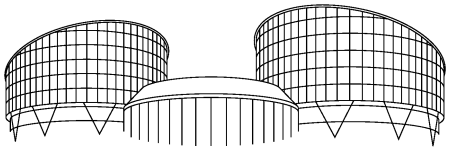

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF GUSEVA v. BULGARIA

(Application no. 6987/07)

JUDGMENT

STRASBOURG

17 February 2015

FINAL

06/07/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Guseva v. Bulgaria,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Guido Raimondi, *President,*
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*
Pavlina Panova, ad hoc *judge,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 20 January 2015,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 6987/07) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Ms Lyubov Viktorovna Guseva ("the applicant"), on 18 January 2007.

2. The applicant was represented by Mr N. Runevski, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms Liliana Gyurova, of the Ministry of Justice.

3. The applicant alleged in particular that the failure of the mayor of Vidin to enforce three final administrative court judgments ordering him to provide public information to her breached her right to freedom of expression, given in particular that she had sought the information in order to contribute to public debate in the field of animal protection.

4. On 19 February 2013 the application was communicated to the Government.

5. Ms Zdravka Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Ms Pavlina Panova to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1951 and lives in Vidin. She is a member of the Board of Directors of the Animal Protection Society in Vidin. On 16 September 2002 she was authorised to represent the organisation before any and all institutions in Bulgaria in relation to its activities.

A. First request for information

7. On 11 April 2002 the applicant asked the mayor of Vidin for access to information about an agreement, concluded between the municipality and the municipal company "Cleanliness" EOOD, for the collecting of stray animals on the territory of Vidin municipality.

8. The mayor sought the explicit consent to that effect of the head of "Cleanliness" EOOD, considering that that was a statutory condition under section 31 (2) of the Access to Public Information Act 2000. The head of "Cleanliness" EOOD refused to give consent on 28 May 2002. The mayor issued a decision on 4 June 2002 in which he refused to provide the applicant with access to the information she sought. The mayor referred to section 37 (1) (2) of the Access to Public Information Act 2000, which at the time listed the absence of a third interested party's explicit written consent for the provision of information among the grounds for refusal to grant access to information.

9. The applicant brought court proceedings against the decision of the mayor refusing access to the information. The Vidin Regional Court allowed the applicant's claim on 27 June 2003, finding that the information sought did not affect the rights of "Cleanliness" EOOD and therefore section 37 (1) (2) was not applicable. The court accordingly ordered the mayor to provide the information to the applicant.

10. Following a cassation appeal by the mayor, the Supreme Administrative Court upheld the lower court's judgment on 25 May 2004. It held that the information was of high public interest, the rights of third parties were not affected and the mayor's decision denying access to information to the applicant was not reasoned.

B. Second request for information

11. On 20 January 2003 the applicant again asked the mayor of Vidin for information. This time the information she sought concerned the annual statistics for 2001 and 2002 about animals held in an animal shelter called "Municipal Care". In particular she asked how many animals were placed

there, how many of them died or were put to death, and how much their care had cost the municipal budget.

12. The mayor sought the explicit consent to that effect of the head of the public utilities company concerned, "Titan Sever" OOD, considering once again that that was a statutory condition under section 31 (2) of the Access to Public Information Act 2000. In a letter of 10 February 2003 the head of "Titan Sever" OOD refused to give consent. On 14 February 2003 the mayor refused to provide the applicant with access to the information, referring to section 37 (1) (2) of the Access to Public Information Act 2000.

13. The applicant brought court proceedings against the decision of the mayor refusing access to the information. The Vidin Regional Court allowed the applicant's claim on 27 June 2003. It found that, if third parties objected to the provision of information concerning them, section 31 (4) of the Access to Public Information Act 2000 obliged the mayor to grant access to that information in a manner not disclosing the parts related to the third party. It then sent the case back to the municipality ordering it to provide the information to the applicant.

14. Following a cassation appeal by the mayor, the Supreme Administrative Court upheld the lower court's judgment on 25 May 2004. It held that the information was of high public interest, the rights of third parties were not concerned and that, even if they were, the information could be provided without disclosing the parts concerning the third parties. Finally, that court found that the mayor's decision denying access to information to the applicant was not reasoned.

C. Third request for information

15. On 17 June 2003 the applicant once again asked the mayor for information. The information concerned a public procurement procedure which had been organised by the mayor and aimed at reducing the number of stray dogs in Vidin. The applicant wanted to know the number of the organisations which had tendered for a contract with the municipality, which ones had passed the pre-selection stage, and - in respect of those who have - the following information: the type and number of qualified staff they employed; the infrastructure and facilities they had for humane catching and transportation of dogs; the proof they had presented for their capacity to deliver quality services; and, the price they asked for providing the services.

16. On 1 July 2003 the mayor refused to provide that information in a reasoned decision. The explanation he gave was that the information requested concerned solely the participating candidates in that procurement procedure and their bids in accordance with the Public Procurement Act 2004; that it was of an economic nature; that it was related to the preparation of the mayor's administrative actions in relation to the procurement procedure; and, that it had no significance of its own.

17. The applicant brought court proceedings against the decision of the mayor refusing access to the information. On 10 December 2003 the Vidin Regional Court allowed the applicant's claim and overturned the mayor's refusal to provide the information sought. The court found that the information in question had not been classified, that the mayor's decision was not issued within the statutory time-limit and that its content was not in conformity with the requirements of section 38 of the Access to Public Information Act 2000. The court sent the case back to the mayor, specifically ordering him to provide information to the applicant about the organisation which had won the municipal contract at the end of the public procurement procedure and the conditions of that contract.

18. Following a cassation appeal by the mayor, on 20 October 2004 the Supreme Administrative Court partly upheld the lower court's judgment. It quashed the judgment's part which ordered the mayor to provide the applicant with information about the organisation which had won the municipal contract and the conditions of that contract. It held that the mayor had to provide the rest of the requested information.

D. Attempts to secure compliance with the judicial decisions

19. On 10 June 2004, referring to the two decisions of the Supreme Administrative Court of 25 May 2004 which concluded the proceedings in her first two requests for information, the applicant asked the mayor of Vidin to provide her with the information requested.

20. On 10 December 2004, referring to the decision of the Supreme Administrative Court of 20 October 2004 which concluded the proceedings in her third request for information, the applicant asked the mayor to provide her with the information requested.

21. On 27 December 2004, the mayor refused in a written decision to provide the information sought by the applicant following the Supreme Administrative Court's judgment of 20 October 2004. In particular, he repeated the findings of the Supreme Administrative Court that he was not expected to provide information about the company which had won the municipal contract and remained silent in respect of the rest of the information he had been ordered to provide. It would appear that the mayor did not react to the applicant's request for information following the two Supreme Administrative Court's judgments of 25 May 2004.

22. In a letter of 15 September 2010, the applicant informed the Court that there were no further developments and the information she sought had not been provided to her.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Access to information

23. Access to public information was regulated at the time in the Access to Public Information Act 2000, which is also currently in force. That Act defines "public information" as any information related to public life in Bulgaria and allowing people to form a personal opinion about the acts of State or municipal bodies. Every Bulgarian citizen has the right of access to public information under the conditions and procedure of this Act, unless a *lex specialis* provides for a special procedure for the seeking, receiving and disseminating of such information.

