



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 10 November 1999
DH-S-AC(1999)008

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**GROUP OF SPECIALISTS ON ACCESS TO OFFICIAL
INFORMATION (DH-S-AC)**

4th meeting
5-8 October 1999

REPORT

Introduction

1. The Group of Specialists on access to official information (DH-S-AC) held its fourth meeting from 5-8 October 1999 at the Palais de l'Europe, Strasbourg, with Ms Helena JÄDERBLOM (Sweden) in the Chair.
2. The list of participants is set out in Appendix I. The agenda as adopted appears in Appendix II, with references to the working documents.
3. During this meeting the DH-S-AC in particular:
 - (i) further examined the basic elements ([DH-S-AC \(98\) 6](#), Appendix III) identified at the previous meetings (see item 2 of the agenda). The texts chosen as a basis for discussion at the next meeting appear in Appendix III to this report;
 - (ii) held an exchange of views on the contribution it might make to preparations for the next [European Ministerial Conference on Human Rights](#) (Rome, 3 and 4 November 2000) and drew the attention of [the CDDH](#) on a number of considerations on the subject. These considerations are set out in Appendix IV;
 - (iii) decided to ask the CDDH to authorise a four-day meeting in February 2000, instead of the three days initially planned, in order to hold a hearing of representatives of NGOs and other sectors concerned. The hearing would essentially cover the draft instrument being drawn up in the DH-S-AC (see paragraph 21);
 - (iv) decided to ask the CDDH to authorise it to hold a supplementary three-day meeting in May 2000 in order to progress with the execution of its own terms of reference, as well, if need be, to contribute to the drawing-up of the draft political text for the sub-theme 2 of the Ministerial Conference (see paragraph 28 below);
 - (v) brought to the CDDH's notice its intention to address, at its next meeting and in connection with the drawing up of the draft instrument, the questions posed by the Group of Specialists GT-DH-MAT concerning access to the law and justice of the very poor (see paragraph 16 below).

Item 1 of the agenda: Opening of the meeting and adoption of the agenda

4. See the introduction.

Item 2 of the agenda: *Tour de table* on recent developments in member States and in the European Union

5. A “*tour de table*” showed that in several member States draft bills on access to public information are being prepared or are at least under discussion (Bulgaria, Germany, the Netherlands, Norway, the Russian Federation, Sweden, Turkey, United Kingdom). Moreover, in two German *Länder* new bills entered into force recently and in Finland a new law will enter into force at the end of this year. Outside of Europe, the DH-S-AC took note of developments in Japan which were directed towards the achievement of a greater transparency of public administration.

6. Furthermore, general developments within the European Union were mentioned. It was pointed out that the Court of First Instance of the European Communities, on 19 July

1999, gave two judgements concerning the terms of reference of the DH-S-AC (*Heidi Hautala vs. Council of the European Union* (T-14/98) and *Rothmans International BV vs. Commission of the European Communities* (T-188/97)).

7. One expert mentioned that certain sectors in his country have a somewhat reluctant opinion concerning an “excess of the right to access to official information”, which could lead for instance to a request for a copy of a bill in order to show the public opinion how public funds are used for official dinners. Other experts think that in the society of their country there is a more positive attitude concerning such cases which can lead to a internal control of the administration.

Item 3 of the agenda: Further examination of the elements to provide a basis for discussion on the future work of the DH-S-AC

8. The DH-S-AC resumed examination of the elements which could provide a basis for discussion for its future work. It took as a departure point for discussion, the text appearing in Appendix III of the report of its last meeting ([DH-S-AC \(99\) 5](#)), as well as the proposals put forward by the Chairman when presenting this item of the agenda.

Terminology

9. The DH-S-AC decided to be more precise over what it means when a document is “held” by a public authority : this term covers both documents prepared by the authority and documents which it receives. The DH-S-AC will return to the question of harmonisation of terminology once it has completed its first examination of the draft instrument as a whole.

Scope of the instrument

The DH-S-AC reiterated its view that the instrument should concentrate on access to *documents*. However it recognises that there is also a problem concerning access to *information*. It decided to come back to this point at a later stage. Moreover, certain experts thought that the draft instrument should also cover the *obligation* of public authorities to supply documents on their own initiative.

The question of justification of a personal interest for access to documents

11. The DH-S-AC concluded that it is not necessary for an applicant for a document to specify any reason for having access to the document. The DH-S-AC noted that in certain countries the applicant may be anonymous.

