

Establishing The Right to Information as a Basic Human Right

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Abstract

The free and open information is essential for a democratic society to thrive and maintain a constant debate and discussion among its citizens. We have a right to know what officials, wielding state powers, do with their entrusted authority and how state funds are spent. Without such information, there will be no transparency, accountability, or opportunities for citizens to participate in the democratic process. This paper attempts to explore how the right to information can be defined as a basic human right-basing such perspective on the more particular and internationally recognized human right to freedom of speech.

Keywords: Human Rights, Right to Information, Corruption, Public Offices, Constitution, Democracy

Introduction

The right to information (or the freedom of information/access to information) is a fundamental right that underlies essence of a true democracy, good governance, poverty alleviation, and has a great practical value for almost all the issues relating to the human rights.¹ Human rights can only be realized in a democratic society where people are equipped with information and knowledge, are able to scrutinize the functioning of their government, and are capable of meaningful participation in community governance.² However, as aptly put forth by Justice Bhagwati, “No democratic can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only when people know how Government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy.”³ Any country can evolve as a robust society of informed citizenry by making maximum disclosure of information in the public domain a rule and secrecy an exception.

In recent years, there has been an almost unstoppable worldwide movement toward states, international organizations, civil society, and the general public recognizing the right of access to government information. The right to information has been recognized as a basic human right that protects all people’s inherent dignity.⁴

1 Debashish Sankhari, Right to Information as a Human Right and Developments in India. Presentation at Sarai, Commonwealth Human Rights Initiative, p. 2. Available at: <https://bit.ly/3xRMZNp> (Last accessed on: 20/02/2022).

2 Ibid.

3 S.P. Gupta v. President of India, AIR 1982 SC 149, 1981 supp (1) SCC 87, 1982 2 SCR 365, para 63.

4 Dr. Sweety Phogat, Right to Information A Tool for Good Governance, International Journal of Creative Research Thoughts (IJCRT), p. 590.

In its very first session in 1946, the UN General Assembly adopted Resolution 59(I), stating, “Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.”⁵ The then UN Special Rapporteur on Freedom of Opinion and Expression, elaborated on this in his 1995 Report to the UN Commission on Human Rights, stating:

“Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked.”⁶

Such is the appeal of information as a basic human right that from the year 2016 UNESCO (a UN specialist agency) has marked the 28th of September as the “International Day for Universal Access to Information” (IDUAI). On 17 November 2015, UNESCO adopted a resolution (38 C/70) declaring 28 September of every year as IDUAI.⁷ This day honors a Fundamental Human Right: Access to Information. It is intertwined with the right to information, which is an essential component of the right to freedom of expression as well as the corollary right to media freedom.⁸

“The international human rights law has been slow to recognize a right to information, international human rights, however, bodies such as the UN Human Rights Committee, the European Court of Human Rights, the Inter-American Court of Human Rights, and the European Committee on Social Rights, have now accepted the existence of a right to information in certain circumstances. This has mostly happened in the context of securing other rights, including civil, political, economic, and social rights.”⁹ It must be

noted that the International human rights instruments did not explicitly guarantee the right to information until the Council of Europe approved the *Convention on Access to Official Documents* in 2009.¹⁰

In this paper, I shall mainly endeavor to demonstrate how ‘right to information’ is a basic/fundamental human right. I intend to ground the arguments for such relation on more specific and internationally recognized human right to ‘freedom of expression’.

The Right to Information as a Fundamental Human Rights: An Analytical Overview

The ‘right to freedom of expression’ is perhaps the most widely acknowledged rights that have been relied on as the foundation for a ‘right to information.’ This right is protected by almost every international human rights convention.¹¹ The European Court of Human Rights has held that “freedom of expression constitutes one of the essential foundations of [democratic] society, one of the basic conditions for its progress and for the development of every man.”¹²

“The international human rights treaties most often recognize the rights to information within the framework of right to freedom of expression, although, they have at times-based recognition of this right on other rights, such as, the rights to respect for private life; the right to a fair trial; the right to life, social and economic rights, and other

International Human Rights Law, Human Rights Law Review, 2013, pp. 25-55, p. 28.

10 The Council of Europe Convention on Access to Official Documents, usually known as the Tromsø Convention, was signed on 18 June 2009 in the Norwegian city of Tromsø. It entered into force on 1 December 2020 after it had been ratified by Ukraine on 20 May 2020. Available at: <https://rm.coe.int/1680084814> (Last accessed on: 20/02/2022).

