ECHR awards 4,000 euros in damages for privacy violation

By James Michael

THE EUROPEAN COURT OF HUMAN RIGHTS (ECHR) recently ruled in favour of a UK individual who had been denied access to his public authority records.

The case of *MG v United Kingdom* has made it clear that individuals have rights of access to public authority records kept on them as children, and a right of appeal against refusals of such access to an independent arbiter, regardless of whether national data protection laws provide such a right. However, it has not yet been decided whether such a Human Rights Convention-based right extends to private sector records.

In this particular case, the ECHR ruled, in a decision announced on September 24th, that the refusal of access violated the individual's right to privacy, as protected by Article 8 of the ECHR. He had wanted access to all the records kept on him by local authority social services when he was a child in care during the 1960's.

The case is very similar to the 1989 case of *Gaskin v United Kingdom*. In this case, the Court also ruled that it was a violation of the right to privacy for a local authority to refuse subject access to records kept on the subject when they were in care, particularly when there was no right of appeal against the refusal to an independent arbiter (although Gaskin had gone, unsuccessfully, to the High Court and Court of Appeal before going to Strasbourg).

In the case of *MG v United Kingdom*, MG wanted the records because he believed that they might be relevant to his belief that he had been abused by his father, who died in 1980.

The Court distinguished the two cases involving records kept on children in care from the 1996 case of *Martin v United Kingdom*, where the Court found that it did not violate the right of privacy to refuse access to mental health records kept for a period of less than four years beginning when the applicant had been around nineteen years old.

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Although MG could have appealed against the refusal of access when the Data Protection Act 1998 went into effect in March 2000, he had not done so. Therefore, the violation of his right to privacy extended only from the date of his first request in 1995 to the entry into force of the 1998 Act. The ruling is a clear indication to public authorities in all countries covered by the European Convention on Human Rights to provide a right of appeal to an independent authority for refusals of access to personal records (at least to those on children in care). This right of appeal applies to records held before national data protection legislation provided such an appeal, and, in the United Kingdom, for records created before the Access to Personal Files Act 1987 came into force in April 1989.

MG asked for £15-19,000 in compensation for non-pecuniary (non-material) damages. The Court found that the emotional distress caused by the refusal of access and the absence of any appeal procedure was worth 4,000 euros (about £2,666). In making such a 'just satisfaction' award, the Court usually also makes an award for legal expenses incurred, but there was no such award in this case.

It is possible that MG's legal representatives did not make such a request, or that it was rejected without being reported, or that MG represented himself (although there is a reference to his 'legal representatives' writing to the local authority) or that he represented himself in Strasbourg and did not ask for such compensation. Gaskin had been awarded £5,000 for emotional distress and anxiety, and £11,000 (less 8,295 French francs already paid in legal aid) for legal costs and expenses.

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