A minimalistic approach to formalities required to register a request

12. In order to enhance access to documents, the DH-S-AC stressed that the formal requirements concerning requests for documents should be kept to a minimum.

Competent public authority to deal with a request

13. In order to accelerate as much as possible the reply to requests, the DH-S-AC felt that any public authority holding a document is competent to decide on the request for access concerning that document.

Attitude to be adopted by public administrations in the treatment of requests

14. The DH-S-AC stressed that, faced with requests emanating from all sorts of persons, including those incapable of formulating a request correctly, the administration must adopt, in principle, a double attitude of *service* towards any applicant, without discrimination, and in pursuit of *efficiency*. This attitude would translate, in particular, into rapidity in the treatment of requests and, in a willingness to co-operate with the applicant. Therefore:

- when it does not have the document for which it is being asked, the public authority should, whenever possible, guide the applicant towards the competent authority;
- public administrations should also show some understanding towards those requests which are not worded explicitly enough: whenever possible, it should help the applicant to set out his request more clearly.

15. This being said, the DH-S-AC nevertheless recognises that there may be requests which are manifestly unreasonable, and which, exceptionally, will not be treated. In other cases, there are restrictions or limitations in access (set out in principle 2 of the draft instrument which appears as Appendix III, such as certain national security/defence documents). In any case, the public authority which refuses access to a document must give the reasons on which this refusal is based, according to law.

16. The DH-S-AC withheld as a basis for discussion a certain number of principles which reflect these ideas. They appear in Appendix III. It felt that in drawing up these principles, to which they would return at their next meeting, it provides an initial reply to the request put forward by the CDDH at its 46th meeting (22 – 25 June 1999, [CDDH \(99\) 10](#), paragraph 50: request to examine, in particular, possible problems of access to official information for handicapped people or those persons in situation of extreme hardship (illiterate, homeless, etc.).

Forms of access

17. The DH-S-AC examined the following questions:

- if and how the public authority should take into account the preferences expressed by the applicant concerning the form of access. Certain experts stressed the need for a specific principle stating the right of access to the original document. Other experts preferred that this question be treated within the framework of the Explanatory Memorandum. Further existing possibilities are: supply of one copy of the document; possibility for the applicant to consult the document in the offices of the administration if the physical state of the document allows this; supply of a version with blank spaces in order to protect confidential information; or even supply, at the applicant's request, of a synthesis of the document.
- if and how access can be refused if the requested information is reasonably accessible by other means.

18. The DH-S-AC will come back to these questions at its next meeting.

Other issues

19. The DH-S-AC decided to examine, at its next meeting, the wording to be given to other principles that would need to be included in a draft instrument, to cover, in particular, the following questions:

- (i) the costs of the supply of requested information;

- (ii) the refusal of access/request for review of the refusing decision/appeals;
- (iii) “support system” to make the right to official information effective: Existence of a documentation service;
- (iv) possible practical solutions (special assistance offices, etc.) to assist persons in situation of extreme hardship (illiterate, homeless people, etc.) when trying to have access to official information;
- (v) registers (public, individual, confidential);
- (vi) time limits for the storage of documents;
- (vii) time limits for the destruction of documents.

Item 4 of the agenda: Organisation of a hearing with NGO representatives and other bodies concerned by the work of the DH-S-AC

20. The DH-S-AC discussed the possibility of holding, at its next meeting (February 2000) an exchange of views with representatives of various sectors concerned by its work. Whilst welcoming the idea in general, several experts pointed out the difficulties of the organisation of this hearing, taking into account the time-problem that the Group will be faced with in the year 2000 as well as its work overload. Whilst being aware of these difficulties, other experts thought that, given the present state of progress in the elaboration of the draft instrument, it would be advisable to organise the hearing for the next meeting. They considered it necessary to get the reactions of the sectors concerned early enough so that the DH-S-AC will be able to take them into account when drafting the instrument.

21. At the end of this debate, the DH-S-AC asked the CDDH to authorise an exceptional four-day meeting, which would allow the hearing to be held on the first day of the meeting, thus not using up any of the time needed for the drafting of the instrument. If the CDDH agreed to this proposal, the 5th meeting of the DH-S-AC would take place from 22 to 25 February 2000, instead of 23 to 25 as initially planned.

22. Subject to one extra day being granted for its next meeting, the DH-S-AC retained the idea of organising the hearing. It then held an exchange of views on (i) the subject of the hearing; (ii) the participants; and (iii) organisational arrangements.