11 Article 19 International Covenant on Civil and Political Rights 1966, 999 UNTS 171 (ICCPR); Article 13 American Convention on Human Rights 1969, 1144 UNTS 123 (ACHR); Article 10 European Convention on Human Rights and Fundamental Freedoms 1950, ETS 5 (ECHR); and Article 9 African Charter on Human and Peoples’ Rights 1981, OAU CAB/LEG/67/3rev.5; 1520 UNTS 217; 21 ILM 58 (1982).

12 *Handyside v. the United Kingdom*, (Application no. 5493/72), para 49, 7 December 1976.

5 Toby Mendel, Freedom of Information as an Internationally Protected Human Right, at p.1. Available at: <https://bit.ly/3qwTB0Y> (Last accessed on: 20/02/2022).

6 UN Doc. E/CN.4/1995/32, para. 35.

7 International Day for the Universal Access to Information, UNESCO. Available at: <https://en.unesco.org/iduai2016> (Last accessed on: 20/02/2022).

8 Access to Information: A Universal and Human right! #AccessToInfoDay, Organization of Security and Co-operation in Europe. Available at: <https://bit.ly/3dmu3hP> (Last accessed on: 20/02/2022).

9 Maeve McDonagh, The Right to Information in <http://www.shanlaxjournals.com>

rights to information as well.”¹³ The argument for incorporating a right to information under the umbrella of freedom of expression is based on the fact that access to information is a prerequisite for fully exercising the right to freedom of expression.¹⁴ Indeed, without adequate information, a person cannot form an informed opinion.

At the International Level

In international human rights initiatives and documentation, freedom of expression and freedom of information have long been connected. The UN Special Rapporteur on Freedom of Opinion and Freedom of Expression have recommended for the inclusion of a right to information within the scope of the right to freedom of expression in the International Covenant on Civil and Political Rights (ICCPR).¹⁵ Judge Bell of the Victorian Civil and Administrative Tribunal stated, “Freedom of information is in the blood that runs through the veins of freedom of expression.”¹⁶ The right to seek, receive, and impart information, as stated in Article 19,¹⁷ imposes a ‘positive responsibility on states to ensure access to information, particularly information held by governments,’ according to

the 1998 report.¹⁸ Subsequent, Special Rapporteur findings have supported the notion that Article 19 of the ICCPR includes a right of access to information. For example, the Special Rapporteur’s 2005 Report said:¹⁹

“Although international standards establish only a general right to freedom of information, the right of access to information, especially information held by public bodies, is easily deduced from the expression ‘to seek [and] receive . . . information’ as contained in articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.”

In 2004, the Special Rapporteur, together with the Special Rapporteurs on Freedom of Expression of the Organization of American States and the Organization for Security and Cooperation in Europe (OSCE), issued a joint declaration recognizing the ‘right to access as a basic human right based on the principle of maximum disclosure.’²⁰ The Special Rapporteurs emphasized the fundamental importance of access to information to ensure democratic participation, accountability in government and to control corruption.²¹ Also, in 2010 UNESCO commemorated World Press Freedom Day by issuing the *Brisbane Declaration on Access to Information*. The Declaration urged national governments to pass access to information legislation based on international standards and the concept of ‘maximum disclosure’ if they had not already done so.²²

¹⁸ Report of the Special Rapporteur, Promotion and protection of the right to freedom of opinion and expression, UN Doc. E/CN.4/1998/40, 28 January 1998, para. 14.

¹⁹ Report of the UN Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, E/CN.4/20.05/64, 2005, para 39. See also Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/11/4, 2009, para 60.

²⁰ Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 6 December 2004. Available at: <https://bit.ly/3zZdkuR> (Last accessed on: 20/02/2022).

²¹ Ibid.

²² UNESCO, Brisbane Declaration: Freedom of

¹³ See supra note 9, p. 14.

¹⁴ See generally, Beatson and Cripps (eds), *Freedom of Expression and Freedom of Information: Essays in Honour of Sir David Williams* (Oxford: Oxford University Press, 2000).

¹⁵ See, supra, note 6.

¹⁶ *XYZ v Victoria Police* [2010] VCAT 255 (16 March 2010).

¹⁷ Article 19 of ICCPR states that:

1. Everyone shall have the right to hold opinions without interference. 2.

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with its special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals.

