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Council of Europe Access Info Group (AIG)

Draft Baseline Evaluation Report on the implementation of the Council of Europe Convention on Access to Official Documents (CETS No.205) – Albania

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I. Introduction

1. The Council of Europe Convention on Access to Official Documents (CETS No. 205, hereinafter “the Convention”) entered into force on 1 December 2020. It is the first binding international legal instrument to recognise a general right of access to official documents held by public authorities.
2. The Convention lays down minimum obligations for its Parties on the scope of the right to access official documents upon request, the balancing exercise between the protection of the public interest in transparency and the protection of other legitimate rights and interests, the procedures for handling a request for access and the review of decisions. It also sets out other measures to ensure the transparency of public authorities’ activities such as those relating to the management of documents and publication of official documents at the authorities’ own initiatives.
3. An important added value of the Convention is its monitoring mechanism, which consists of the Council of Europe Access Info Group (“the AIG”) and the Consultation of the Parties. The AIG is composed of a minimum 10 and a maximum of 15 independent and impartial experts appointed on the basis of their recognised expertise in the field of access to official documents. On 31 March 2022, the Consultation of the Parties elected 10 members for a period of four years, renewable once. The AIG’s task is to monitor the implementation of the Convention by the Parties, notably reporting on the adequacy of the measures in law and practice taken by the Parties to give effect to the provisions set out in the Convention.
4. This report is part of the baseline evaluation carried out by the AIG on the basis of the report submitted by Albania pursuant to Article 14, paragraph 1, of the Convention (Doc AIG/Inf(2023)21, 30 October 2023) As a first step, the Party responded to a Questionnaire on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Access to Official Documents (Doc AIG(2022)01, adopted by the AIG on 17 November 2022). [Another source of information for the work of the AIG is civil society. Therefore, it maintained contacts with two international non-governmental organisations, namely Access Info Europe and Article 19.] In the spirit of dialogue with the Parties to the Convention, the AIG requested comments from Albania in the elaboration of the present report which were considered before its adoption. This report will be published together with any further comments received by the Party after its adoption.
5. The baseline evaluation focuses on the legislative act whose main objective is to regulate the right to access official documents, that is the Law on the Right to Information No. 119/2014 (hereinafter the Law on the Right to Information). Other specialised legislation, such as that on archives or legislation which may contain provisions that regulate access to specific types of information, for example, information containing personal data, information of relevance to national or public security, information belonging to the banking sector, is not analysed in the present baseline evaluation. Such analysis would have required more complete information by the Party and an in-depth examination of numerous other laws which was not feasible in the first evaluation round carried out by the AIG covering 11 Parties to the Convention. The AIG, therefore, plans to evaluate the implementation of the Convention by its Parties in specific sectors in its subsequent evaluation rounds in accordance with its Rules of Procedure. Having considered the different approaches taken by the Parties, the AIG will adopt its position on the concept of “drawn up” provided for in Article 1, paragraph 2, of the Convention after its baseline evaluation.
6. This report is intended to assist the Party in its efforts to ensure compliance with the Convention.

II. Article 1 – General Provisions

The meaning of public authorities

7. The Law on the Right to Information (Article 2(1) a) applies to legislative, executive, judicial, and local government authorities without any distinction as to their administrative functions or other activities. It also applies to prosecutor offices at all levels, public institutions and entities created on the basis of the Constitution or by law. Companies in which the State holds the majority of shares and companies or private persons which are allocated, on the basis of law or other forms envisaged by law, the right to exercise public functions are also considered as public authorities (Article 2(1) b,c). The AIG presumes that the exercise of administrative authority is included in the concept of public functions set out in Article 2(1) of the Law. This is in line with Article 1, paragraph 2, sub-paragraph a, of the Convention.

The meaning of official documents

8. Any data recorded in any form or format during the exercise of public functions, regardless of whether it was drafted by the public authority, is considered as public information (Law on the Right to Information, Article 2(2)). This definition reflects the requirements of Article 1, paragraph 2, sub-paragraph b, of the Convention. However, the qualification “during the exercise of public functions” raises questions of compatibility with this provision of the Convention. The AIG notes that only documents received by public officials as private persons and which are not connected to their duties fall outside the definition contained in Article 1, paragraph 2, sub-paragraph b, of the Convention (see Explanatory Report to the Convention, §13). The Party could clarify what is the purpose of the qualification “during the exercise of public functions”.
9. The Party is invited to clarify what information that is held by a public authority would be considered as not recorded “during the exercise of public functions”.

III. Article 2 – Right of access to official documents

10. The right to obtain information about the activity of State organs and of persons who exercise State functions is guaranteed by Article 23(1) of the Constitution of Albania. Every person, physical or legal, national or foreigner (including stateless persons), enjoys “the right to know about public information” without having the obligation of explaining his/her motivations (Law on the Right to Information, Article 3(1); Article 2(3)). When access to information has been granted to one applicant, it cannot subsequently be denied to another applicant, save for cases when the requested information contains personal data as provided by the relevant provisions on limitations of access of the Law on the Right to Information (Article 3(4) and Article 9(1)).
11. The Law on the Right to Information affirms that its provisions aim at guaranteeing “the public’s knowledge of information” in the context of their exercise of their rights and freedoms in practice, and in the context of forming their opinions on the situation of the State and society (Article 1 (2)(3)). Presumably such statements of purpose of the law support its interpretation in favour of the exercise and enjoyment of the right of access.
12. These provisions are in line with Article 2, paragraph 1, of the Convention.