(i) Theme

23. The participants would be asked to give their opinion on the ongoing work of the DH-S-AC. Together with the invitation letter, the Secretariat would send them the terms of reference of the DH-S-AC and the present report.

(ii) Participants

24. The DH-S-AC discussed possible organisations or individual persons to be invited, it being understood that the number of participants should not exceed seven or eight. The DH-S-AC took note that, in any case, the possibility of inviting these organisations would depend upon the necessary financial resources being granted by the CDDH. Subject to this, the DH-S-AC retained the names of the following persons and organisations: M. J. P. COSTA, French judge at the European Court of Human Rights, who is also an expert in the field of access to official information; M. J. SOEDERMAN (Finland), [former] European Ombudsman; M. E. L. DAALDER (the Netherlands), as a legal practitioner ; M. G. KEARNEY (Ireland), as a representative of education for public officials ; M. P. HORSMAN (the Netherlands), as a representative of the new information technologies; the International Federation of Journalists, representing the media field and Article XIX, as an NGO active on the matter.

(iii) *Practical arrangements*

25. The Secretariat, in co-operation with the Chairperson, will send out, if need be, a draft programme containing practical arrangements for the hearing, gaining inspiration from other hearings which have been arranged in the framework of the CDDH.

Item 5 of the agenda: Contribution of the DH-S-AC to the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000)

26. The DH-S-AC was informed that at its next meeting (November 1999), the CDDH would choose topics for the European Ministerial Conference on Human Rights (3-4 November 2000), which would mark the 50th anniversary of the [European Convention on Human Rights](#). The DH-S-AC took note that the topic which it had proposed was on the list that would be considered by the CDDH.

27. The DH-S-AC stressed the particular importance of ensuring that the draft instrument which it was preparing could be adopted at the Conference. However, it was aware of the fact that it had only two meetings before the end of its terms of reference and that it was hardly conceivable, in view of the complexity of the topic, that a final text could be produced in time for the Conference. The DH-S-AC would do everything in its power to achieve that goal. To this end, the DH-S-AC asks the CDDH to authorise an additional 3-day-meeting in 2000 in order to progress with the execution of its own terms of reference, as well, if need be, to contribute to the drawing-up of the draft political text for the second sub-item of the Ministerial Conference. If the CDDH agreed on this proposal, the 6th meeting of the DH-S-AC would take place from 24 to 26 May and the 7th meeting from 27 to 29 September 2000.

28. In any case, even if there was no formal draft instrument to submit to the ministers, the DH-S-AC reiterated the importance of retaining, as a Conference topic, the right of access to official information. These considerations, which are addressed to the CDDH, are set out in Appendix IV.

29. In the context of these considerations, the Dutch expert would like the member States to undertake political commitments in favour of the freedom of expression and information, not only by ensuring “the *transparency* of the public administration” and “the *right of the public to access* to official information” (see Appendix IV. Paragraph 1 (i), (ii)), but also to make *control* of public administration possible for the citizens. According to this expert, this idea could also be reflected in the preamble of the future instrument.

Item 6 of the agenda: Elections

30. The DH-S-AC noted that the terms of reference of its current Chairperson, Ms H JÄDERBLOM (Sweden), expire at the end of 1999. Pursuant to the relevant provisions of articles 17 and 18 of the Appendix to [Resolution \(76\) 3](#), it held elections. Its Chairperson was elected unanimously for another year, as from 1 January 2000. M. Yves GOUNIN (France) was also elected Vice-Chairman for one year, as from 1 January 2000.

Item 7 of the agenda: Other business

*a. Monitoring the honouring of commitments entered into by member States
Monitoring freedom of expression and information*

31. The DH-S-AC was mindful that the CDDH had asked it to review the rules and practices in the area of secrecy of and access to official information in the member States as

the CDDH's contribution to the monitoring exercise on freedom of expression and information. It pointed out that the CDDH, taking into consideration the Group's workload, had decided that the latter would give priority to pursuing the work which stemmed from its current terms of reference.

b. Opinion of the CDDH on the draft recommendation drawn up by the CC-Cult (CDCC) on a European policy on access to archives