In 2011, the United Nations Human Rights Committee, in a highly significant development, issued a revised General Comment on Article 19 of the ICCPR,²³ which, unlike its predecessor,²⁴ explicitly recognized that ‘Article 19 included a general right of access to information held by government bodies.’

The criteria essential to give effect to the right of access to information protected under Article 19 of the ICCPR are outlined in General Comment No 34.²⁵ Parties to the Covenant shall both proactively disclose government information of public interest and ‘enact the appropriate mechanisms, such as through freedom of information laws, whereby one may acquire access to information’²⁶

In the year 2013, Special Rapporteur reports to the Human Rights Council (HRC) and the General Assembly (GA) prepared a report on the promotion and protection of the right to freedom of opinion and expression, particularly, in the context of the “right to access information.”²⁷ The report while referring to Article 10 of the United Nations Convention against Corruption (General Assembly resolution 58/4, annex) submitted that:

“Obstacles to access to information can undermine the enjoyment of both civil and political rights, in addition to economic, social and cultural rights. Core requirements for democratic governance, such as transparency, the accountability of public authorities or the promotion of participatory decision-making processes, are practically unattainable without

adequate access to information. Combating and responding to corruption, for example, require the adoption of procedures and regulations that allow members of the public to obtain information on the organization, functioning and decision-making processes of its public administration.”²⁸

At the Regional Level

Article 9 of the African *Charter on Human and People’s Rights*, 1981 states that:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

The African Commission on Human and Peoples’ Rights, meeting at its 32nd Ordinary Session, in Banjul, The Gambia, from 17th to 23rd October 2002, it was stated that “public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information.”²⁹ Part IV of the African Declaration of Principles on Freedom of Expression specifically addresses the right to information,³⁰ and while it is not legally enforceable, it has great persuasive power since it represents the desire of a significant portion of the African community.

Similarly, Article 13(1) of the *American Convention on Human Rights*, 1969 states that: “Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”³¹

Information, The Right to Know, 3 May 2010. Available at: <https://bit.ly/3w2QdvY> (Last accessed on: 20/02/2022).

23 Human Rights Committee, General Comment No 34: Freedoms of opinion and expression (art. 19), 12 September 2011, CCPR/C/GC/34; 19 IHRR 303 (2012).

24 UN Human Rights Committee, General Comment No 10: Freedom of expression (art. 19), 29 June 1983, HRI/GEN/1/Rev.1; 1-2 IHRR 9 (1994).

25 Human Rights Committee, 102nd session, Geneva, 11-29 July 2011. Available at: <https://bit.ly/3h6l5GE> (Last accessed on: 20/02/2022).

26 Ibid, p. 5.

27 United Nations, General Assembly, Promotion and protection of the right to freedom of opinion and expression, 4 September 2013. Available at: <https://undocs.org/A/68/362> (Last accessed on: 20/02/2022).

28 Ibid. para 3.

29 62 Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa - ACHPR/Res.62(XXXII)02. IV Freedom of Information. Available at: <https://bit.ly/3dMrUfP> (Last accessed on: 20/02/2022).

30 Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples’ Rights, 32nd Session, 17 – 23 October, 2002: Banjul, The Gambia. Available at: <https://bit.ly/2VfX4G1> (Last accessed on: 20/02/2022).

31 American Convention on Human Rights: “Pact of San José, Costa Rica”. Signed at San José, Costa Rica, on 22 November 1969. Available at: <https://bit.ly/3ywThm1> (Last accessed on: 20/02/2022).

“Access to information held by the state is a fundamental right of every individual. States have obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” according to paragraphs 2 and 3 of the Inter-American Declaration of Principles on Freedom of Expression, adopted in 2000.³² The Inter-American Commission on Human Rights approved the Declaration in October 2000.

The Organization of American States (OAS) General Assembly adopted a resolution on “Access to Public Information: Strengthening Democracy”³³ on June 10, 2003. In August 2003, the Permanent Council instructed the submit proposals to the Council for implementing paragraph 5 of the June 10, 2003 OAS Special Rapporteur on Freedom of Expression Resolution, which directs the Permanent Council “to promote seminars and forums designed to foster, disseminate, and exchange experiences and knowledge about access to information so as to contribute, through efforts by the member states, to fully implementing such access.”³⁴ As a result, the Special Rapporteur issued two reports: the First Report on Access to Information, which was considered by the Permanent Council on September 10th, and the Second Report on Access to Information, which was discussed by the Permanent Council on December 17th, 2003. The Chair of the General Committee on the Reports of the Special Rapporteur on Freedom of Expression issued a report on February 9, 2004. The OAS Rapporteur for Freedom of Expression’s 2003 Annual Report explicitly addresses access to information throughout the hemisphere in Chapter IV.³⁵

Likewise, *European Convention for the Protection of Human Rights and Fundamental*

32 OAS, Declaration of Principles on Freedom of Expression, Principle no.4. Available at: <https://bit.ly/3ArFKh0> (Last accessed on: 20/02/2022).

