

TC-CP(2024)04
3 October 2024

Consultation of the Parties

Council of Europe Convention on Access to Official Documents (CETS No. 205)

Conclusions and recommendations on the implementation of the Council of Europe Convention on Access to Official Documents by Hungary

The Consultation of the Parties to the Council of Europe Convention on Access to Official Documents (CETS No. 205) (hereinafter referred to as “the Convention”), acting under the terms of Article 12, paragraph 2, sub-paragraphs a and b, of the Convention;

Bearing in mind the provisions of Article 11, paragraph 1, of the Convention concerning the role of the Council of Europe Access Info Group (AIG) in monitoring the implementation of the Convention;

Bearing in mind the overarching obligation under Article 2, paragraph 2, of the Convention on each Party to take the necessary measures in its domestic law to give effect to the provisions for access to official documents set out in this Convention;

Having regard to the Rules of Procedure of the Consultation of the Parties;

Having examined the baseline evaluation report concerning the implementation of the Convention by Hungary adopted by the AIG at its 6th meeting (29-31 May 2024) which focuses on the Hungarian Act on the right to informational self-determination and on the freedom of information (hereinafter “the Freedom of Information Act”) as well as the comments of the Government received on 12 July 2024;

1. Welcomes the following elements of the Freedom of Information Act:

- 1.1. its application to the widest range of public authorities covered by the Convention in compliance Article 1, paragraph 2, of the Convention;
- 1.2. its application to information held by public authorities regardless of the form in which it is recorded in compliance with Article 1, paragraph 2, sub-paragraph b, of the Convention;
- 1.3. guaranteeing the right of access to official documents held by public authorities to everyone, on request, without discrimination in compliance with Article 2, paragraph 1, of the Convention;
- 1.4. the compliance of the limitations on the right of access set out in its §27(2) with the requirements of Article 3, paragraphs 1 and 2, of the Convention;
- 1.5. the implementation of the requirements of Article 4 of the Convention regarding requests for access to official documents;
- 1.6. its general compliance with the obligations of Article 5 of the Convention regarding the processing of requests for access to official documents;
- 1.7. the implementation of the requirements of Articles 6 and 7 of Convention respectively on forms of and charges for access to official documents;
- 1.8. the implementation of the requirements of Article 8 of the Convention both as regards the review by the National Data Protection and Freedom of Information Authority as well as the judicial review of a refusal of access;
- 1.9. its measures to implement Article 9, paragraphs b, c and d, of the Convention regarding complementary measures and Article 10 of the Convention regarding documents made public at the initiative of the public authorities;

2. Recommends that Hungary take the following measures identified on the basis of the AIG’s report:

- 2.1. reconsider the qualification of data of public interest in §3(5) of the Freedom of Information Act as information pertaining to the activities of and processed by the public authorities to which the Act applies or generated in the course of performing their public duties (paragraphs 8 and 60 of the AIG report);
 - 2.2. bring official documents containing personal data within the scope of the right of access under the Freedom of Information Act and ensure that any limitations of access that may be necessary to protect personal data are carried out in accordance with Article 3, paragraph 1, sub-paragraph f, of the Convention (paragraphs 11-13 and 59 of the AIG report);
 - 2.3. ensure compliance of limitations of the right of access to classified information (§27(2) of the Freedom of Information Act) with Article 3, paragraph 2, of the Convention (paragraphs 22-25 and 64 of the AIG report);
 - 2.4. ensure compliance of limitations of the right of access to information compiled or recorded by a public authority in the context of its decision-making process (§§27(5)-(7) of the Freedom of Information Act) with the requirements of Article 3, paragraph 1, sub-paragraph k, of the Convention (paragraphs 26-27 and 65 of the AIG report);
 - 2.5. stipulate in the Freedom of Information Act the duty of the authority receiving a request for information to refer it to the competent public authority in compliance with Article 5, paragraph 2, of the Convention (paragraphs 33 and 67 of the AIG report);
 - 2.6. bring §29(1a) of the Freedom Information Act permitting dismissal of repeated requests for access to official documents in line with the condition of Article 5, paragraph 5, sub-paragraph ii, of the Convention that such requests be manifestly unreasonable;
3. Requests the government of Hungary to report to the Consultation of the Parties on the measures taken to improve the implementation of the Convention pursuant to point 2 of the present conclusions by 6 October 2025.