



citizens network
WATCHDOG[^]
poland

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The Registrar
European Court of Human Rights
Council of Europe
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Application no. 38564/23

VOULIWATCH NON-GOVERNMENTAL ORGANISATION v. Greece

THIRD PARTY INTERVENTION SUBMITTED IN ACCORDANCE
WITH RULE 44(3) OF THE RULES OF COURT

Introduction and Summary

1. This submission is made pursuant to Rule 44 § 3 (a) of the Rules of Court, following a leave granted by the Vice-President of Third Section by a letter dated 10 December 2024 by the following interveners: Access to Information Programme and Citizen Network Watchdog Poland.
2. Access to Information Programme (AIP) was established in 1996 with the mission to promote and enhance the exercise of the constitutional right of access to information. CITIZEN NETWORK WATCHDOG POLAND is an independent non-governmental organization established in 2003,

dedicated to promoting transparency in public life, the rule of law, and the protection of human rights, with a particular emphasis on the right of access to information.

3. In summary, the Interveners are of the opinion that in the light of the Grand Chamber judgment in *Magyar Helsinki Bizottság v. Hungary* and the recent case law of the Court clarifying the principles underlying Article 10, international law and the case law in some national jurisdictions, it would be consistent to state that the Court recognises a right of access to official information within the scope of Article 10. In short, it follows from the foregoing that the unreasoned failure to provide free access to information, the disclosure of which is or would be valuable for the participation in public debates, to applicants acting as public/ social watchdogs is, accordingly, an interference with their Article 10 rights. Accordingly, the failure to make available information about public money spending, including and especially in cases of emergency where usual competitive and transparent proceedings are excluded, breaches a positive obligation of states to provide information.
4. In striking the right balance in cases where the requested information is withheld on the grounds of commercial confidentiality, the Court should consider the potential harm to the competing interest and the public interest in the disclosure. The balance is particularly likely to favour disclosure where the information concerns companies whose purpose is to serve the public needs and/or who are in receipt of public funding.

The development of the international standards on access to information

5. In the last two decades and a half there has been a significant expansion of the right of access to government-held information around the globe. Surveys show that nearly 140 national access to information/ freedom of expression laws have been adopted.¹ Only a quarter of a century ago, back in 2000, their number was less than 30. The right to information (RTI) laws increasingly empower journalists, NGOs and individuals to participate in public debates, exercise fundamental rights and hold public bodies accountable, thus contributing to public money expenditure in the public interest. It is generally established that the RTI is the principle and its limitations are an exception that needs to be justified in each case.
6. In 1981, the Committee of Ministers of the Council of Europe (CoE) adopted Recommendation R(81)19 to member states on the access to information held by public authorities. The document states that “Everyone within the jurisdiction of a member state shall have the right to obtain, on

¹ See the Global Right to Information Rating results at: <https://www.rti-rating.org/country-data/>

request, information held by the public authorities” and “information shall not be refused on the ground that the requesting person has not a specific interest in the matter.”² In the later 2002 Recommendation, the Committee of Ministers emphasized the main purposes that RTI serves, stating that wide access to official documents in accordance with clear rules:

- allows the public to have an adequate view of, and to form a critical opinion on, the state of the society in which they live and on the authorities that govern them, whilst encouraging informed participation by the public in matters of common interest;
- fosters the efficiency and effectiveness of administrations and helps maintain their integrity by avoiding the risk of corruption;
- contributes to affirming the legitimacy of administrations as public services and to strengthening the public's confidence in public authorities.³

In 2020, the first legally binding international instrument, namely the Convention on Access to Official Documents, came in force after being ratified by 10 states.⁴

