the right to participate in public affairs,²³ prepared by the OHCHR as a guidance for States and other relevant stakeholders in resolution 39/11. In line with the guidelines, States should promote the principles of openness and transparency in all aspects of decision-making processes, and of accountability of public authorities for the implementation of the right to participate in public affairs.²⁴

18. Similarly, the Inter-American Court of Human Rights has stressed that the disclosure of State-held information should play a very important role in a democratic society, because it enables civil society to question, investigate, consider and control whether public functions are performed adequately.²⁵ This becomes crucial for bodies such as the Parliament and the Government to which citizens have entrusted the protection of their interests. It further held that the release of information from public bodies is necessary to avoid abuses by government officials, to promote accountability and transparency within the State, and to allow a substantial and informed public debate that ensures there are effective resources against such abuses.²⁶

ii. Comparative standards on the right of access to information held by the legislative branch

19. National parliaments, bodies, and courts in Europe have issued important decisions as well as developed good practices in relation to accessing information held by the legislative branch as well as expenses of members of the Parliament (MPs).
20. Among the most relevant national jurisprudence, we find the recent decision of the Austrian Constitutional Court that has stated that the watchdog function, in line with the European Court's decision, and conducting a journalistic investigation serving the transparency of political activities and thus of public interest, were more than sufficient conditions for granting access to information related to payments to MPs who had ceased their functions and continued to receive them in the years 2017, 2018 and 2019. Although the Court considered the fundamental right to data protection of former MPs, it found that knowing such information outweighed the MPs' confidentiality.²⁷
21. In the same direction, regarding the balance between the right of access to information on expenditures made by public officials and their right to privacy, the Bulgarian Constitutional Court has decided on several occasions that public

²³ Human Rights Council, Draft guidelines for States on the effective implementation of the right to participate in public affairs - Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/39/28, para 15.

²⁴ *Ibid.*, para 23. See also Human Rights Committee, General comments No. 25 (1996) and General Comment No. 34, *op.cit.*, para 2.

²⁵ Inter-American Court of Human Rights, *Claude Reyes v. Chile*, ser. C No. 151 (2006), paras 86-87.

²⁶ *Ibid.* para 58.

²⁷ Constitutional Court of Austria, [Case 4037/2020-10](#).

officials enjoy much less protection of personal data than the rest of the citizens.²⁸ These decisions of the Constitutional Court are already reflected in the decisions of the Supreme Administrative Court, which in 2013²⁹ stated that MPs are subject to the Access to Public Information Act [under Art.3, para.2, subpara.2] as they are financed by the state budget and, in 2014³⁰, SAC held that information about the remuneration received by a high official should be provided to the requestor.

22. In total, 38 out of 46 access to information laws in the Council of Europe member states apply to the legislative branch, and of these 31 apply to all information and a further 7 to administrative information only.³¹ For all of these countries, a request for access to information held by the legislative branch would be processed. The requests would of course be subject to certain exceptions, largely those permitted by the Tromsø Convention.
23. Within the Council of Europe member states, there is legislation that includes all aspects, and therefore expenditures, of the Legislative Branch. For example, in the United Kingdom, the law explicitly states that it covers both Houses of Parliament,³² as does the Scottish law,³³ and where, in addition, we find a proactive publication of this data.³⁴
24. The Slovenian Access to Information Act explicitly states that information concerning the execution of public duties and concerning public spending is public information.³⁵ The same applies to the laws of Hungary, Georgia, Romania, Bulgaria, Serbia and Poland.
25. A comparative study of European access to information laws shows that in the vast majority of Council of Europe member states, a request for information relating to the use of expenses would be admitted and processed and some relevant information would be provided.

iii. Analysis of the legality and necessity of the right of access to information related to expenses of elected representatives

26. The right of access to information, a fundamental human right under decisions of the European Court, as recognised by the United Nations, other prominent international human rights bodies and by an overwhelming number of member states, clearly includes access to information about and held by the legislative

²⁸ Constitutional Court of Bulgaria, [Case 1/1996](#) and [Case 14/2011](#).

²⁹ Supreme Administrative Court of Bulgaria, [Decision N° 6681 \(2013\)](#).

³⁰ Supreme Administrative Court, [Decision N° 3872](#) (2014).

³¹ Data from the RTI Rating, www.rti-rating.org. See also the PACE, [Media freedom, public trust and the people's right to know](#), Doc. 15308 of 07 June 2021.

³² The UK, [Freedom of Information Act 2000](#).

³³ [Freedom of Information \(Scotland\) Act 2002](#).

³⁴ The Scottish Parliament, [Members' expenses](#).

³⁵ Slovenia, [Access to Information Act](#).

branch, which would include the use of public funds by elected representatives. Any limitation on the right must meet the three parts standard tests of being elaborated in law, and being proportionate and necessary.

27. As for the legality aspect of the test, from the above it can be seen that in international, European and national laws in the vast majority of countries within the Council of Europe, access to information is considered to cover the legislative branch, at least when it comes to the administrative information held by the legislative bodies, which includes the non-regulatory dimensions of the legislative branch such as administrative actions related to the functioning of the institution.
28. As for the necessity of restrictions, there appears a practice that information about expenses of elected representatives relating to their activities is not generally exempt under access to information legislation. Should this information be restricted from public access, the necessity of the restrictions would have to be fully elaborated.
29. The Interveners do not believe that restrictions on access to expenses information would meet the necessity test. In fact, as highlighted earlier, transparency has a crucial role for citizens in holding their elected representatives to account. Research also shows that improved transparency over of the legislative branch leads improvement of how elected representatives conduct themselves and meet citizens' expectations so access to information about elected representatives leads to a greater political accountability.³⁶

CONCLUSIONS

30. Considering the public interest in knowing about the management of public resources, considering the fundamental role of the "watchdogs" such as the organisation Regards Citoyens in ensuring integrity and probity, considering that the most legal frameworks of most Council of Europe countries establish that the legislative power is under the scope of the right of access to information, considering that accountability is a fundamental pillar of any democratic society, the Interveners conclude that any refusal to process a request for administrative information from the legislative branch and any refusal to provide information such as that needed to ensure accountability of the expenses of members of parliament, interferes with the right to freedom of expression, as well as the right to access information held by a public authority, in accordance with Article 10 of the Convention. As such it affects the legitimate purpose of knowing information of public interest and is necessary for accountability, a matter of fundamental importance in any democratic society.

³⁶ See e.g. T. Besley, R. Pande and V. Rao, [Political Selection and the Quality of Government: Evidence from South India](#). London: London School of Economics, 2006; or World Bank, [Making Politics Work for Development: Harnessing Transparency and Citizen Engagement](#), Policy Research Report, 2016.

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