32. The DH-S-AC took note of the fact that at its 46th meeting (June 1999), the CDDH had endorsed the draft opinion which the Group had drawn up concerning the draft recommendation, which was being prepared in the Culture Committee (CC-Cult), on a European policy on access to archives. The representative of the DH-S-AC within that committee, M. Yves GOUNIN (France), recalled that he had had the opportunity of orally presenting to the CC-Cult the ideas expressed in the opinion adopted by the CDDH in June 1999, and in particular the need to ensure good co-ordination – including co-ordination of their calendars – of their respective activities. For its part, the observers of the CC-Cult participating in the present meeting informed the meeting that the draft recommendation would be submitted, for opinion, to the European Committee on Legal Co-operation (CDCJ) in December 1999, and for possible adoption, to the Council for Cultural Co-operation (CDCC) in March 2000. If this calendar of events is respected, the Committee of Ministers should receive the draft recommendation at about the same time at which the DH-S-AC will be finalising its own work.

c. Request for Observer status set out by Article XIX

33. The Chairperson of the DH-S-AC had received a letter by *Article XIX* (International Centre against Censorship), an NGO based in London and active in the field of access to official information, asking for observer status within the Group. Mentioning the fact that *Article XIX* already had observer status within the Group of Specialists on Media Law and Human Rights (MM-S-HR) the Chairperson invited the members of the DH-S-AC to hold an exchange of views on the possibility of proposing to the CDDH to grant observer status.

34. Some experts were of the opinion that transparency is a fundamental principle which the DH-S-AC is trying to improve within national administrations. Therefore, it would only be logical if the Group would apply this principle itself and thus grant the observer status to *Article XIX*. Moreover, this could give a positive input to the work of the DH-S-AC. Without contesting this approach, others thought that this could slow down the work of the DH-S-AC which is under time pressure already, and that a positive answer could even attract further requests for observer status, which would certainly slow down the work of the Group.

35. Following this discussion, the DH-S-AC decided not to submit any proposal to the CDDH for further observers within the Group. This being said, it felt that it would be very useful to invite *Article XIX* to be represented at the hearing in February.

Item 8 of the agenda: **Dates of the next meetings**

36. Subject to the authorisation of the CDDH concerning the length of the next meeting of the Group, the DH-S-AC agreed on the following dates:

5th meeting: [Tuesday 22 (hearing)] – Friday 25 February 2000

[6th meeting: Wednesday 24 – Friday 26 May 2000]

[7th] meeting: Wednesday 27 – Friday 29 September 2000

37. The DH-S-AC took note of the fact that the CDDH was planning to hold its 48th meeting from 20 to 23 June 2000 and its 49th meeting from 3 to 6 October 2000. These latter dates being very close to those of the 6th meeting of the DH-S-AC, the Group drew the Steering Committee's attention to the fact that the report of the 6th meeting would be available in the room in which the CDDH met but that the Secretariat would not have sufficient time to send it to those CDDH experts who did not have e-mail. The DH-S-AC therefore proposed that the CDDH not take up consideration of the work of the Group until a later stage of the meeting so that all participants had a chance to study the report.

* * *

Appendix I**LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS**BULGARIA/BULGARIE

Mr Peter KOLAROV, Counsellor at the Human Rights Department, Ministry of Foreign Affairs, Alexandre Jendov 2, SOFIA

FRANCE

M. Yves GOUNIN, Maître des Requêtes au Conseil d'Etat, Commission d'accès aux documents officiels (CADA), 1 place du Palais Royal, 75001 PARIS

Mme Lydie LALUQUE, Chargée de mission auprès de la CADA, rue de Varenne, 75007 PARIS

GERMANY/ALLEMAGNE

Mr Ulrich SONDERMANN, Principal Administrator, Federal Ministry of the Interior, Alt Moabit 101D, 10559 BERLIN

NETHERLANDS/PAYS-BAS

Mr Gerard P.I.M. WUISMAN, Advisor to the Prime Minister, Ministry of General Affairs, Postbus 20001, NL-2500 EA THE HAGUE

NORWAY/NORVEGE

Ms Tonje MEINICH, Legal Adviser, Legislation Department, Ministry of Justice, Postbox 8005 Dep, N-0030 OSLO

POLAND/POLOGNE

Mr Andrzej KALINSKI, Legal Adviser, Ministry of Foreign Affairs, Al. Szucha 23, PL-00-950 WARSAW

RUSSIAN FEDERATION/FEDERATION DE RUSSIE

Mr Jassen ZASSOURSKY, Dean of the Faculty of Journalism, Ulitsa Mokhovaya 9, 103914 MOSCOW, Russian Federation