B. Enforcement of final administrative court judgments

24. Enforcement of administrative court judgments was regulated at the time by the Administrative Procedure Act 1979, as in force until July 2006, and – as regards judgments of the Supreme Administrative Court – by the Supreme Administrative Court Act 1997 (the Act 1997), as in force until 1 March 2007. The latter's section 30 provided that the decisions of that court had an obligatory force vis-à-vis the parties. Its section 32 provided that a decision of that court was subject to an immediate enforcement by the administrative body concerned. Its Chapter IV contained administrative-penal provisions which envisaged the imposition of a pecuniary sanction of between 100 Bulgarian leva (BGN) and BGN 500 in cases in which administrative bodies did not enforce the court's decisions.

25. Insofar as time-limits are concerned, it is to be noted that the Supreme Administrative Court held in a decision of 2001 (see decision no. 2572 of 17 April 2001, case no. 4047/2000) that the applicable legislation at the time (Administrative Procedure Act 1979 and the Act 1997) did not provide for time-limits within which the administrative body had to comply with judicial decisions. The decision as to when the judgment should be enforced was entirely in the hands of the administrative body concerned. The only procedure for the enforcement of administrative court decisions was an administrative pecuniary sanction (in accordance with section 53 and following of the Administrative Procedure Act 1979, and section 51 and following of the Act 1997). The party seeking enforcement did not need to appeal against a tacit or explicit refusal to enforce a judgment, but instead had to bring a separate complaint before the courts asking for the imposition of a pecuniary sanction on the administrative body which had not complied with the court's judgment.

26. The Code of Administrative Procedure 2006 (the Code), which is currently in force, was adopted in 2006 and, with effect as from 1 March 2007, it repealed the Act 1997. Article 290 of the Code regulates the

enforcement of administrative court judgments vis-à-vis an administrative official obliged in a court judgment to deliver a non-substitutable action. If the responsible official fails to act, the bailiff imposes on him or her weekly pecuniary sanctions (*изпълнителна глоба*), in the amount of between BGN 50 and BGN 1200, for so long as the act remains uncompleted. The bailiff's decisions, actions or failure to act can be challenged before the administrative court (Article 294 of the Code). If the administrative court quashes a bailiff's decision or action, or declares unlawful his or her failure to act, the court either decides the matter itself or orders the bailiff to act within a deadline it determines for it.

27. Article 304 of the Code provides that, in cases which do not concern enforcement of administrative or judicial decisions under Chapter V of the Code and where a responsible official does not comply with a final judgment, the official could be fined with between BGN 200 and BGN 2000. In case of a repeated failure to act, the official could be fined with BGN 500 for every week of non-enforcement, unless his or her inaction is objectively impossible. The fine is imposed by the president of the administrative court and is subject to appeal before a three-member bench of the same court (Article 306).

28. In two decisions taken in 2008 and 2013 respectively (see реш. № 8487 от 9 юли 2008 г. на ВАС, I отделение; реш. № 83 от 23 май 2013 г. на Адм. Съд Кюстендил), the domestic courts fined the Minister for Internal Affairs in the first case and the mayor in the second case for having failed to act in order to comply with final judgments which had ordered the Minister to reply to the complainant's request for access to public information and to the mayor to grant such access. Both decisions were taken in application of Article 304 of the Code. No information is available if these fines led to the Minister's or mayor's complying with their obligation to enforce the judgments.

C. State responsibility for unlawful acts and omissions

29. Section 1(1) of the State and Municipality Responsibility for Damage Act 1988 (SMRDA) provides, as of July 2006, that the municipalities, and not only the State as was the case until then, are liable for damage caused to private individuals and legal entities as a result of unlawful decisions, acts or omissions by their own authorities or officials while discharging their administrative duties. Section 4 of the SMRDA provides that compensation is due for all damage which is the direct and proximate result of the unlawful act or omission. The State's liability is strict, i.e. no fault is required on the part of the civil servants in the commission of the unlawful acts. A claim for damages could be made after the administrative act in question had been quashed in prior proceedings. The lawfulness of administrative actions of failure to act is established by

the court in the context of the proceedings for damages (Article 204 (4) of the Code). Persons seeking redress for damage occasioned in circumstances falling within the scope of SMRDA have no claim under the general law of tort, as the SMRDA is a *lex specialis* and excludes the application of the general regime (реш. № 1370/1992 г. от 16 декември 1992 г. по гр.д. № 1181/1992 г. на ВС, IV г.о.; реш. от 29 юли 2002 г. по гр.д. № 169/2002 г. на СГС, ГК, IVб отд.).

30. The domestic courts have sometimes accepted that public authorities could be responsible for damages under section 1 of SMRDA in cases where they delay or fail to enforce a final judgment (see реш. № 7088 от 31.05.2010 г. по а. д. № 12358/2009, ВАС, confirming реш. № 1075 от 10.11.2008 г. по а. д. № 6339/2007, адм. съд София; see also реш. от 27.04.2009 г. по гр. д. № 71/2009, ОС Разград, in respect of situations where an administrative body had to comply with a final judgment ordering it to open privatisation proceedings). However, in other cases the courts awarded damages not as a result of the lack of enforcement of the judgment, but because of the initial quashing of the unlawful administrative act by the court (see реш. № 8204 от 09.06.2011 г. на ВАС; реш. № 2 от 16.07.2010 на адм. съд Габрово; реш. № 782 от 20.12.2008 на адм. съд София област; реш. № 1365 от 10.05.2010 на адм. съд София град; реш. № 4529 от 30.03.2011 на ВАС, in respect of situations where medical commissions' decisions were quashed as unlawful). Yet, in a number of other cases the courts rejected such claims, finding that the responsibility of the authorities could not be engaged. The reasons were either that the applicants had omitted to use the enforcement procedure under Articles 290 and 294 of the Code (see реш. № 4730 от 15.08.2012 г. по а. д. № 9471/2010, адм. съд София) or because the authorities were only responsible for damages stemming from their actions or failure to act but not from their tacit refusal to issue an administrative act (see реш. № 1706 от 3.02.2011 г. по а. д. № 9953/2010, ВАС; опр. № 7877 от 7.06.2013 г. по а. д. 7001/2013, ВАС), or ─ further still ─ because no damage could be established as a result of the refusal to provide information (see реш. № 7425 от 30.05.2011 г. на ВАС).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

31. The applicant complained that the mayor's refusal to provide to her the information she had sought was in breach of her freedom to receive and impart information. She relied on Article 10 of the Convention which reads as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers....

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

1. The parties' submissions

32. The Government contended, first, that the applicant had not exhausted domestic remedies as required by Article 35 § 1 of the Convention, because she had not sought the imposition of a pecuniary sanction on the mayor under Chapter IV of the Act 1997.

33. Secondly, they submitted that she could have sought damages under the SMRDA, but failed to do so.

34. The applicant disagreed. She pointed out in respect of the first objection advanced by the Government that the Act 1997 only provided for a possibility to impose a minor pecuniary sanction of between 100 and 500 Bulgarian levs (BGN) on an official who did not enforce a Supreme Administrative Court's judgment. In her view such a non-substantial fine could not guarantee that the official responsible to act would do so in the absence of a mechanism for actual enforcement. The applicant emphasised that she criticised precisely the absence of a possibility to seek forced enforcement of final administrative court judgments under the applicable procedure at the time. In addition, the Government had not provided an example whereby the imposition of such a fine had led to the enforcement of a final judgment.

35. As regards the second Government's objection on the ground of non-exhaustion of domestic remedies, the applicant submitted that any compensation she might have claimed under the SMRDA would not have addressed her complaints in the present application. This was because section 1 of the SMRDA covered situations in which damage stemmed from unlawful decisions, actions or omissions by civil servants committed in the course of or in connection with the performance of their duties and found to be unlawful by a court. However, the applicant was complaining before the Court not about the initial refusals of the mayor to provide the information to her but of the subsequent lack of enforcement of the final judgments ordering the mayor to provide the information. The SMRDA did not

specifically compensate damage stemming from non-enforcement of judgments.