33 Department of International Legal Affairs, AG/RES. 1932 (XXXIII-O/03), Access to Public Information: Strengthening Democracy. Available at: <https://bit.ly/3hA3QxJ> (Last accessed on: 20/02/2022).

34 Ibid.

35 OAS, 9 - Annexes (Annual Report 2003). Available at: <https://bit.ly/2SS2INC> (Last accessed on: 20/02/2022).

*Freedoms, 1950*³⁶ states the commitment to freedom of speech and expression its Article 10. Also, Article 11(1) of the European Union’s Charter of Fundamental Rights from 2000 expressly guarantees the right to receive and impart information and ideas without interference from public authorities and regardless of frontiers.

The Maastricht Treaty of 1992 included a declaration (No. 17) on “the right to information,” recommending that the European Commission prepare a report on “measures designed to improve public access to the information available to the institutions.”³⁷ The Commission and the Council adopted a code of conduct based on the declaration, outlining the criteria under which access to information held by these institutions might be sought. The code of conduct was then put into effect by a Council decision in 1993 and a Commission decision in 1994, both of which were in effect until recently.

The Amsterdam Treaty (1997)³⁸ went a step further by providing a right of access to documents in the newly added Article 255 European Community (EC) Treaty, which was subject to additional rules set forth in secondary EC law. This supplementary legislation had to be adopted within two years of the

36 Article 10 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. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises...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 the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

37 Treaty on European Union — Declaration No 17 on the right of access to information (Maastricht, 7 February 1992) Available at: <https://bit.ly/3qN1HTE> (Last accessed on: 20/02/2022).

38 The Treaty of Amsterdam. Available at: <https://bit.ly/3hACWpy> (Last accessed on: 20/02/2022).

Treaty of Amsterdam coming into force, according to Article 255. The Treaty entered into force in 1999, and the Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents was passed in 2001.³⁹ It applies to all documents held by an institution, that is, materials written up or received by it and in its custody, in all areas of European Union activity.⁴⁰ Both the European Union Commission and the European Parliament are required by the Regulation to create public online document registers and to guarantee that references to all documents in the register are provided as soon as they are generated.⁴¹ The European Ombudsman issued a Code of Good Administrative Behavior in 2002,⁴² which applies to all EU institutions. Officials are obligated to “provide members of the public with the information that they seek” under Article 22 of the Code on Access to Information, and if they are unable to do so, they must state the reasons for non-disclosure. Officials are enjoined under the Code to respond to requests promptly and to take appropriate measures to inform the public about their rights under it.

Despite these advancements in the right to information, international human rights courts and monitoring bodies have been hesitant to interpret the right to freedom of speech as including a right to information for many years. Recent developments, on the other hand, show a willingness to move toward acceptance of this right, at least in specific circumstances.

Case Analysis of International Human Rights Courts and Monitoring Bodies Human Rights Committee

In the case of *Gauthier v Canada*,⁴³ the United Nations Human Rights Committee (HRC) stated in 1999 that Article 19, when read in conjunction with Article 25 (the right to take part in the conduct of public affairs), “implies that citizens, particularly through the media, shall have wide access to information and the opportunity to disseminate information and opinions about the activities of elected bodies and their members.” The issue in this case was access to press facilities in the Canadian parliament by the applicant journalist, rather than access to information in general in itself.

In terms of the acknowledgment of a right to information, the Human Rights Committee’s admission judgement in *S.B. v Kyrgyzstan*⁴⁴ from 2009, was less encouraging. The applicant was a human rights activist who had requested information concerning the pronouncing of death sentences in Kyrgyzstan. The applicant, according to the HRC, had not stated “why exactly he, personally, wanted the information in issue,” and had just claimed that it was a matter of ‘public interest.’ In light of these facts, and ‘in the absence of any other significant information,’ the Committee concluded that the complaint constituted an *actio popularis* and as such was inadmissible.