7. Among the international jurisdictions, the Interamerican Court of Human Rights recognized in 2005 the right to access government held information under the American Convention of Human Rights in *Claude Reyes v. Chile*. In 2009, the Court read an obligation under Article 10 of the European Convention of Human Rights (the Convention) of the states' public bodies to provide access to information held by public bodies to those who need it for participation in public debates.⁵ It found that the failure of public bodies to provide access to information in such cases amounts to information monopoly, which is a form of censorship. In *Magyar Helsinki Bizottság v. Hungary*, the Grand Chamber reaffirmed that approach, finding that the duty of the states, and everyone's right to access information, respectively, is applicable in cases where the applicant plays the role of a public/ social watchdog, the information is readily available and is needed for the participation in a debate.⁶
8. In March 2020, the world underwent an unprecedented crisis, the COVID-19 pandemic. It posed a serious challenge to fundamental rights and democratic values,⁷ while some CoE member states

² See the Recommendation available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804f7a6c>

³ See the whole text of the Recommendation at:

[https://search.coe.int/cm/#\[%22CoEIdentifier%22:\[%2209000016804e6fcc%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]\]](https://search.coe.int/cm/#[%22CoEIdentifier%22:[%2209000016804e6fcc%22],%22sort%22:[%22CoEValidationDate%20Descending%22]])

⁴ *The Council of Europe Convention on Access to Official Documents* (CETS No. 205), also known as the *Tromsø Convention*, entered into force on 1 December 2020.

⁵ *Társaság a Szabadságjogokért v. Hungary* (no. 37374/05).

⁶ *Magyar Helsinki Bizottság v. Hungary, GC* (no. 18030/11).

⁷ See e.g. the FRA report: *The Coronavirus Pandemic And Fundamental Rights: A Year In Review*, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-fundamental-rights-report-2021-focus_en.pdf

derogated from certain human rights under Art. 15 of the Convention.⁸ The right to information was itself subject to temporary emergency limitations in some national systems, while specific measures such as lock-down, restricted free movement, limited access to public premises and isolation increased the need for stricter accountability of public bodies. On another hand, the frequent necessity in that period for speedy and effective executive action exempted from regular transparency and competitive rules posed the risk to jeopardise the protection of fundamental rights, as was alarmed within the Council of Europe framework.⁹

The watchdog role of the applicant in RTI cases

9. In RTI cases, the Court has built upon its classical understanding under Article 10 of the journalistic function of a public watchdog, i.e. generating or adding to public debate over a matter of public interest. It ruled that the concept was not restricted to professional journalists and extended its scope to the so called “social watchdogs” such as NGOs, researchers and even individual activists.¹⁰
10. Any individual seeking information, which is in the public interest, with a view to making it public, is acting as a public watchdog: see also the Concurring Opinion in *Youth Initiative* referred to above and the judgment in *Guseva* cited above at §§ 38 and 41. There was no particular meaning of the term “social watchdog,” which can be broadly understood as relating to a historian researcher like Kenedi, or a sociologist and a paediatrician as was the case in *Gillberg*. The scope of the Convention right is more likely formulated upon the individual circumstances rather than following a formal applicant profile. As the Court held: “the Convention offers a protection to all participants in debates on matters of legitimate public concern”.¹¹

The nature of the information at stake

11. International and regional standards provide for a broad definition of public documents. According to the *Tromsø Convention*, “official documents” means all information recorded in any form drawn up or received and held by public authorities.”¹² Likewise, Regulation (EC) No 1049/2001 defines

⁸ See European Parliament brief, Upholding human rights in Europe during the pandemic, available at: [https://www.europarl.europa.eu/RegData/etudes/BRIEF/2020/652085/EPRS_BRI\(2020\)652085_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIEF/2020/652085/EPRS_BRI(2020)652085_EN.pdf)

⁹ See e.g. Information Documents, SG/Inf(2020)11 of 17 April 2020, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, a toolkit for member states, available at: <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809c1f40>

¹⁰ See *Tarsasag* case quoted above; *Kenedi v. Hungary*; *Gillberg v. Sweden*, GC; *Youth Initiative for Human Rights v. Serbia*; *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v. Austria*; *Guseva v. Bulgaria*.

¹¹ See *Braun v Poland* (application no 30162/10), November 4, 2014, § 47.