2. The Court's assessment

(a) Applicability of Article 10

36. The Court first notes that Article 10 cannot be read as guaranteeing a general right of access to information (see *Leander v. Sweden*, 26 March 1987, § 74, Series A no. 116). At the same time, the Court has consistently emphasised that Article 10 guarantees not only the right to impart information but also the right of the public to receive it (see *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59(b), Series A no. 216; *Guerra and Others v. Italy*, 19 February 1998, § 53, Reports of Judgments and Decisions 1998-I; *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 50, ECHR 2012). In that connection it has held that particularly strong reasons must be provided for any measure limiting access to information which the public has the right to receive (see *Timpul Info-Magazin and Anghel v. Moldova*, no. 42864/05, § 31, 27 November 2007; *Węgrzynowski and Smolczewski v. Poland*, no. 33846/07, § 57, 16 July 2013).

37. The Court points out that, in cases where the applicant was an individual journalist and human rights defender, it has held that the gathering of information is an essential preparatory step in journalism and is an inherent, protected part of press freedom (see *Shapovalov v. Ukraine*, no. 45835/05, § 68, 31 July 2012; *Dammann v. Switzerland*, no. 77551/01, § 52, 25 April 2006). It reiterates that obstacles created in order to hinder access to information which is of public interest may discourage those working in the media, or related fields, from pursuing such matters. As a result, they may no longer be able to play their vital role as "public watchdogs" and their ability to provide accurate and reliable information may be adversely affected (see *Shapovalov*, cited above, § 68).

38. Furthermore, in cases where the applicant was an association, the Court has found that when a non-governmental organisation is involved in matters of public interest it is exercising a role as a public watchdog of similar importance to that of the press (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 103, 22 April 2013; *Vides Aizsardzības Klubs v. Latvia*, no. 57829/00, § 42, 27 May 2004; *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, § 27, 14 April 2009; *Youth Initiative for Human* Rights *v. Serbia*, no. 48135/06, § 20, 25 June 2013; *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria*, no. 39534/07, § 34, 28 November 2013). The association's activities related to matters of public interest therefore warrant similar protection to that afforded to the press (see *Youth Initiative*, cited above, § 20; *Társaság a Szabadságjogokért*, cited above, § 27).

39. The Court recalls in that connection the case *Kenedi v. Hungary*, no. 31475/05, 26 May 2009, which concerned the inability to obtain enforcement within a reasonable time of a final court decision authorising the applicant's access to archived documents. The Court noted in that case that the domestic courts had recognised the existence of the right underlying the access sought by the applicant, a historian, to accomplish the publication of a historical study. It found that the intended publication fell within the applicant's freedom of expression as guaranteed by Article 10 of the Convention (see *Kenedi*, cited above, § 33).

40. The Court also stated in a subsequent Grand Chamber judgment that a domestically recognised right to receive information could give rise to an entitlement under Article 10 (see the second sentence of § 93 in *Gillberg v. Sweden* [GC], no. 41723/06, 3 April 2012, where the Court held that refusing to provide information to a pediatrician and a sociologist, seeking access to it for purposes related to their professional research, "would impinge on their rights under Article 10, as granted by the Administrative Court of Appeal, to receive information in the form of access to the public documents concerned").

41. Turning to the circumstances of the present case, the Court notes that the applicant, a member of an association active in the area of animal defence, sought access to information about the treatment of animals in order to exercise her role of informing the public on this matter of general interest and to contribute to public debate (see, more generally, paragraph 23 above). Furthermore, the existence of the applicant's right of access to the information sought was recognised both in the domestic legislation and in three final Supreme Administrative Court judgments which ordered the mayor to provide the information to her (see paragraphs 10, 14 and 18 above). The Court also notes that the Government did not dispute the applicability of Article 10 to the facts of the present case. In view of the above, it finds that, like in the cases mentioned above, the gathering of information with a view to its subsequent provision to the public can be said to fall within the applicant's freedom of expression as guaranteed by Article 10 of the Convention.

(b) Exhaustion of domestic remedies

42. The Court reiterates that it is incumbent on the Government claiming non-exhaustion of domestic remedies to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V; *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). The availability of any such remedy must be sufficiently certain in law and in practice (see *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198) and the

Government's arguments would clearly carry more weight if examples from national case-law had been supplied (see *Doran v. Ireland*, no. 50389/99, § 68, ECHR 2003-X (extracts)).

43. As regards enforcement of domestic judicial decisions in favour of individuals against public authorities, the Court has held that any domestic means to prevent a violation by ensuring timely enforcement is, in principle, of greatest value (see *Burdov v. Russia (no. 2)*, no. 33509/04, § 98, ECHR 2009; *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, § 65, ECHR 2009-... (extracts)). At the same time, the burden of ensuring compliance with a judgment against the State lies primarily with the State authorities, starting from the date on which the judgment becomes binding and enforceable (see *Burdov* (no. 2), cited above, § 69).

44. Turning to the present case, the Court notes that the Government referred, first, to the possibility for the applicant to have sought an imposition of a pecuniary sanction on the mayor under Chapter IV of the Act 1997 (see paragraph 24 above). They submitted to the Court, as an example of a sanction in case of non-enforcement, a 2008 decision of the Supreme Administrative Court in which, in application of the Code, the court fined a Minister for failing to enforce a final judgment (see paragraph 28 above).

45. The Court observes that the Government did not provide any examples of cases showing that pecuniary sanctions imposed on an official responsible to act have actually resulted in that official enforcing a final judgment. This was the case irrespective of whether such sanctions may have been imposed under Chapter IV of the Act 1997 in force at the time of the facts, or under Article 304 of the Code applied in the decisions of 2008 and 2013 cited in paragraph 27 above. What is more, until the applicant lodged her application with the Court on 18 January 2007 only the Act 1997 was applicable, as it was repealed by the Code on 1 March 2007. In any event, even if it were accepted that Article 304 of the Code was applicable to the present case because the failure to enforce the three judgments in the applicant's favour represented a continuing situation which had not been resolved after the entry into force of the Code, the Court has already held that imposing a pecuniary sanction under that Article could not be considered an effective remedy for the reasons that the applicant could not take part in the related proceedings, nor could he appeal against a possible refusal to impose such a sanction (see *Stoyanov and Tabakov v. Bulgaria*, no. 34130/04, § 99, 26 November 2013).

46. As regards the Government's second objection of non-exhaustion, namely the possibility of bringing a claim for damages, the Court notes that as of July 2006 a claim for damages can be brought not only against the State, but also against the municipalities under section 1 of the SMRDA (see paragraph 29 above). Indeed, the Court has held that proceedings for damages could, in principle, be considered an effective remedy in cases of

non-enforcement of final administrative court decisions (see *Burdov* (no. 2), cited above, § 99; *Yuriy Nikolayevich Ivanov*, cited above, § 65; *Stoyanov and Tabakov*, cited above, § 102). However, in cases where the authorities were expected to take specific action to comply with a final court judgment and not simply pay compensation, the Court has repeatedly dismissed an objection of non-exhaustion of domestic remedies based on the possibility to bring a tort action against the State (see *Hadzhigeorgievi v. Bulgaria*, no. 41064/05, § 50, 16 July 2013; *Mutishev and Others v. Bulgaria*, no. 18967/03, § 104, 3 December 2009, with further references; *Lyubomir Popov v. Bulgaria*, no. 69855/01, §§ 102-107, 7 January 2010; *Vasilev and Doycheva v. Bulgaria*, no. 14966/04, §§ 26-30, 31 May 2012; *Petkova and Others v. Bulgaria*, nos. 19130/04, 17694/05 and 27777/06, 25 September 2012). The reason for it was that a compensatory remedy in the form of a claim for damages could not provide adequate redress in a situation where the authorities were called upon to take specific, i.e. non-substitutable measures, as was the case for example where they had to accelerate and complete the process of restitution of agricultural land. The Government have not put forward arguments capable of convincing the Court to depart from the approach adopted in the above cases.