SWEDEN/SUEDE

Ms Helena JÄDERBLOM, Associate Judge of Appeal and Legal Adviser, Ministry of Justice, S-10333 STOCKHOLM (Sweden)

TURKEY/TURQUIE

Mr Aykut KILIÇ, Judge, Deputy Director General of International Law and Foreign Relations, Ministry of Justice, Adalet Bakanligi, 06659 ANKARA

UNITED KINGDOM/ROYAUME-UNI

Ms Emma-Louise AVERY, Policy Manager, Freedom of Information Unit, Room 912A, 50, Queen Anne's Gate, LONDON SW1 9AT

Mr Alan KING, Policy Worker, Freedom of Information Unit, Room 912, 50, Queen Anne's Gate, LONDON SW1 9AT

* * *

European Committee for Legal cooperation / Comité européen de coopération juridique (CDCJ)

Mr Pekka NURMI, Director General, Ministry of Justice, PL 1, 00131 HELSINKI (Finland)

M. Michel CAPCARRERE, Magistrat, Services du Premier Ministre, Commissaire du Gouvernement Adjoint auprès de la CNIL, 56 rue de Varenne, F-75700 PARIS

Steering Committee on Mass Media / Comité directeur sur les moyens de communication de masse (CDMM)

Council for Cultural Co-operation / Conseil de la coopération culturelle (CDCC)

Mr Patrick CADELL, Keeper of the Records of Scotland, International Council on Archives, H.M. General Register House, P.O. Box 36, GB - EDINBURGH EH1 3YY
(Apologised/excusé)

Mlle Elisabeth RABUT, Inspecteur Général des Archives (...)

* * *

European Commission / Commission européenne

M. Pierre BISCHOFF, Administrator, European Commission, Euroforum Building (Office 1/197), rue Alcide de Gasperi, L-2920 LUXEMBOURG

* * *

Secretariat/Secrétariat

M. Alfonso DE SALAS, Principal Administrator/Administrateur Principal, Secretary to the Group of Specialists/Secrétaire du Groupe de Spécialistes

Mr Philipp MITTELBERGER, Counsellor/Conseiller, Directorate of Human Rights/Direction des Droits de l'Homme

Mrs Katherine ANDERSON-SCHOLL, Administrative Assistant/Assistante administrative

Mme Michèle COGNARD, Administrative Assistant/Assistante administrative

Interpreters/Interprètes

Mr Jean SLAVIK

Mr Amath FAYE

Mr Christopher TYCZKA

* * *

Appendix II**AGENDA**

- 1. Opening of the meeting and adoption of the agenda**
- 2. *Tour de table* on recent developments in member States and in the European Union**
- 3. Further examination of the elements to provide a basis for discussion on the future work of the DH-S-AC**
 - Proposals which have not yet been discussed (as they appear in the report of the 3rd meeting of the DH-S-AC, 9-12 March 1999)
[DH-S-AC \(99\) 5](#), Appendix III
 - Elements already identified by the DH-S-AC (as they appear in the report of the 3rd meeting of the DH-S-AC, 9-12 March 1999)
DH-S-AC (99) 5, Appendix IV
 - Extracts of the reports of the 53rd meeting of the Bureau of the CDDH (30 April 1999) and of the 46th meeting of the CDDH (22-25 June 1999)
[DH-S-AC \(99\) 7](#)
 - Terms of reference of the Group of Specialists (as approved by the Ministers' Deputies at their 613th meeting, 18-19 and 23 December 1997)
[DH-S-AC \(98\) 1](#)
 - [Recommendation No R \(81\) 19](#) on the access to information held by public authorities
 - [Recommendation No R \(91\) 10](#) on the communication to third parties of personal data held by public bodies
- 4. Further examination of the elements to provide a basis for discussion on the future work of the DH-S-AC**
- 5. Organisation of a hearing with NGO Representative and other bodies concerned by the work of the DH-S-AC**
- 6. Contribution of the DH-S-AC to the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000)**
- 7. Elections**
- 8. Any Other Business**
- 9. Date of next meeting and organisation of forthcoming work**

* * *

Appendix III

**Elements identified by the DH-S-AC
at its 4th Meeting (5-8 October 1999)
as a basis for discussion
on its future work**

Introduction

This Appendix lists a number of elements, which emerged from discussions of the Group of Specialists on access to official information (DH-S-AC), during its first, second and third meetings (4-6 March 1998 and 21-23 October 1998, 9-12 March 1999).