IV. Article 3 – Possible limitations to access to official documents

13. The grounds for restricting the right of access which are provided by Article 17 of the Law on the Right to Information are in line with those provided for by Article 3, paragraph 1, of the Convention. The ground provided for in:

- a. Article 17(1), sub-paragraph a, of the Law corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph f, of the Convention;
 - b. Article 17 (1) b, c and ç, correspond to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraphs f and g, of the Convention;
 - c. Article 17(2), sub-paragraph a, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph a, of the Convention;
 - d. Article 17(2), sub-paragraph b, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph c, of the Convention;
 - e. Article 17(2), sub-paragraph c, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph d, of the Convention;
 - f. Article 17(2), sub-paragraph ç, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph e, of the Convention;
 - g. Article 17(2), sub-paragraph d, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph h, of the Convention;
 - h. Article 17(2), sub-paragraph dh, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph i, of the Convention;
 - i. Article 17(2), sub-paragraph e, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph k, of the Convention;
 - j. Article 17(2), sub-paragraph ë, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph, a of the Convention.
14. The Law on the Right to Information explicitly requires that all limitations on the right of access must be necessary and proportionate.
15. According to Article 17(1) of the Law on the Right to Information, the right of access may be limited to protect the interests listed in its sub-paragraphs a- ç. These interests concern the protection of the right to private life, trade secrets, copyright and patents. Limitations on the right of access on these grounds apply when the disclosure of the requested information damages the protected interests. Such limitations do not apply when the rightsholders have given their consent to the disclosure of information or when they are considered as public authorities under the Law on the Right to Information. The Party has provided further information that there is no a consultation procedure with the rightsholders to obtain their consent and that it is up to the relevant public authority to decide on who proceed with seeking such consent which typically include a request for it in writing or via email.¹
16. According to Article 17(2) of the Law on the Right to Information, the right of access is limited to protect interests listed in its sub-paragraphs a-ë. These interests concern the protection of national security; the prevention, investigation and prosecution of criminal offences; the normal flow of administrative review in the context of disciplinary proceedings; the normal flow of inspection and auditing procedures for the public sector bodies; the formulation of state monetary and fiscal policies (with the exception of data concerning facts, analysis of facts, technical or statistical data); the equality of parties and the normal flow of judicial proceedings (with the exception of data concerning facts, analysis of facts, technical or statistical data); preliminary consultations or discussion internally or among the public sector bodies to develop public policies; and the normal flow of international and inter-governmental

¹ AIG/Inf(2025)01

relations. Limitations on the right of access on these grounds apply when the disclosure of the requested information causes a clear and serious harm to the protected interests.

17. In both cases (Articles 17(1) and 17(2) of the Law on the Right to Information), access to the requested information shall be granted even though limitations may apply where a higher public interest in its disclosure exists.
18. Both categories of limitations stipulated in paragraphs 1 and 2 of Article 17 of the Law on the Right to Information are subject to a harm test and an overriding public interest test as required under Article 3, paragraph 2, of the Convention. These tests are carried out on a case-by-case basis, including in respect of requests for access to information classified as a state secret pursuant to the legislation on classified information (Article 17(5)). In the latter case, the authority receiving a request for information starts immediately the procedure for reviewing the classification of information with the authority which has ordered the classification and informs the applicant about this procedure. In any event, the decision to grant access or not is made pursuant to the requirements of the harm and overriding public interest tests.
19. Article 17, paragraph 3, of the Law on the Right to Information provides that the right to information shall be restricted as long as it is indispensable, proportional and as long as the dissemination of information would infringe the professional secret sanctioned by law. The Party has note that professional secrecy refers to the ethical and legal obligations of practitioners to maintain the secrecy of information entrusted to them by clients or patients. Sensitive data must not be disclosed without their consent except in cases provided by law. For example, the attorney-client relationship is guaranteed by the special law on the lawyer's profession. In case of denials of access on this ground, the public authority concerned must provide the legal basis and a reasoning which are subject to decision-making by the Commissioner's office. It still remains unclear whether a harm test and an overriding public interest test apply.
20. The Law on the Right to Information provides for time limits beyond which limitations no longer apply in respect of certain grounds. Limitations in the interest of the normal course of disciplinary investigations and the normal course of inspection and auditing of public authorities do not apply after the completion of the relevant investigation and inspection procedures. Limitations in the interest of internal or intra-agency discussions or consultations aimed at developing public policies do not apply after those policies have been made public (Article 17(2)).