47. Furthermore, the Government have not provided examples of case-law showing that damages have been awarded under the SMRDA as a result of a failure to enforce final judgments. While the Court is aware of two final decisions in which the domestic courts awarded damages for non-enforcement of final judgments (see paragraph 30 above), it notes that in a number of other decisions the courts have rejected such claims (see paragraph 30 above) or awarded damages not in connection with the failure to enforce but because of the quashing of the initial administrative act by the courts (see on this last point *Stoyanov and Tabakov*, cited above, § 104). Consequently, the Court finds that the domestic practice is not sufficiently consolidated to allow it to conclude that the compensation remedy provided for in the SMRDA is an effective one for the purposes of exhaustion in cases where final administrative court judgments have not been acted upon.

48. In addition, the Court observes that in the present case the three final judgments in the applicant's favour date back to May and October 2004, while the possibility to seek damages against the municipality was introduced in law in July 2006 (see paragraph 29 above). Therefore, the period of around two years during which the applicant could not seek damages in law was in itself sufficiently long to be considered problematic under the Convention (see *Androsov v. Russia*, no. 63973/00, § 53, 6 October 2005, where the Court held that a delay of a year and 12 days to enforce a final judgment against the regional authorities had been too long).

49. Finally, the Government have not argued that, as of 1 March 2007 when the Act 1997 was repealed, the applicant could have sought actual enforcement under Article 290 of the Code (see paragraph 30 above). The

Court notes that, in any event, she could have only attempted that remedy as of 1 March 2007 which was more than two and a half years after the judgments in her favour had entered into force. The Court considers that the utility of the information for the purposes of the applicant's request would have been greatly diminished due to the passage of time. It recalls in this connection that news is a perishable commodity and to delay its publication for indeterminate periods, or its dissemination as in the instant case, may well deprive it of all its value and interest (see *Observer and Guardian*, cited above, § 60). The Court has held that these principles also apply to the publication of books in general or written texts other than the periodical press (see, in the case of an association applicant complaining about a ban on its publication, *Association Ekin v. France*, no. 39288/98, § 57, ECHR 2001-VIII). The applicant in the present case sought information, including statistical data, in order to inform the public about a question of general interest which had been relevant during a particular period of time, namely more than two years before the remedy under Article 290 of the Code 2006 was introduced. In the light of the above it cannot be considered that the applicant should have attempted to exhaust that remedy.

(c) Conclusion

50. Accordingly, the Court finds that Article 10 is applicable to the facts of the present case and also that the Government's objections to admissibility on the grounds of non-exhaustion of domestic remedies must be rejected. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is likewise not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

51. The Government submitted that Article 10 had not been breached, given that the Supreme Administrative Court had upheld the applicant's right to receive information in three final judicial decisions. However, the Government could not establish whether those final judgments had been implemented, because the municipal authorities had kept the administrative files for five years only, in accordance with the relevant regulations. The applicant had sought the information in 2004, which was more than five years before the application was communicated to the Government. The files were currently not preserved and no conclusive answer could be given to the question whether the judgments were enforced.

52. The applicant reiterated her complaint that the failure of the mayor, after the final Supreme Administrative Court judgments, to provide to her

the information she had sought breached her right to freedom of expression and information. The reason was that she could not exercise her role, as a representative of a non-governmental association active in the field of animal rights, to inform the public on a question of general societal interest.

2. The Court's assessment

(a) Whether there has been an interference

53. The Court recalls that it has consistently recognised that the public has a right to receive information of general interest. Its case-law in this field has been developed in relation to press freedom, the purpose of which is to impart information and ideas on such matters. The Court has emphasised that the most careful scrutiny on its part is called for when measures taken by the national authorities may potentially discourage the participation of the press, one of society's "watchdogs", in the public debate on matters of legitimate public concern (see *Társaság a Szabadságjogokért*, cited above, § 26 with references to *Observer and Guardian*, cited above, § 59; *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, § 63, Series A no. 239; *Jersild v. Denmark*, 23 September 1994, § 35, Series A no. 298; see also *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 64, ECHR 1999-III, where the Court held that the vital public interest in ensuring an informed public debate on the question of animal treatment outweighed the fishermen's interest).

54. Furthermore, the Court has held that the function of creating various platforms for public debate is not limited to the press. That function may also be exercised by non-governmental organisations, whose activities are an essential element of informed public debate. The Court has accepted that non-governmental organisations, like the press, may be characterised as social "watchdogs". In that connection their activities warrant similar protection under the Convention to that afforded to the press (see *Társaság a Szabadságjogokért*, cited above, § 27; *Österreichische*, cited above, § 34; *Animal Defenders International* [GC], cited above, § 103; *Youth Initiative*, cited above, § 20).

55. Turning to the circumstances of the present case, the Court notes that the applicant brought the application in her own stead as an individual and that the association she represents is not an applicant before it. However, the purpose for which the applicant had sought the information was to inform the public, in the context of her work for the association, about the treatment of stray animals collected from the streets of the town of Vidin. Therefore, the information was directly related to her work as a member and representative of the association which was active in the field of animal defence. Consequently, the applicant was involved in the legitimate gathering of information of public interest for the purpose of contributing to public debate. According to the applicant, the three final judgments in her

favour remained entirely unenforced. As the Government did not provide information capable of demonstrating the opposite, the Court sees no reason to find otherwise. Therefore, by not providing the information which the applicant had sought, the mayor interfered in the preparatory stage of the process of informing the public by creating an administrative obstacle (see, similarly, *Társaság a Szabadságjogokért*, cited above, § 28). The applicant's right to impart information was, therefore, impaired.

56. The Court considers it necessary to distinguish the situation in the present case from that of the case of *Frăsilă and Ciocîrlan v. Romania*, no. 25329/03, § 58, 10 May 2012, where it found that the authorities bore no direct responsibility for the restriction of the applicants' freedom of expression. The reason was that in *Frăsilă and Ciocîrlan*, cited above, a private company, as opposed to a public authority, had prevented the applicants from gaining access to a newsroom which had been ordered in a final judgment in the applicants' favour. As a result, the Court examined the responsibility of the State as a positive obligation to protect the exercise of the Article 10 rights of the applicants, two journalists, from interference by others. In the present case it was a public authority, the mayor of Vidin, who failed to act in order to implement the final judgments in the applicant's favour (see paragraph 21 above) despite being bound to do so in law. Consequently, the mayor's failure to act in accordance with the final judgments constitutes a direct interference with the applicant's right to receive and ultimately to impart information as enshrined in Article 10 § 1 of the Convention (see *Társaság a Szabadságjogokért*, cited above, § 28; *Österreichische*, cited above, § 36; *Kenedi*, cited above, § 43).