For practical reasons, the elements are set out in the form of a draft recommendation. However, the DH-S-AC has not taken a position on the final legal form to be taken by the instrument that is in preparation. In particular, it has not ruled out the possibility of moving, at a later stage, towards drafting a binding instrument such as a convention. It is awaiting guidance from the CDDH on this point.

* * *

Preamble

[*A reference in the preamble shall be made to certain key legal instruments adopted by the Committee of Ministers in the field of information policy, namely: the Convention on the protection of individuals with regard to automatic procession of personal data of 28 January 1981 (ETS no 108); the Declaration on the freedom of expression and information adopted on the 29 April 1982; [Recommendation No. R \(81\) 19](#) on the access to information held by public authorities; [Recommendation No. R \(91\) 10](#) on the communication to third parties of personal data held by public bodies; [Recommendation No. R \(97\) 18](#) concerning the protection of personal data collected and processed for statistical purposes.]

i. Considering the importance in a pluralistic, democratic society of adequate information for the public on issues of common interest;

ii. [Considering that the public's right of access to official information should be analysed in human rights terms, particularly in the light of Articles 8 and 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law pertaining thereto];

[*A study of the relevant case-law concerning Articles 8 and 10 has to be made before deciding whether this text should be deleted or not.]

iii. Considering the importance of transparency in public administration;

iv. Considering that wide access to official documents, on a basis of equality and in accordance with clear rules:

- allows the public to have an adequate view of, and to form a critical opinion on, the state of the society in which they live and on the authorities that govern them, whilst encouraging responsible participation by the public in matters of common interest;
 - encourages internal control within administrations and helps maintain its integrity by avoiding the risk of corruption;
 - contributes to affirming the legitimacy of administrations as public services and to reinforcing citizens' confidence in public authorities;
- v. Considering therefore that the utmost endeavour should be made to ensure the fullest possible availability to the public, subject to the protection of other legitimate rights and interests, of documents;
- vi. Stressing that the principles set out hereafter constitute a minimum base, and that they should be understood without prejudice to domestic laws and regulations which already recognise a wider right of access to official documents;

Definitions

For the purposes of this recommendation:

- "public authorities" shall mean:

[*Concerning the definition of "public authorities" the group decided to consult other legal instruments of [the Council of Europe](#). The term will be further elaborated in the Explanatory memorandum.]

-
- i. national, regional or local administration;

[*It was decided to explore the concept of "governments", both in its political and administrative notion, in the Explanatory Memorandum.]

- ii. natural or legal persons performing public functions or public administrative functions insofar as they perform on this capacity or exercise administrative authority under national law; [unless excluded by national law]

[*It was decided to develop this principle further in the Explanatory Memorandum.]

- "official documents" shall mean all information recorded in any form, prepared or received by public authorities and linked to any public function, with the exception of documents under preparation;

[*The Explanatory Memorandum could indicate that:

Documents under preparation are being understood as being documents (drafts, proposals etc.) which were not yet approved definitely by the public authorities.

It has to be kept in mind that there are different traditions and practices in member States concerning the qualification of documents as "official documents". In principle, a document is "official" only after it has been finally approved. This being the case, there are certain

countries which declare documents as being official which have not been officially approved, such as draft proposals and regulations, with a view to notably associating the public opinion to the decision process.

Private letters and letters received by members of the administrations in their capacity as politicians are also excluded from the notion of "official documents" in the sense of this recommendation."]

Scope

This recommendation concerns only official documents held by public authorities as defined above. However, the member States should examine, in the light of their domestic law and practice, to what extent the principles of this recommendation could be applied to information held by legislative and judicial authorities.

[* The Explanatory Memorandum could indicate that the concept of "official information" (informations publiques) covers all recorded information held by the various public authorities. This means essentially documents in the broad sense: printed documents, computerised documents in a retrievable form, documents recorded on audio or video tape, etc. The documents may contain texts, images etc.]

Principle 1

The member States should guarantee the right of everyone to have access, on request, to official documents held by public authorities.

[* At this stage the DH-S-AC decided to limit the scope to documents that are requested. The group will further examine whether the scope shall be extended to cover also the individuals right to receive public information]

Principle 2

1. Member States may derogate from the right of access to official documents. Limitations or restrictions must be applied sparingly, set down precisely in the law, be necessary in a democratic society and be proportionate to the aim of providing protection on:

[*The DH-S-AC is working towards the preparation of an exhaustive list. For the moment, the following list of elements is intended to be provisional, as a basis for discussion.]