With the ruling of the Human Rights Committee in another Kyrgyzstan case, *Toktakunov v Kyrgyzstan*⁴⁵ in 2011, the attitude of the Committee changed back in favour of the right to information. The facts of *Toktakunov v Kyrgyzstan* are similar to those of *S.B. v Kyrgyzstan*. The applicant’s Article 19 rights had been infringed by the Kyrgyzstan authorities’ reluctance to furnish him with statistics on the imposition of death sentences in that country, according to the Committee. On the question of admissibility, the Committee observed that the requested information had been considered to be of *public interest* in a number of UN documents, each of which *Kyrgyzstan* had either signed or accepted.

43 *Gauthier v Canada* (633/1995), Merits, CCPR/C/65/D/633/1995 (1999), para 13.4.

44 (1877/2009), Merits, CCPR/C/96/D/1877/2009 (2009), para 4.2.

45 (1470/2007), Merits, CCPR/C/101/D/1470/2007 (2011); 18 IHRR 1039 (2011).

39 Regulation (EC) No 1049/2001 of the European Parliament and of The Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. Available at: <https://bit.ly/3hHROCB> (Last accessed on: 20/02/2022).

40 Ibid.

41 Ibid. para 14.

42 The European Code of Good Administrative Behavior, European Ombudsman. Available at: <https://bit.ly/3qP5dga> (Last accessed on: 20/02/2022).

The Committee went on to clarify that Article 19(2)'s reference to the right to "seek" and "receive" information includes the right of individuals to obtain State-held information, subject to the Covenant's exceptions. The Committee observed that 'information should be supplied without the requirement to establish direct interest or personal involvement in order to access it, save in cases where a legitimate restriction is applied,' which is a significant divergence from its approach in the case of *S.B.* The Committee attempted to separate the position in *Toktakunov* from that in *S.B.* by pointing out that the complainant in *Toktakunov* was a legal consultant for a public human rights organization and 'as a result, he can be identified as having particular "watchdog" functions on public-interest issues.'⁴⁶

This distinction is difficult to maintain, given that *S.B.* was a human rights activist who, like *Toktakunov*, sought access to information on death sentences. The Committee determined that the complainant was personally harmed by the authorities' reluctance to make the information available to him as an individual member of the public, and that the application was therefore admissible.⁴⁷

In terms of the case's merits, the Committee, after noting that the right to information encompasses a right for the media to have access to information on public affairs as well as a right for the general public to receive media output, concluded that public organizations or private persons performing 'watchdog' functions on issues of genuine public concern are entitled to almost the same protection as afforded to the press in terms of access to government-held information.

The Committee noted that providing information to an individual allows it to circulate in society, allowing others to become acquainted with, access, and evaluate it, and went on to say: 'In this way, the right to freedom of thought and expression includes the protection of the right of access to State-held information...' The Committee concluded that the State party has a duty under Article 19(3) of the Covenant to either supply the author with the sought information or to justify any restrictions on the author's right to obtain State-held information.⁴⁸

46 Ibid. para 6.3.

47 Ibid. para 6.5.

48 Interestingly this decision was not referred to by

Regional Level: Inter-American Court of Human Rights & European Court of Human Rights

At the regional level, in 2006, the Inter-American Court of Human Rights handed down its decision in *Claude Reyes v Chile*,⁴⁹ and later extended the scope of the right to freedom of expression in *Gomes Lund v Brazil*,⁵⁰ marking an important turning point in the international development of the right to access to information.

However, the road to the European Court of Human Rights' (ECtHR) recognition of a right to information as a constituent of the right to freedom of speech has been long and winding. In the instances of *Leander v Sweden*,⁵¹ *Gaskin v United Kingdom*,⁵² and *Guerra v Italy*,⁵³ the ECtHR was initially hesitant to apply it to individuals who sought information. However later, in *Ozgur Gundem v Turkey*,⁵⁴ the European Court of Human Rights clearly established that positive obligations can arise from the right to freedom of expression as set out in Article 10, holding that genuine effective exercise of the right to freedom of expression 'does not depend exclusively on the State's duty not to interfere, but may require positive measures of protection.' As a result, it's possible that Article 10 might be construed to include a positive right to public access to information.

