

AUT-2021-1-001

a) Austria / b) [Constitutional Court](#) / c) / d) 04-03-2021 / e) E 4037/2020 / f) / g) ECLI:AT:VFGH:2021:E4037.2020 / h) CODICES ([German](#)).

Keywords of the systematic thesaurus:

- [03.17](#) General Principles - Weighing of interests.
- [05.03.24](#) Fundamental Rights - Civil and political rights - Right to information.
- [05.03.32](#) Fundamental Rights - Civil and political rights - Right to private life.
- [05.03.32.01](#) Fundamental Rights - Civil and political rights - Right to private life - Protection of personal data.

Keywords of the alphabetical index:

[Journalist](#), public watchdog / [Journalists](#), [access to information](#) / [Information](#), [access](#) / [Legitimate interest](#) / [Member of Parliament](#), public office, private life.

Headnotes:

[Article 10.1 ECHR](#) may, under certain conditions, justify a right of access to information in individual cases. The rejection of a journalist's request for information about continued salary payments to former members of the National Council violates the journalist's right of access to information. Such continued payments cannot be viewed separately from the former mandate; therefore, there is an important public interest in these payments, which outweighs that of the former members of the National Council in the non-disclosure of information.

Summary:

I. Under the Access to Information Act (*Auskunftspflichtgesetz*), federal bodies must provide information on matters within their sphere of activity, provided that no legal confidentiality obligation precludes them from doing so. Anyone can submit requests for information.

The applicant is a journalist. In this capacity, he submitted a request for information to the Parliamentary Administration, asking which members of the National Council in 2017, 2018 and 2019 made use of continued salary payments after the end of their mandate, and for how long. The President of the National Council rejected that request, referring to the right to data protection of the persons concerned.

The applicant filed a constitutional complaint, alleging a violation of the right to freedom of expression. He claimed, in particular, that the refusal to provide information was not necessary in a democratic society within the meaning of [Article 10 ECHR](#) and was therefore disproportionate.

II. The Constitutional Court pointed out that [Article 10.1 ECHR](#) does not create a general obligation of the state to provide information or to grant access to information. However,

under certain conditions, there may be a right of access to information in individual cases. Those conditions were met in the present case: the applicant submitted his request for information in the context of journalistic research and acted in his function as a "public watchdog". The requested information aimed at the existence and duration of claims for continued payments by former members of the National Council. It served the interest in transparency of political actors and, consequently, was suitable for contributing to a matter of public interest. Furthermore, according to the Court, it was not evident that the requested information was not ready and available. The request for information was therefore covered by the scope of protection of [Article 10.1 ECHR](#). Rejecting the request thus interfered with the applicant's right to freedom of expression.

The Constitutional Court held that according to § 1.1 of the Access to Information Act, federal bodies must provide information on matters within their sphere of activity, unless this is contrary to a legal obligation of confidentiality. Since such information may concern personal data, the provision constituted an interference with the right to data protection according to § 1.1 of the Data Protection Act. At the same time, the provision also constituted an interference with [Article 10.1 ECHR](#) because the part of the provision setting out that information shall be denied in the event of a conflicting duty of confidentiality also affects cases in which there is a right of access to information according to [Article 10 ECHR](#) – such as the present one.

According to the Court, such interference with those two fundamental rights caused by § 1.1 of the Access to Information Act pursues a legitimate aim within the meaning of both [Article 10.2 ECHR](#) and § 1.2 of the Data Protection Act in conjunction with [Article 8.2 ECHR](#): it serves to protect the respective opposite fundamental right. § 1.1 of the Access to Information Act enables the necessary balancing of interests between the two fundamental rights. The Court continued that the information requested included the names of former members of the National Council who had made use of the continued payment of salaries, and the duration of such payment; thus, it concerned personal data within the meaning of § 1.1 of the Data Protection Act.

The Constitutional Court observed that there is an important public interest in the activities of members of the National Council and thus also in knowing their salaries. The continued payment of salaries requires the termination of the term of office at the National Council and the non-existence of gainful employment; hence, it is also linked to private circumstances. However, the payment is a continuation of the members' remuneration and can therefore not be viewed separately from the (former) National Council mandates. As a result, there is – in the same way as with regard to the remuneration of acting members of the National Council – an important public interest in knowing such continued payments.

The Constitutional Court concluded that for the reasons set out above, the applicant's interest in information under [Article 10.1 ECHR](#) outweighed the conflicting interest in confidentiality of the former members of the National Council in accordance with Article 1.1 Data Protection Act. The refusal to provide the requested information thus represented a disproportionate interference with the applicant's right to information guaranteed by [Article 10.1 ECHR](#).

Cross-references:

European Court of Human Rights:

- *Guerra v. Italy*, no. 14967/89, 19.02.1998;

- *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forstwirtschaftlichen Grundbesitzes v. Austria*, no. 39534/07, 28.11.2013;

- *Magyar Helsinki Bizottság v. Hungary*, no. 18030/11, 08.11.2016;

- *Szurovecz v. Hungary*, no. 15428/16, 08.10.2019.

Languages:

German.