

CDDH comments concerning Recommendation 2024 (2013) – “National security and access to information”

CDDH: 79th meeting – 26/29 November 2013 CDDH(2013)R79

1. The CDDH takes note with interest of this recommendation, notably its references to the Council of Europe Convention on access to official documents (CETS No. 205), which was drafted by the CDDH. The CDDH recalls that this Convention, as highlighted by its explanatory report, “is the first binding international legal instrument to recognise a general right of access to official documents held by public authorities..., which finds its origins in the 1950 European Convention on Human Rights.” The CDDH regrets that Convention 205 has not yet come into force (of the ten required ratifications, only six¹ have been made so far), and encourages other member States to examine the possibility of soon ratifying this instrument.
2. The CDDH recalls that the Council of Europe Convention on access to official documents constitutes a basic minimum framework governing access to information held by public authorities, and encourages member States to go beyond those measures provided for by the Convention.
3. The CDDH recalls that following the ‘review of Council of Europe Conventions’ exercise, the Committee of Ministers has given it responsibilities, within the limits of the available resources and bearing in mind its priorities, for promotion and awareness-raising in relation to this convention. These responsibilities would include to “draw the attention of member States to [Convention 205]” and to “encourage States to regularly examine the possibility and/or desirability of becoming a Party to [it]”.² The CDDH further notes the requirement that it report back to the Committee of Ministers on any activities in this connection.
4. The CDDH also draws attention to the European Court of Human Rights recent case-law affirming that “*The right to receive and impart information explicitly forms part of the right to freedom of expression under Article 10*”³. Moreover, European Union Regulation regarding public access to European Parliament, Council and Commission documents, also states that “In principle, all documents of the institutions should be accessible to the public”⁴, thus further evidencing a trend in favour of greater openness.

¹ Bosnia and Herzegovina, Hungary, Lithuania, Montenegro, Norway, and Sweden.

² See Decisions of the Ministers’ Deputies of 10 April 2013, reproduced in doc. CDDH(2013)019.

³ *Gillberg v Sweden* [Application no. 41723/06] 3 April 2012 [83]; *Youth Initiative for Human Rights v Serbia* [Application no. 48135/06] 25 June 2013 The European Court of Human Rights found that the refusal by the Serbian intelligence agency to provide a non-governmental organisation with information as to the use of electronic surveillance measures, despite a contrary order made by the Serbian Information Commissioner, was in violation of Article of the European Convention on Human Rights.

⁴ 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 [para (11)]

Recommendation

2024(2013)

Final

version

National security and access to information

Parliamentary Assembly

1. The Assembly refers to its [Resolution 1954 \(2013\)](#) on national security and access to information and invites the Committee of Ministers to:

1.1. examine ways and means to promote the entry into force and speedy implementation of the Council of Europe Convention on Access to Official Documents (CETS No. 205);

1.2. to review the Council of Europe's own policies regarding access to information and classification and declassification of documents in light of the Assembly's resolution;

1.3. encourage member States of the Council of Europe to take into account the "Global Principles on National Security and the Right to Information", adopted on 12 June 2013 by an assembly of experts from international organisations, civil society, academia and national security practitioners, in particular concerning the points highlighted in the above-mentioned resolution, in modernising their legislation and practice.