Following the Inter-American Court of Human Rights' ruling in *Claude Reyes v Chile* in 2006,

the Human Rights Committee in explaining the basis of its finding in General Comment No 34 that Article 19 includes a right to information. This may have been down to a question of timing. While the General Comment was formally adopted in September 2011, a number of months after the Human Rights Committee had handed down its decision in *Toktakunov*, it is likely that much of the contents of the General Comment had been agreed well in advance of that date.

49 19/2007, IACtHR Series C 151 (2007);16 IHRR 863 (2009). The Court also found a violation of Article 8 ACHR

50 24/2010 IACtHR Series C 219 (2010).

51 A 116 (1987); 9 EHRR 433.

52 A 160 (1990); 12 EHRR 36.

53 1998-I; 26 EHRR 357.

54 31 EHRR 1082. The Turkish Government was found to be under a positive obligation to take investigative and protective measures where the 'pro-PKK' newspaper and its journalists and staff had been victim to a campaign of violence and intimidation.

there was a noticeable shift in the ECtHR's attitude to the issue of access to information. The European Court of Human Rights' admissibility judgement in *Sdruzeni Jihoceske Matky v Czech Republic*⁵⁵ was the first indication of a shift in attitude. The Court acknowledges that the applicant's request for information was denied, therefore infringing on its right to information under Article 10. This decision was noteworthy in that it established that denying a request for access to information can be construed as a violation of Article 10.

In 2009, this decision was followed by the ECtHR's historic judgement in *Társaság a Szabadságjogokért v. Hungary*,⁵⁶ in which the ECtHR declared, for the first time, that denying access to information violated Article 10 of the European Convention on Human Rights (ECHR). Again, in *Kenedi v Hungary*,⁵⁷ a 2009 judgement of the ECtHR, the Court held that the State's denial of access to information amounted to an interference with the right to freedom of speech.

In 2012, the Grand Chamber of the ECtHR referred to the *Gillberg v Sweden*⁵⁸ of the Court, as having right to information 'in accordance with Article 10... as access to public documents concerned',⁵⁹ confirmed the Court's recognition of the right to information to persons who had requested access to research files maintained in a university.

In addition, the ECtHR noted in 2016 that, given the Internet's important role in enhancing the public's access to news and facilitating the dissemination of information, the function of bloggers and popular users of social media may be assimilated to that of "public watchdogs" in terms of the protection afforded by Article 10.⁶⁰ The Court considers that obstacles created in order to hinder access to information of public interest may discourage those working in the media or related fields from pursuing

55 Application No 19101/03, Admissibility, 10 July 2007.
56 Application No 37374/05, Merits, 14 April 2009.
57 Application No 31475/05, Merits, 14 May 2009.
58 Application No 41723/07, Merits, 3 April 2012.
59 Ibid. paras 93 and 94.
60 Magyar Helsinki Bizottság v. Hungary, Application no. 18030/11, para 168, 8 November 2016.

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such matters.⁶¹

However, the ECtHR believes that whether and to what extent a denial of access to information infringes on an applicant's right to freedom of expression must be determined in each case and in light of the circumstances, considering the relevant criteria outlined below, as illustrated by case law, in order to further define the scope of such rights.⁶²

1. The purpose of the information request
2. The nature of the information sought
3. The role of the applicant
4. The availability of the information

In dismissing a complaint regarding access to information as incompatible *ratione materiae* with the provisions of the Convention, on the grounds that one of the four criteria – namely "the purpose of the information request" – had not been met, the Court implicitly acknowledged that they are to be examined cumulatively.⁶³

Conclusion

As has been demonstrated from the analysis of various international and regional initiatives, one of the very basic human rights, i.e., the right to freedom of expression, has a strong bearing on the right to information. Furthermore, from the case analysis of international human rights courts and other monitoring bodies, it has also been brought to light how gradually the right to information is taking very strong roots in the international and domestic jurisprudence of almost all democratic states. The significance of the right to information as a basic human right is indeed a powerful instrument that supplements the notion of checks and balances, promoting transparency and openness in the governing process and instilling a culture of increased accountability.

61 *Társaság a Szabadságjogokért v. Hungary*, Application no. 37374/05, Para 38, 14 April 2009; See also, *Shapovalov v. Ukraine*, Application no. 45835/05, para 68, 31 July 2012.

62 *Magyar Helsinki Bizottság v. Hungary*, Application no. 18030/11, para 157, 8 November 2016.

63 *Centre for Democracy and the Rule of Law v. Ukraine*, Application no. 75865/11, para 54-59., 3 March 2020.