(b) Whether the interference was justified

57. The Court reiterates that an interference with the applicant's rights under Article 10 § 1 will infringe the Convention if it does not meet the requirements of paragraph 2 of Article 10. It should therefore be determined whether the interference was "prescribed by law", whether it pursued one or more of the legitimate aims set out in that paragraph, and whether it was "necessary in a democratic society" in order to achieve those aims. More specifically in respect of the law, the Court has held that it has to be of a certain quality, namely that its provisions should be clear and accessible, and the consequences of its application foreseeable (see, among other authorities, *Müller and Others v. Switzerland*, 24 May 1988, § 29, Series A no. 133).

58. Turning to the present case, the Court notes that at the time of the facts the mayor's failure to provide the information after the final judgments ordered him to do so had no legal basis. On the contrary, according to the letter of the applicable law, final administrative court judgments were subject to immediate enforcement (see paragraph 24 above). The Court also notes that on this point the Supreme Administrative Court had held that, as

the law did not provide time-limits within which the administrative body had to comply with final judgments, the decision as to when the judgment should be enforced was entirely in the hands of the administrative body concerned (see paragraph 25 above). The Court further observes that, similarly to the situation in *Társaság a Szabadságjogokért*, cited above, § 36, the information in the present case was in the mayor's exclusive possession and readily available.

59. Given that enforcement was due in domestic law (see paragraph 24 above), the failure of the mayor to act in order to implement the judgments was in breach of the law (see, *mutatis mutandis*, *Youth Initiative*, cited above, §§ 25-26, as well as *Kenedi*, cited above, § 45, in both of which the Court concluded that the obstinate reluctance of the administrative authorities to provide the information ordered in a judgment was in defiance of domestic law). Notwithstanding this, the national judicial practice had accepted that the law itself provided no clear time-frame for enforcement and the question was left to the good will of the administrative body responsible for the implementation of the judgment (see paragraph 25 above). The Court finds that such a lack of clear time-frame for enforcement created unpredictability as to the likely time of enforcement, which, in the event, never materialised. Therefore, the applicable domestic legislation lacked the requisite foreseeability capable of meeting the Court's test under Article 10 § 2 of the Convention.

60. In the light of the above, the Court is satisfied that the interference was not "prescribed by law" within the meaning of Article 10 § 2 of the Convention. It is therefore not necessary to examine further whether the remaining elements were met.

61. There has accordingly been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

62. The applicant claimed that the mayor's refusals to provide information to her breached her right to have final judgments in her favour enforced, in violation of her right of access to a court as part of the right to a fair trial. She relied on Article 6 § 1 of the Convention which reads as follows:

Article 6 § 1

"1. In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

63. The applicant complained that the judgments in her favour were not enforced.

64. The Government reiterated their submissions that they did not possess information as to whether the judgments were implemented (see paragraph 51 above).

B. The Court's assessment

65. Having regard to the finding of a violation of Article 10 as a result of the lack of implementation of the final judgments in the applicant's favour, the Court considers that it is not necessary to examine the admissibility or the merits of the same complaint under Article 6 (see, by analogy, *Youth Initiative*, cited above, § 29).

III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 10

66. The applicant further complained that she had not had an effective remedy at her disposal in connection with her complaint examined above. She relied on Article 13, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

67. The Government contested that argument.

68. The Court notes that this complaint is linked to the one examined above and therefore must be declared admissible.

69. Having regard to its findings in respect of remedies available to the applicant at the time of the facts (see paragraphs 44 to 49 above), the Court considers that, in the circumstances of the present case, there were no effective remedies capable of providing redress in respect of the applicant's complaint and offering reasonable prospects of success. Accordingly, there has been a violation of Article 13 in conjunction with Article 10.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

71. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage, stemming in particular from her frustration at the impossibility to perform her activities as a representative of a non-governmental organisation, which impossibility was the result of a helpless judicial system whose judgments remained unenforced.

72. The Government considered that this claim was unsubstantiated, unjustified, exorbitant and manifestly ill-founded.

73. The Court accepts that the applicant must have suffered frustration as a result of the impossibility for her to perform her role of an association representative because of the failure of the administrative authorities to provide her with the information she had sought in implementation of the three final judgments in her favour. It therefore awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

74. The applicant also claimed EUR 1,520 for legal fees incurred before the Court. She submitted an agreement with her lawyer for 19 hours of work at an hourly rate of EUR 80, which covered in particular research on the case, preparation of the application and of the subsequent observations submitted to the Court.

75. The Government contested this amount as exorbitant and unrealistic.

76. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,520 covering legal fees for the proceedings before the Court.

C. Default interest

77. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the complaints under Articles 10 and 13 of the Convention admissible;

2. *Holds*, by five votes to two, that there has been a violation of Article 10 of the Convention;

3. *Holds*, by five votes to two, that there has been a violation of Article 13 in conjunction with Article 10 of the Convention;

4. *Holds*, by six votes to one, that it is not necessary to examine separately the admissibility or the merits of the complaint under Article 6 § 1 of the Convention;

5. *Holds*, by six votes to one,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,520 (one thousand five hundred and twenty euros), plus any tax that may be chargeable to the applicant, in respect of legal fees;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Done in English, and notified in writing on 17 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

Guido Raimondi
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Dissenting opinion of Judge P. Mahoney;

(b) Dissenting opinion of Judge K. Wojtyczek.

G.R.A.
F.E.P.

DISSENTING OPINION OF JUDGE MAHONEY

I. ARTICLE 10

1. Like my colleague Judge Wojtyczek, I have been unable to agree with the majority's approach to Article 10 in the present case. I understand many of the hesitations expressed by Judge Wojtyczek in his dissenting opinion, but, given our differences on some crucial points, I have preferred to set out my own view separately.

2. My main concern in the present case is that the Chamber in its judgment should not be a party to a covert overturning of rather clearly stated established case-law, including Grand Chamber judgments. As Judge Wojtyczek points out in his dissenting opinion (paragraph 2), beginning with a chamber judgment in *Leander v. Sweden* (26 March 1987, Series A no. 116, § 74) as confirmed in succeeding plenary Court or Grand Chamber judgments (*Gaskin v. the United Kingdom* [plenary Court], 7 July 1989, Series A no. 160, § 52; *Guerra and Others v. Italy* [GC], 19 February 1998, Reports 1998-I, §§ 52-53; and *Roche v. the United Kingdom* [GC], no. 32555/96, ECHR 2005-X, § 172), there is a line of jurisprudential authority which unambiguously rules out reading into freedom of expression as protected by Article 10 any right of access to information from an unwilling provider and any corresponding positive obligation on public authorities to gather and disclose information to the general or specialised public. It is worth recalling the relevant passages from the *Guerra* judgment:

> "52. ... [In the submission of the European Commission of Human Rights,] Article 10 imposed on States not just a duty to make available information to the public on environmental matters, a requirement with which Italian law already appeared to comply, by virtue of section 14(3) of Law no. 349 in particular, but also a positive obligation to collect, process and disseminate such information, which by its nature could not otherwise come to the knowledge of the public. The protection afforded by Article 10 therefore had a preventive function with respect to potential violations of the Convention in the event of serious damage to the environment and Article 10 came into play even before any direct infringement of other fundamental rights, such as the right to life or to respect for private and family life, occurred.
>
> 53. The Court does not subscribe to that view. In cases concerning restrictions on freedom of the press it has on a number of occasions recognised that the public has a right to receive information as a corollary of the specific function of journalists, which is to impart information and ideas on matters of public interest (see, among other authorities, the *Observer and Guardian v. the United Kingdom* judgment of 26 November 1991, Series A no. 216, p. 30, § 59(b), and the *Thorgeir Thorgeirson v. Iceland* judgment of 25 June 1992, Series A no. 239, p. 27, § 63). The facts of the present case are, however, clearly distinguishable from those of the aforementioned cases since the applicants complained of a failure in the system set up pursuant to *DPR 175/88*, which had transposed into Italian law Directive 82/501/EEC of the Council of the European Communities (the 'Seveso' directive) on the major-accident

> hazards of certain industrial activities dangerous to the environment and the well-being of the local population. Although the prefect of Foggia prepared the emergency plan on the basis of the report submitted by the factory and the plan was sent to the Civil Defence Department on 3 August 1993, the applicants have yet to receive the relevant information...
>
> The Court reiterates that freedom to receive information, referred to in paragraph 2 of Article 10 of the Convention, 'basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to him' (see the *Leander v. Sweden* judgment of 26 March 1987, Series A no. 116, p. 29, § 74). That freedom cannot be construed as imposing on a State, in circumstances such as those of the present case, positive obligations to collect and disseminate information of its own motion."

