

Legal Reasoning Case Study based on 'Magyar Helsinki Bizottság v. Hungary [GC], Case No. 18030/11, Judgment of 8.11.2016

TEACHING NOTE

Facts of the Case taken from the 'Résumé juridique':

The applicant NGO [A] was founded in 1989 with the task of monitoring the implementation of international human-rights standards in Hungary [H] and providing related legal representation, education and training. In the context of a survey regarding the efficiency of the system of public defence, the applicant requested from various police departments the names of the public defenders retained by them and the number of their respective appointments. Seventeen police departments complied with the request; a further five disclosed the requested information following a successful legal challenge. However, the applicant was unsuccessful in its action against a further two police departments which refused to disclose the requested information. The applicant complained under Article 10 that the domestic courts' refusal to order the disclosure of the information sought amounted to a breach of its right to access to information.

Learning Objectives

- Students will learn about the different legal interpretation methods applied by the ECtHR.
- Students will learn how the court narrates applicable case law and distinguishes the case at hand from it.
- Students will learn about the (material scope of the) right to access public information.

Students' Tasks

- Read the ECtHR Case of '*Magyar Helsinki Bizottság v. Hungary [GC], Case No. 18030/11, Judgment of 8.11.2016*'
- While reading focus on the interpretation methods applied by the ECtHR.
- Highlight the different methods applied that you can identify.
- Think about and take notes on the following questions:

Questions to stimulate class discussion

1. What is the material scope of the right to seek public information according to the ECtHR?
 - According to the Court does Article 10 ECHR encompass the freedom to access public information?
 - Does it mean that public authorities need to share any information with the public?

- Is the state obliged to be proactive about sharing information? Or collect information (which it has not recorded so far) and make it available if so requested?
- 2. Can the right to access public information be restricted?
 - Does the aim to protect the personal data of public defenders (e.g. the names of public defenders and the number of times they had been appointed to act as counsel in certain jurisdictions) constitute a legitimate aim to restrict the freedom to access public information of A?
 - Is the restriction necessary in the case at hand?
- 3. How did the Court reach this decision?/ Which interpretative methods were applied?
 - In your opinion, does the ordinary wording of Art 10 ECHR encompass a right to access public information? How did the court view this matter?
 - Which weight did the Court attribute to the travaux préparatoires?
 - Originally the wording of Art 10 ECHR was identical to Article 19 of the Universal Declaration. It was changed later to its current text. Which conclusion is drawn from this genesis?
 - How did the ECtHR deal with the existing case law on the question of access to public information?
 - Does the ECtHR refer to other international human rights treaties than the ECHR? Which weight does the ECtHR attribute to those other sources of human rights?
 - Is the right to seek information recognised under different international human rights instruments? Which conclusions did the ECtHR draw from this analysis? Why is the opinion of the majority of states of any importance?
 - Which role does the principle of legal certainty play?
 - Can the ECtHR divert from its own jurisprudence? What does the Court say on this matter?
 - Do the 'living instrument' and the 'evolving convergence' principle play any role in the Court's reasoning?
 - What was the decisive argument for the Court in the end when reaching its decision on whether the right to seek public information was within the scope of Art 10 ECHR?

Module Solution

See highlighted passages in the original judgment (pdf attached)

Key Take Aways

- An individual may have a right of access to information held by public authority if, firstly disclosure of the information has been imposed by a judicial order which has gained legal force and secondly, the access to the information is instrumental for the individual's exercise of his or her right to freedom of expression, in particular the freedom to receive and impart information and if its denial constitutes an interference with that right.

- The ECtHR is applying several interpretative methods, including the ordinary meaning of the words, the context of the provision, the object and purpose of a provision, other rules and principles of international law applicable in the relations between the contracting parties, supplementary means such as the travaux préparatoires.
- Even though emphasising the importance of legal certainty, the ECtHR views the ECHR as a living instrument, subject to an evolving interpretation.