¹² Article 1, § 2, letter “b”.

a “document” 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.”¹³ In most national laws, the definition of public information is similar. It extends to any documents or records irrespective of the nature of the use.

12. In the practice of the Court under Article 10, account is given more to the plausibility that the information sought is used in public debates, rather than to the nature of the information itself. Whether it is “factual information concerning the use of electronic surveillance measures”,¹⁴ “information about a constitutional complaint”,¹⁵ “original documentary sources for legitimate historical research”,¹⁶ or decisions of special transaction commissions,¹⁷ it is the public interest in the information that matters. Similarly, information about public funds distribution to natural persons could be of public nature and available under Article 10.¹⁸

Commercial confidentiality

13. Both international and national norms define commercial confidentiality as a ground of exemption/limitation from RTI, rather than as an exception from the definition of “public documents”. The *Tromsø Convention* provides for that access could be limited in the interest of the protection of commercial and other economic interests.¹⁹ Any such limitation should be set out precisely in law, be necessary in a democratic society and be proportionate to the aim of the protection.²⁰ Additionally, a refusal to disclose a document is permissible only if access would or would be likely to harm any of the listed interests unless there is an overriding public interest in disclosure. In the last case, even harmful disclosure is and should be legitimate.²¹ A similar approach is provided under the Aarhus Convention and the EU Regulation.
14. National regimes use different terms to label the protected interest in the case. It could be “commercial confidentiality”, “economic interests”, “trade secrets” and other. In some statutes the scope is broader, while in other it is narrower. In some laws the prejudice to commercial interests

¹³ Article 3, letter “a”.

¹⁴ See *Youth Initiative for Human Rights v. Serbia*.

¹⁵ See *Társaság a Szabadságjogokért v. Hungary*.

¹⁶ See *Kenedi v. Hungary*.

¹⁷ See *Österreichische Vereinigung* cited above.

¹⁸ See *Zöldi v. Hungary*, (application no 9049/18).

¹⁹ Article 2, § 1, letter “g”.

²⁰ Article 2, § 1.

²¹ Article 2, § 2.

is the threshold of protection,²² while in other the interest is limited to the protection of a company against unfair competition.²³ Sometimes the assessment whether the disclosure of the information sought could harm one's interests is made by the relevant authorities who hold the information and further by RTI commissioners, tribunals and courts. The case may be even that commercial confidentiality protection is provided by law.²⁴

15. In the Court practice special attention is attributed to the question, whether information is relevant for the participation in a public debate and the applicant exercises a watchdog role. If so and the information being readily available, then the three-part test under Article 10, § 2 should be performed in each case. This means that the limitation should have ground in the national law, which needs to be accessible, foreseeable and formulated with adequate precision. Then the restriction should aim at the protection of a legitimate aim among the listed in Article 10, § 2. Finally it should meet the "necessary in a democratic society" test. In a number of CoE member states government contracts are open to the public and sometimes subject to a public interest test where the presumption is on the side of openness.²⁵ In view of the other two important factors, namely the Covid-19 campaign related issue and the issue of the fair and efficient distribution of public money to the media the Interveners share the opinion that the public interest is clear.

Relevant practice of EU bodies - Text messages case

16. During and immediately after the COVID-19 pandemic, information concerning the virus, vaccines, and related actions was of heightened sensitivity to public debate and garnered significant attention. Citizens, media, and civil society organizations (CSOs) sought transparency from authorities in various countries regarding decisions, agreements, and, in the case of the President of the European Commission, even text messages related to the purchase of vaccines. The lack of reliable information from verified sources, coupled with authorities avoiding direct responses, fueled distrust and facilitated the spread of misinformation.

²² See section 43 of the UK FOIA 2000, available at: <https://www.legislation.gov.uk/ukpga/2000/36/section/43>

²³ See Article 17, para. 2 of the Bulgarian RTI law as amended in 2008, available at: http://www.aip-bg.org/en/legislation/Text_of_the_APIA/200432/

²⁴ For example, such protection is not provided under Article 6 of the Law on Free Access to Public Information of North Macedonia, available at: <https://uspi.mk/wp-content/uploads/2021/02/Law-on-free-access-to-public-information.pdf>.