- i. national security, defence and international relations;
- ii. public safety
- iii. prevention, investigation and prosecution of criminal activities;
- iv. personal privacy and other legitimate private interests, in particular the protection of personal integrity;
- v. commercial and other economic interests, be they private or official;
- vi. equality of parties concerning court proceedings;
- vii. nature;
- viii. inspection, control and supervision by public authorities;
- ix. governmental economic, monetary and exchange rate policy;
- x. confidentiality of governmental deliberations (on local, regional or national level).

[The DH-S-AC decided to come back at a later date to this issue of state obligations following the receipt of documents entrusted to it confidentially.]

2. Access may be refused only if the disclosure of the document or of the information contained therein :

- i. risks harm to the interests mentioned in paragraph 1 and
- ii. if there is no public interest attached to the disclosure.

3. The evaluation of the risks and of the possible public interest has to be assessed at the time of the request.

Principle 3

[Unless exceptional cases demand otherwise, Member States should set maximum time limits for the restrictions mentioned in Principle 2.]

[*As regards the “exceptional cases” mentioned in Principle 3, the Explanatory Memorandum could indicate that the Group preferred to limit itself to mention the practice of certain member States: Thus, in the Netherlands, all the documents have to be accessible after twenty years, the only possible exceptions being in the protection of privacy and the national interest.]

[*The Explanatory Memorandum could indicate that, with regard to documents classified as confidential, the public authorities should ensure that they are made accessible as soon as circumstances permit or, if the law sets a time limit on confidentiality, as soon as that limit is reached.]

[*Moreover, the Explanatory Memorandum could indicate, in a convenient place, that, with regard to registers or inventories of documents, the public authorities should ensure that they are always made available, this being a prerequisite for the exercise of the right of access to official information. It is, however, open to public authorities to determine the type of information to be included in such registers or inventories, with the aim of protecting legitimate interest and, in particular, respect for private life].

Principle 4

1. An applicant for a document does not need to specify any reason for having access to the document [and he or/she may be anonymous].
2. Formal requirements for requests should be kept to a minimum.
3. Any request should be sufficiently descriptive, within reasonable limits, so that the public authorities can determine which document the request concerns.

Principle 5

Treatment of requests of access

1. Any public authority holding a document is competent to decide on the request for access concerning that document.

2. Any request for access to a document shall be dealt with promptly. The decision should be reached and communicated within a given time limit [which is known to the applicant beforehand].

[The Explanatory Memorandum could indicate that if the handling of the request needs more time, the authorities will inform the applicant of the date on which his/her request will be satisfied.]

3. Any definitive decision to grant access to a document has to be executed immediately.

[The Explanatory Memorandum will give details on this subject].

4. Access to information shall be provided on the basis of equality.

[The Explanatory Memorandum could indicate: This principle refers to non-discriminatory treatment of requests. The authorities holding the document, while enjoying a certain margin of appreciation, should, in any event, bear in mind the requirements of Article 14 ECHR (Prohibition of discrimination). [In principle, requests should be dealt with in a chronological way.]]

No specific sub-paragraph on formalities.

[The Explanatory Memorandum could indicate: The formalities have to be as simple as possible. In many cases the authority holding the document will be in a position as to transmit it directly, without supplementary formalities. It can be useful to establish a documentation and information centre within the national administration in order to speed up the treatment of requests. In any event, the establishment of such structures should never complicate this treatment, take the applicant away from the original authority which is at the origin of the information or even operate as a (political) filter of requests.]

5. If the public authority does not hold the document it should, wherever possible, guide the applicant to the competent authority.

6. The authority should help the applicant to be more specific, if the request is not descriptive enough.

7. [All requests for access to a document must be dealt with, unless they are manifestly unreasonable.]

8. Any public authority refusing access to information [a document] shall give the reasons on which the refusal is based, according to law.

[*At its 46th meeting (22 - 25 June 1999, [CDDH \(99\) 10](#), paragraph 50), the CDDH, responding to the request expressed by its Working Group on the right to the satisfaction of basic material human needs at its 2nd Meeting (2-4 June 1999, GT-DH-MAT (99) 2), asked the DH-S-AC to consider at a future meeting the problems arising for instance from illiteracy or through the particular circumstances of minorities with regard to access to official documents ; the question of access to official information through NGOs ; the specific issues encountered by persons in situation of extreme hardship (homeless people, etc.) when trying to have access to official information.]