3. The judgment in the present case (see paragraphs 35-39 and 52-55) begins by "noting", on the basis of *Leander*, "that Article 10 cannot be read as guaranteeing a general right of access to information", but thereafter proceeds to develop reasoning similar to that rejected in *Guerra.* Thus, it cites the dictum from the *Observer and Guardian* judgment (§ 59) to the effect that the public has a right to receive information of general interest, without however specifying that the context of this dictum was an averred negative interference with press freedom. It then refers to a number of recent – largely chamber – judgments so as to derive from Article 10 a right to receive information on the part of the media and also non-governmental organisations, as an attribute of their vital role as democratic society's "watchdogs" in debates on matters of public concern. The gathering or seeking of information by the media and non-governmental organisations is seen as a "preparatory stage" of the process of informing the public, so that obstruction by a public authority in allowing the media and non-governmental organisations access to information of public concern constitutes a direct interference with their "right to receive and ultimately to impart information as enshrined in Article 10". The paragraphs in the two Grand Chamber judgments cited (*Gillberg v. Sweden* [GC], no. 41723/06, § 93, 3 April 2012; and *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, §103, 22 April 2013) provide no reasoned authority whatsoever for overturning the unambiguous case-law as stated in, for example, *Guerra* so as to read into Article 10 a right of access to information, even be it for democratic society's "public watchdogs". Furthermore, given that Article 10 has been held to embody no right of access to publicly-held personal or private information about oneself, one's own health, one's own living conditions, and correspondingly no positive obligation of disclosure on the part of the public information-holder (as in *Leander, Gaskin, Guerra* and *Roche),* it is difficult to understand how the judgment nonetheless manages to uncover in Article 10 such a right for the present applicant on the basis of her much weaker and wholly general interest as a "public watchdog".

4. The judgment in the present case appears to treat as significant that an entitlement on the part of the applicant to access to the information she was seeking was recognised both in the domestic legislation and in three final Supreme Administrative Court judgments (see paragraphs 40 and 55 of the judgment). It is indeed so that domestic Bulgarian law (the Access to Public Information Act 2000) grants every Bulgarian citizen – and not only "public watchdogs" in the form of the media and non-governmental organisations, it should be noted – a right of access to public information, unless a *lex specialis* provides for a special procedure for seeking, receiving and disseminating such information (see paragraph 22 of the judgment). However, it cannot surely be that the particular content of domestic law in one respondent State should have the consequence of changing the "international" content of Article 10, a Convention guarantee entailing obligations for all the Contracting States. Likewise, the fact, on which the judgment also seems to place reliance (see paragraph 40 of the judgment), that the respondent Government do not dispute the applicability of Article 10 in the present case – a concession doubtless prompted by the content of the domestic law – in no way constitutes a legal ground capable of reversing existing case-law, so as to lead to an interpretational change affecting all the other Contracting States.

5. In sum, I find unsatisfactory, in terms of legal certainty, the judgment's approach to development of the Court's case-law. Without going into the merits of whether the time has come to revisit the existing case-law under Article 10 regarding access to information, I prefer not to be associated with reasoning that in effect reverses the clear direction of existing Grand Chamber case-law, contrary to what is foreseen in Article 30 of the Convention and Rule 72 § 2 of the Rules of Court as the normal procedure for rendering a ruling having "a result inconsistent with a judgment previously delivered by the Court".

II. ARTICLE 6 § 1

6. This hesitation on my part regarding the reasoning on Article 10 does not, however, mean that the applicant should be left without relief. Unlike my colleague in dissent, Judge Wojtyczek, I consider that the undoubted injustice of which the applicant was a victim can, and should, be taken as giving rise to a violation of the right to a fair trial in the determination of one's civil rights and obligations, as protected by Article 6 § 1 of the Convention.

7. If, as paragraph 40 of the judgment summarises them, the basic circumstances of the present case concern (a) a claim by the applicant to benefit from a right accorded to her by domestic law (in the event, a right of access to information), (b) three final judgments by the Supreme Administrative Court ordering the mayor of the town of Vidin to provide

certain information to her and (c), at the end of the story, a refusal by the mayor to comply with those judgments, the issue would rather appear to be one falling to be examined more appropriately under Article 6 § 1.

8. The suggestion underlying the majority's approach to Article 10, namely that the applicant's complaint is essentially to be analysed as one of a restriction on or interference with an asserted Convention right of access to or disclosure of information, is not entirely borne out by the facts of the case. The domestic law did provide for a right of access to information of the kind sought by the applicant and the national courts upheld her claim in the particular circumstances (see paragraphs 9, 13, 17 and 22 of the judgment). The applicant is not complaining to this Court either about the content of the domestic law on access to information or about the manner in which that law was applied in her case by the national courts. Rather, her grievance is that the domestic legal order did not adequately ensure compliance by the mayor of Vidin with the national courts' judgments directing him to supply her with the requisite information. This is one of the classic aspects of the "right to a court" as safeguarded by Article 6 § 1, namely the entitlement to proper execution of a judgment delivered at the close of judicial proceedings (see, for example, *Hornsby v. Greece*, 19 March 1997, Reports 1997-II, §§ 40-41). Provided that the domestically recognised rights and obligations at stake in the judicial proceedings can be considered "civil" for the purposes of Article 6 § 1, it is immaterial whether or not they are guaranteed under the Convention.

9. It is on this latter point that I part company with my dissenting colleague, Judge Wojtyczek. To my mind, separate opinions are not the appropriate place to indulge in lengthy jurisprudential analyses on issues not examined in the main judgment. This being so, I limit myself to the following general observations. The applicable domestic law may well be classified as public law, the party against whom the applicant was asserting her claim was indeed a public official and the direct subject-matter of the litigation concerned the performance by the public official of his public duties, but this is not decisive for the applicability of Article 6 § 1 under its civil head. The applicability of Article 6 § 1 does not depend on the status of the parties to the litigation or on the character of the legislation governing the determination of the dispute; what matters is the character of the right at issue, its substantive content and its effects, as well, in some instances, as the incidence of the proceedings for "private rights and obligations" (see, for example, *König v. Germany*, 28 June 1978, Series A no. 27, §§ 89-90; and *Baraona v. Portugal*, 8 July 1987, Series A no. 122, §§ 42-44). Frequently, where a right of access to information is recognised under domestic law, the person exercising the right will be seeking disclosure of information of direct relevance for his or her private sphere of existence (personal data, personal history, health, education, home, living conditions and so on – see the kind of information at issue in *Leander*, *Gaskin*, *Guerra*

and *Roche*). Information of public concern being sought by journalists and non-governmental organisations goes to the performance of their professional or associative duties. In my opinion, (a) leaving aside litigation relating to areas held by the Court's case-law to be outside the "civil" scope of Article 6 § 1 (such as tax matters or election disputes), the private, personal or professional colouring of a right of access to information will generally be sufficient to bring it within the scope of Article 6 § 1; and (b) such a sufficient colouring is present on the facts of the present case. In so far as a right of access to information is recognised under domestic law (and without going into the question of whether and, if so, to what extent the Convention embodies any such right in Article 10), treating the domestically recognised right as "civil" for the purposes of Article 6 § 1 by virtue of its private, personal or professional colouring does not entail, I believe, an over-expansionist interpretation of Article 6 § 1, extending the Convention into fields alien to those contemplated by its drafters.