²⁵ See e.g. § 1, subpara. 5, letter "f" of the Bulgarian RTI law, available at: http://www.aip-bg.org/en/legislation/Text_of_the_APIA/200432/.

17. The Eurofound report “Maintaining trust during the COVID-19 pandemic”²⁶ emphasizes the importance of transparency and access to information in maintaining citizens’ trust in public institutions across the EU during a health crisis. It highlights that clear communication on issues like vaccine procurement, vaccination strategies, and restrictions is essential for citizens’ evaluation of government actions. The report notes that a lack of reliable information during the COVID-19 pandemic fueled public mistrust and misinformation, particularly regarding vaccine contract negotiations. It also links public trust with compliance during the pandemic, stating that higher trust led to better adherence to health measures, while insufficient transparency hindered cooperation and undermined the rule of law.
18. The European Ombudsman has addressed transparency issues within the EU legal framework, particularly in case 1316/2021/MIG,²⁷ which involved the European Commission’s refusal to provide public access to text messages between the Commission President and the CEO of a pharmaceutical company during COVID-19 vaccine procurement negotiations. A journalist had requested access to “text messages and other documents” mentioned in a New York Times article, but the Commission only identified three documents and denied the existence of any relevant text messages, arguing they were too “short-lived” to meet registration criteria.
19. The Ombudsman highlighted that under Regulation 1049/2001, a “document” includes any content related to EU policies, decisions or activities, regardless of its medium. Moreover, the Ombudsman criticized the Commission’s narrow interpretation, which limited the search to registered documents and obstructed the complainant’s right to access information. The Ombudsman recommended that the Commission conduct a renewed search, explicitly including text messages regardless of their registration status, and evaluate their disclosure in compliance with Regulation 1049/2001.
20. This case highlights systemic issues in EU institutions’ handling of modern communication tools, such as text and instant messages, which increasingly serve as mediums for decision-making and policy negotiation. The Ombudsman emphasized the need for institutions to adapt their record-keeping practices to modern communication methods to ensure transparency, accountability, and public access, as required by EU law and established case law, and to promote public confidence.

²⁶ Eurofound, *Maintaining trust during the COVID-19 pandemic*, 2022, available at: <https://www.eurofound.europa.eu/en/publications/2022/maintaining-trust-during-covid-19-pandemic>, last accessed on 13.01.2025.

²⁷ European Ombudsman, *Recommendation on the European Commission's refusal of public access to text messages exchanged between the Commission President and the CEO of a pharmaceutical company on the purchase of a COVID-19 vaccine (case 1316/2021/MIG)*, 26 January 2022, available at: <https://www.ombudsman.europa.eu/en/recommendation/en/151678>, last accessed on 13.01.2025.

Relevant national RTI frameworks. The case in Poland

21. In 2021, Citizens Network Watchdog Poland sought to investigate the Polish government's transparency in managing the public information campaign for the National Vaccination Program (#SzczepimySię) aimed at informing citizens about the COVID-19 vaccination process. Recognizing the vital role of public information in pandemic management, Citizens Network Watchdog Poland submitted a public information request to Poland's Ministry of Health, seeking details of contracts signed in December 2020 and January 2021 for media campaigns and leaflets distribution, including contractors, amounts, and contract purposes. After receiving documents provided on the request by the Chancellery of the Prime Minister (CPM) indicating expenditures for broadcasting and publishing in specific media outlets, Citizens Network Watchdog Poland further requested details of contracts for free broadcasting/publication of materials during February and March 2021. CPM disclosed that no formal agreements existed for free campaign promotion, though certain media outlets had voluntarily participated without compensation. It also provided lists that revealed a significant reduction in campaign spending for February and March 2021 compared to December 2020 and January 2021.
22. It turned out that the campaign had excluded major media organizations, raising questions about whether the selected outlets could effectively achieve the government's goal of maximizing public reach. Despite claims of free media participation, Citizens Network Watchdog Poland identified that some media outlets involved in unpaid promotions were also compensated in other contracts, indicating partial financial engagement.
23. In both the Polish and the instant Greek cases, it is essential to apply clear and transparent criteria in order to evaluate whether the funds were allocated in a way that maximized outreach and served the public interest. The absence of such criteria would raise concerns about favouritism, inefficiency, or political bias in the public funds' distribution. Disclosing the criteria for selecting partners for paid and unpaid campaigns promotes public confidence that all stakeholders are treated fairly and the government is not favouring certain media groups based on political or ideological preferences.
24. In the Polish case, the Supreme Audit Office (NIK) conducted a review of the #SzczepimySię campaign, which was among five public campaigns assessed from 2019 to 2023. NIK's report identified problems in the campaign's planning and implementation. Key findings revealed that: a) the campaign lacked clearly defined performance indicators to evaluate its effectiveness and efficiency, thus making it impossible to measure the campaign's efficiency against its objectives to