Principle 6

Forms of access

[When giving access, the public authority shall take into account as far as possible the preferences expressed by the applicant concerning the form of access.]

[The applicant must be able to choose between access to the original or to a copy of the document.]

[Should the original be fragile and its conservation needs to be guaranteed, the DH-S-AC will discuss in due course the conditions in which it would be appropriate to refuse access to the original. The DH-S-AC will decide to include this idea either in the Draft Recommendation or in the Explanatory Memorandum.]

[In addition, the Explanatory Memorandum will give details on the following forms of access:]

- Supply of one copy of the document.
- Possibility for the applicant to consult the document in the offices of the administration if the physical state of the document allows this.
- Supply of a version with blank spaces in order to protect confidential information.
- Supply, at the applicant's request, of a synthesis of the document.

[The authorities do not have to produce a copy of official information if there are other means being reasonably accessible.]

* * *

Finally, the DH-SAC retained the idea of including in the draft recommendation, three other principles, the wording of which will be drafted at its next meeting.

Principle 7

Principles concerning the costs of the supply of requested information.

Principle 8

Principle concerning the refusal of access/request for review of the refusing decision/appeals

Principle 9

“Support system” to make the right to official information effective

[Existence of a documentation service

Categories of persons having difficulties in accessing documents: disabled or those in situations of extreme hardship (illiterate, homeless, etc.).

Registers (Public, individual, confidential)

Timelimit for the storage of documents

Timelimit for the Destruction of documents]

[...]

* * *

Appendix IV

Reflections of the DH-S-AC for the attention of the CDDH concerning the preparation of the European Ministerial Conference on Human Rights (Rome, 4 November 2000)

Preliminary remark:

At its 4th meeting (5-8 October 1999), the Group of Specialists on Access to Official Information (DH-S-AC) held an exchange of views on the reasons for the inclusion, among the subjects for the next Ministerial Conference on Human Rights, of the topic of the right to access to official information.

At the end of the debate, the Group decided to transmit to the CDDH a certain number of reflections which are reproduced hereafter.

The DH-S-AC has noted that the Steering Committee will, at its 47th meeting (30 November – 3 December 1999), decide on the subjects to be retained for the Conference.

* * *

1. The Conference presents an appropriate framework for the ministers of the 41 states which are currently members of the Council of Europe to reiterate their countries' commitment, on a national level, to an effective protection of human rights and fundamental freedoms. In this context, it is important that the member States commit themselves politically, and in particular, to encouraging the freedom of expression and information by:

- (i) ensuring transparency within their public administrations and
- (ii) guaranteeing the right of access of the public to official information.

2. These commitments are a consequence of the requirements of a pluralistic, democratic society. A wide access to official documents, on a basis of equality and in accordance with clear rules:

- allows the public to have an adequate view of, and to form a critical opinion on, the state of the society in which they live and on the authorities that govern them, whilst encouraging responsible participation by the public in matters of common interest;
- encourages internal control within administrations and helps maintain its integrity by avoiding the risk of corruption;
- contributes to affirming the legitimacy of administrations as public services and to reinforcing citizens' confidence in public authorities.

3. Moreover, the CDDH considers it necessary to keep in mind that the [Committee of Ministers](#)' Declaration on the freedom of expression adopted on 29 April 1982 declared, in particular, that the member States seek to achieve "an open information policy in the public sector including access to information, in order to enhance the individual's understanding of,

and his ability to discuss freely political, social, economic and cultural matters” (Principle 8.II.c).

4. Accordingly, member States must do everything possible to structure their public administration, in law and in practice, in respecting those commitments. To this end, they must take into due account the new environment which has been created by information technology and communications.

5. [Basic principles concerning the access on official information are being drawn up within the CDDH by its Group of Specialists, DH-S-AC. These principles could constitute a minimum base, without prejudice to domestic laws and regulations which already recognise a wider rights of access to official documents.]

5. [The Ministerial Conference could give political importance to the ongoing work by asking the public authorities of member States of the Council of Europe to agree to make the maximum effort to ensure that the public, subject to the protection of other rights and legitimate interests, has the widest possible access to documents held by the public authorities.]

7. [The Conference could also provide the occasion to formally adopt the legal instrument the CDDH has been asked to draw up through its Group of Specialists.]