10. For the reasons given in paragraphs 46 *in fine* and 47 of the judgment in relation to the complaint under Article 10, though not for the reason given in paragraph 45, I can agree that the Government's objection regarding exhaustion of domestic remedies is to be rejected also in relation to the complaint under Article 6 § 1.

11. On the assumption that the applicant enjoyed the "right to a court" as protected by Article 6 § 1 in relation to the judicial proceedings she brought against the mayor of Vidin, there can be little dispute that the failure of the Bulgarian legal order to ensure the compliance by the mayor with the final judgments delivered against him by the Supreme Administrative Court gave rise to a violation of that provision.

III. CONCLUSION

12. To conclude, if, as I believe, Article 6 § 1 is applicable to the facts of the present case and is to be held to have been violated, there is no need to go into the complaint raised under Article 10 and, thus, into the issue whether any right of access to public information and, correspondingly, any positive obligation on public authorities to gather, disclose or disseminate information should be read into the wording of Article 10 of the Convention. That issue, which is now somewhat problematic in view of the lack of clarity introduced by some recent chamber judgments, including the present one, may well need to be elucidated in future cases – but preferably after full argument by the parties, careful consideration by the Court and a transparent reasoning that, rather than eluding, adequately addresses the explicit statements of general principle contained in the existing *Leander* line of authority as confirmed in *Gaskin, Guerra* and *Roche.*

DISSENTING OPINION OF JUDGE WOJTYCZEK

1. The application lodged in the instant case pertains to a fundamental issue in a democratic society: citizens' access to information held by public authorities. It cannot be disputed that such access is one of the preconditions for democracy. The right to access information has been recognised in many international documents. In particular, in 1981 the Committee of Ministers of the Council of Europe adopted Recommendation No. R(81)19 to Member States on the Access to Information Held by Public Authorities.

2. On 18 June 2009 the Council of Europe Convention on Access to Official Documents was adopted in Tromsø. The explanatory report states that : "[a]lthough the European Court of Human Rights has not recognised a general right of access to official documents or information, the recent case-law of the Court suggests that under certain circumstances Article 10 of the Convention may imply a right of access to documents held by public bodies [...] The Convention of the Council of Europe on Access to Official Documents comes as the first international binding instrument that recognises a general right of access to official documents held by public authorities." It appears that the drafters of this treaty intended to fill a lacuna in the international protection of transparency. I also note that this instrument has so far been ratified by only six States and has not entered into force. A large majority of the member States of the Council of Europe have preferred to refrain from giving firm international undertakings in respect of access to public documents.

On the other hand, the Convention for the Protection of Human Rights and Fundamental Freedoms was devised as a first step for the collective enforcement of certain rights set out in the Universal Declaration of Human Rights. It does not encompass all the fundamental standards of the democratic rule of law. Furthermore, the Court has only a limited mandate, defined in Article 19 of the Convention, namely to ensure the observance of engagements by the High Contracting Parties in the Convention and the Protocols thereto. The adoption of the Council of Europe Convention on Access to Official Documents confirms that the "further realisation of human rights and fundamental freedoms" referred to in the Preamble of the Convention for the Protection of Human Rights and Fundamental Freedoms is to be undertaken by way of new treaties.

Therefore, although I understand my colleagues' endeavours to protect and promote the democratic rule of law, I disagree with the approach adopted by the majority in the present case.

3. The issue of access to information held by public authorities has been addressed many times by the Court. Initially, the Court took the view that "the right to freedom to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him. Article 10 does not, in

circumstances such as those of the present case, confer on the individual a right of access to a register containing information on his personal position, nor does it embody an obligation on the Government to impart such information to the individual" (*Leander v. Sweden*, 26 March 1987, § 74, Series A no. 116). This approach was confirmed in subsequent Grand Chamber judgments (see, in particular, the Grand Chamber judgments in *Gaskin v. the United Kingdom* (7 July 1989, Series A no. 160), *Guerra and Others v. Italy* (19 February 1998, *Reports of Judgments and Decisions* 1998-I) and *Roche v. the United Kingdom* (no. 32555/96, ECHR 2005-X) and Chamber judgments (see, in particular, *Sîrbu and Others v. Moldova*, nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01, § 18, 15 June 2004, and *Jones v United Kingdom* (dec.), no. 42639/04, 13 September 2005).

The majority refers to the Grand Chamber judgment in the case of *Gillberg v. Sweden* (no. 41723/06, 3 April 2012), suggesting that it modified the Court's initial approach. In that case the Court addressed the question of whether the applicant had a "negative right within the meaning of Article 10 of the Convention not to make the research material available [to other persons]". The Court expressed the view that "finding that the applicant had such a right under Article 10 of the Convention would run counter to the property rights of the University of Gothenburg. It would also impinge on K's and E's rights under Article 10, as granted by the Administrative Court of Appeal, to receive information in the form of access to the public documents concerned, and on their rights under Article 6 to have the final judgments of the Administrative Court of Appeal implemented (see, *mutatis mutandis*, *Loiseau v. France* (dec.) no. 46809/99, ECHR 2003-XII, extracts; *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III; and *Hornsby v. Greece*, judgment of 19 March 1997, § 40, Reports 1997-II)." I note that this dictum is ambiguous, but in any event it does not state that Article 10 imposes on the States the obligation to provide information to the citizens. Moreover, the *Gillberg* dictum did not state that the hitherto applicable case-law had been overruled.

In the decision of 10 July 2006 in *Sdruzeni Jihoceske Matky v. Czech Republic* the Court stated: "In this instance, the applicant association asked to be able to consult administrative documents which were available to the authorities and to which access could be granted in the conditions provided for by section 133 of the Building Act, which was contested by the applicant association. In those circumstances, the Court accepts that the rejection of the said request amounted to interference in the applicant association's right to receive information." This approach was subsequently confirmed in *Társaság a Szabadságjogokért v. Hungary* (no. 37374/05, 14 April 2009), *Kenedi v. Hungary*, (no. 31475/05, 26 May 2009), *Youth Initiative for Human Rights v. Serbia* (no. 48135/06, 25 June 2013), and *Osterreichische Vereiningung zur Erhaltung, Stärkung und Schaffung*

v. Austria, no. 39534/07, 28 November 2013). The Court referred to the general role of the press and its right to receive and impart information, but no legal arguments were advanced as to why the *Leander* case-law should be abandoned. In consequence, we have a situation in which the jurisprudential line adopted in certain Chamber judgments is in contradiction with the Grand Chamber judgments.