increase the vaccination rate or influencing public attitudes toward COVID-19 vaccine; b) it seemed that the campaign was inefficient as despite significant investment, the return on this expenditure was inconsistent, as albeit the first phase ("Ostatnia Prosta") led to a substantial increase in vaccinations (74.9% for fully vaccinated individuals), next phases achieved much lower growth rates of 9.6% and 5.8%, respectively; c) the monitoring and evaluation were insufficient as no systems were in place to measure outcomes such as vaccination uptake directly attributed to the campaign; d) strategic and creative shortcomings were identified in view of the fact that the campaign employed various communication channels, including television, radio, social media, and outdoor advertising, but the absence of a cohesive creative strategy undermined its overall impact and the campaign did not fully optimize its media mix to maximize outreach to sceptical audiences and underserved communities; e) issues of non-compliance and non-transparency were identified such as the violation of public procurement laws in contracting broadcasting services thus raising concerns about transparency and accountability.

25. The Interveners are of the opinion that the Citizens Network Watchdog Poland #SzczepimySię campaign case is similar to the instant *Vouliwatch case*, highlighting critical issues of transparency, accountability, and equitable allocation of public funds in public information. Both cases focus on access to public information as a critical means for ensuring government transparency in the management of public funds. As affirmed in *Magyar Helsinki Bizottság v. Hungary*, access to such information is essential for fostering public debate and holding authorities accountable. In the Polish case, the information sought was related to vaccination campaign contracts, including media selection and spending criteria. Similarly, *Vouliwatch* NGO requested information on fund allocation for a public health campaign. In both cases government transparency on fair allocation of public resources is at stake.
26. The allocation of public funds to the media is a matter of public interest. The Polish campaign's exclusion of major media groups raised concerns about whether the government prioritized political alignment over maximizing public reach, mirroring the concerns in Greece about discrimination against media critical of the government. The absence of transparent criteria for fund distribution in Poland, as noted in the Supreme Audit Office review, is visible also in the *Vouliwatch case*, where vague and unjustified refusal undermined public trust.
27. The Polish case revealed significant gaps in planning, evaluation, and compliance with public procurement laws, as identified by the Supreme Audit Office. These transparency failures undermine public trust and could leave practices of favouritism, inefficiency, or political bias unscrutinised and concealed from public knowledge — an issue also central to the *Vouliwatch case*.

28. In the Greek case, authorities cited “professional and trade secrecy” to deny access to information, failing to meet the proportionality test under Article 10 (2) ECHR. Similarly, in Poland, limited transparency in procurement practices and inadequate justification for media exclusions compromised public accountability. Both cases underline the critical role of NGOs as public watchdogs. By seeking access to public information, these organizations ensure democratic oversight and facilitate informed public debate. Denying access to such information not only violates Article 10 but also creates a chilling effect, discouraging further scrutiny of public authorities. Access to this information is indispensable for upholding the principles of democracy, ensuring accountability in public spending, and protecting the public’s right to participate in meaningful debate on matters of significant public interest.

Yours sincerely,

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