4. Every time a question of interpretation of the Convention arises, it should be dealt in accordance with the established rules of treaty interpretation codified in the Vienna Convention of the Law of Treaties. This is not always an easy task. Without entering into the detailed analysis which would be necessary in the present case, I should like to address very briefly only a few points. The wording of the Convention seems clear. Article 10, paragraph 1, sentence 1 and 2, of the Convention states: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers." The verbs "receive" in English and "*recevoir*" in French imply that another person is willingly giving something. Moreover, the emphasis is placed on negative freedom, i.e. on freedom from interference, and there is no reference to any claim-right (positive right) to be provided with information held by public authorities. The provision under consideration therefore protects freedom to receive information that another person is disseminating or providing.

Furthermore, I see no arguments based on the context of the treaty (within the meaning of Article 30 of the Vienna Convention) which would justify another conclusion. The Council of Europe Convention on Access to Official Documents cannot be seen as an instrument related the Convention for the Protection of Human Rights and Fundamental Freedoms within the meaning of Article 31 § 2 of the Vienna Convention of the Law of Treaties. The adoption of the Council of Europe Convention on Access to Official Documents in 2009 merely confirms the literal interpretation of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, accepted in the *Leander* judgment and confirmed by a number of Grand Chamber judgments, referred to above. It should be noted that the High Contracting Parties did not opt for an additional protocol to the Convention on the matter and preferred not to entrust the Court with adjudication of the observance of the new engagements. Nor is there any evidence from the *travaux préparatoires* of the Convention for the Protection of Human Rights and Fundamental Freedoms that the High Contracting Parties wished to encompass in Article 10 the claim-right to be provided information held by public authorities.

The freedom to receive information without external interference as enshrined in the Convention should not be confused with the positive right to claim information from public authorities. Furthermore, a positive

obligation imposed on a State must have a clear legal basis in the relevant treaty and precise scope. In any event, I do not consider it justified in the present case to depart from the Grand Chamber's case-law.

5. The applicant complains, *inter alia*, about a violation of Article 6. Paragraph 58 of the judgment suggests that the main reason for finding a violation is a lack of clear rules concerning the enforcement of final judgments delivered by the administrative courts. I note in this respect that the enforcement of judgments is more of an issue under Article 6 (provided that this provision is applicable in a particular case) than under Article 10. There is no doubt that final domestic judgments remained unenforced in the present case and that such a situation is unacceptable in a democratic State ruled by law. In my view, however, the subjective right to information recognised in Bulgarian law is a public right. It is not a "civil right" within the meaning of Article 6 of the Convention.

For all the reasons exposed above, I consider that the application should be declared inadmissible *ratione materiae*. Thus, it is not justified to find a violation of Articles 10 and 13 or to award any compensation.

6. I note that the reasoning in the judgment is inconsistent on the following point. On one hand, the majority recognises in paragraph 35 that Article 10 cannot be read as guaranteeing general access to information. At the same time, no right of access to information, limited to certain specific domains, has been invoked in the instant case. On the other hand, a refusal by the authorities to provide information is considered to be an unjustified interference with Article 10. Yet a refusal to provide information can only be considered to be an interference with the rights guaranteed in Article 10 if the positive right to have information provided is accepted as an integral part of Article 10.

The majority seems to attach importance to the fact that the domestic law granted access to the information requested by the applicant and that her right was recognised by the domestic courts. In my view, the content of national legislation and of the judicial decisions rendered in the application thereof is irrelevant in answering the question whether there was interference with a right guaranteed by Article 10. The scope of the right protected by this provision does not depend on the content of national legislation. National legislation would only be relevant, assuming the applicability of Article 10 has been established, for assessing the lawfulness of an interference with the rights protected.

The majority also refers to the fact that the Government did not dispute the applicability of Article 10. In my view, this is not a valid argument. The question of a substantive provision's applicability has to be examined *ex officio* and the answer to it does not depend on the parties' choice of pleading strategy.

7. The majority expresses views which I find very problematic from the viewpoint of the fundamental values underlying the Convention. It stresses

that the applicant was an activist in a non-governmental organisation which was active in the area of animal defence and that her purpose was to inform the public. The emphasis placed on all of those elements unequivocally suggests that they are important for the assessment of the present case. If they were irrelevant, would it be necessary to emphasise them in paragraphs 36, 37, 52, 53 and 54? The majority thus implicitly differentiates between two categories of legal subjects: journalists and non-governmental organisations on one hand, and all other persons on the other. The first category enjoys stronger protection in respect of the right of access to information, whereas the second category does not enjoy the same protection. All this leads to an implicit recognition of two circles of legal subjects: a privileged elite with special rights to access information, and the "commoners", subjected to a general regime allowing more far-reaching restrictions.

The Court's case-law concerning the rights of journalists and of the press was developed in 1970s and 1980s in a specific social context. At that time the right to access public information was not widely recognised and the press enjoyed a quasi-monopoly in gathering and imparting information. The development of technology and especially the Internet has led to a completely different situation today. The quantity of available information and the way it circulates in society have changed substantially. The press has lost its quasi-monopoly on imparting information and access to public debate has been democratised. The role of the press has evolved and its influence has declined considerably. It is no exaggeration to say that today we, the citizens of European States, are all journalists. We (at least many of us) directly access different sources of information, collect or request information from public authorities, impart information to other persons and publicly comment on matters of public interest. We directly participate in public debate through various channels, mainly through the Internet. We are all social watchdogs who oversee the action of the public authorities. Democratic society is - *inter alia* - a community of social watchdogs. The old distinction between journalists and other citizens is now obsolete. In this context, the case-law hitherto on the functions of the press seems out of date in 2015 and should be adapted to the latest social developments.

I fully agree that the press still has an important role to fulfil in a democratic society and that the profession of journalist may require some special rules. I also agree that the role of non-governmental organisations is essential for democratic society and that their activity may require special regulations. However, special rules cannot pertain to the "extra-conventional" but nonetheless fundamental right of access to information. *Vis-à-vis* this right, all citizens should be equal. I do not see why the two groups singled out by the majority should enjoy better-protected access to information. Access to information should not depend on the status of the person requesting information. Assuming that

the claim-right to information is protected under Article 10, the distinction made in the reasoning is incompatible with the prohibition of discrimination enshrined in Article 14 of the Convention.

The majority also refers to "the gathering of information with a view to its subsequent provision to the public" (paragraph 40) when justifying the applicability of Article 10, and notes further that "the purpose for which the applicant had sought the information was to inform the public" (paragraph 54). It is stressed that "[t]he applicant was involved in the legitimate gathering of information of public interest for the purpose of contributing to public debate" (paragraph 54). It is difficult to understand why the motivation of the applicant is considered so important in the instant case. Would the outcome have been different had her motives been different? In my view, it is irrelevant whether someone needs information for any selfish purpose or in order to participate in public debate with a view to promoting the common good. Furthermore, the emphasis on the applicant's motivation (to inform the public), taken in conjunction with the focus on the special role of the press and of non-governmental organisations (in informing the public) rather than on the public's *direct* access to the sources of information, gives an impression of preference for indirect access of citizens to information (through the press and non-governmental organisations), which inevitably brings with it the inherent risk of distortion and filtering of information.

8. In conclusion, I am not persuaded that filling lacunae in the protection of the democratic rule of law by way of an over-extensive interpretation of the Convention is the most effective strategy for ensuring the protection of human rights and promoting democracy. Such an approach exacerbates the "democracy deficit" in Europe, limits the effectiveness of the political rights protected by Article 3 of Protocol No. 1 and diminishes legal certainty. Thus, the achievements made on some fronts do not necessarily compensate for the substantial losses incurred on others.