V. Article 4 – Requests for access to official documents

21. The Law on the Right to Information (Article 3) explicitly provides that this right is enjoyed without the applicant being obliged to provide reasons regarding the request.
22. It is not possible under this law to request access to information in an anonymous manner.
23. Requests for information under the Law on the Right to Information shall be made in writing and submitted to the public authority in person, by mail or e-mail. Thus, oral requests are not provided for under the law. A request must contain the first and last name of the applicant, the postal or e-mail address for delivering the requested information, a description of the requested information, the preferred format for its receipt, and any other data that the applicant considers as helpful to identify the requested information (Article 11 (1) and (4) of the Law on the Right to Freedom of Information).
24. Overall, these provisions are in line with Article 4 of the Convention.

VI. Article 5 – Processing of requests for access to official documents

25. The duty of the public authority receiving a request for information to help the applicant identify the requested information is provided for in Article 12(1) of the Law on the Right to Information. When the content and the nature of the request is not clear to the public authority, it should promptly and in any case within 48 hours of the receipt of the request contact the applicant to make the necessary clarifications. In all cases, the public authority helps the applicant to make the request more precise.
26. Where the authority receiving a request for information does not possess the requested information, it transmits the request to the competent authority no later than 10 days after its receipt. The applicant is informed about such transmission and provided with the contact details of the authority to which the request has been transmitted. The Law on the Right to Information specifically provides that the transmission is justified only when the authority does not hold the information (Article 12).
27. All requests for information must be registered and assigned a number which is communicated to the applicant together with the contact details of the person assigned as a coordinator on the right to information within the relevant public authority (Article 11(2)). Each public authority must keep and publish a special register of all requests for information on its website, updated monthly; the identities of the applicants are not included in this register (Article 8(1)). Requests are dealt with in the order of their presentation and without any distinction (Article 11(3)).
28. A request for information to which access has been previously granted at least once must be dealt with within three working days of its submission (Article 9(2)).
29. As regards any other request, the public authority must deal with it as soon as possible and no later than 10 working days from the date of its submission, with the exception of cases when special legislation provides otherwise (Article 15(1)). Where a request for information is transferred to another authority, the latter must deal with it no later than 15 working days from the receipt of the request by the first authority (Article 15(2)). Both deadlines may be extended by five working days when there is a need to search for and examine numerous or voluminous documents; there is a need to search in offices or premises that are physically separate from the main offices of the authority receiving the requests; or there is a need to consult other public authorities before deciding on the request. In all cases, the applicant is informed of the deadline extension (Article 15(3)).
30. As regards a request for information classified as state secret in accordance with legislation on classified information, the authority receiving the request decides to extend the time limit for granting access to the requested information to 30 working days and informs the applicants of this decision (Article 17(5)).
31. The Law on the Right to Information provides that the right of access is restricted when despite the assistance given by the public authority receiving the request remains unclear and the identification of the requested information becomes impossible. This is in line with Article 5, paragraph 5, of the Convention.
32. According to Article 17(6) of the Law on the Right to Information, where the restriction affects the information only partially, the remaining part shall not be rejected to the applicant. The public authority shall clearly indicate the parts of the respective documentation having been rejected, as well as based on which point of Article 17 the rejection was ruled upon. Hence, a refusal of access must indicate its legal basis. The Law on the Right to Information does not specify whether the applicant has the right to receive a written justification on request from the public authority for its refusal. This provision appears to satisfy the requirements of

Article 5, paragraph 6, of the Convention. However, the AIG notes that according to the Explanatory Report to the Convention (§53), a minimum requirement in this respect is to state the legal basis for refusal by reference to the relevant provisions in law as well as an explanation of how these provisions apply.

VII. Article 6 – Forms of access to official documents

33. According to Article 14(1) of the Law on the Right to Information, as a rule, all requests are dealt with by means of consultation of information for free in the premises of the public authority, on the unique governmental portal (e-albania.al), and “as the case may be” on the official website of the public authority. Requests for written documents (presumably paper-based documents) are dealt with by means of making available a copy of them in the same format as that used by the public authority, except special cases, and making available a copy by means of email when the information is available in this format or can be converted into this format (Article 14(2)). Otherwise, the information is provided in the form that is the most effective and the least costly for the public authority (Article 14(3)). It is not clear that this provision complies with the principle of Article 6, paragraph 1, of the Convention that the applicant has the right to choose whether to inspect the original or a copy, or to receive a copy of it in any available form or format of his/her choice unless the preference is unreasonable. This point warrants explanation by the Party.
34. Where restrictions under Article 17 (1) and (2) of the Law on the Right to Information apply to part of the requested information, access to the remainder is guaranteed (Article 17(6)). The public authority indicates clearly the parts of the information access to which has been refused and the legal basis for the refusal. These provisions are in line with Article 6, paragraph 2 of the Convention.
35. As mentioned in paragraph 33 to the present report, the public authority may give access to the applicant by referring him/her to consult the information accessible on the relevant governmental or public authorities’ website.

VIII. Article 7 – Charges for access to official documents

36. The inspection of official documents on the premises of the public authority is free of charge (Article 14(1) of the Law on the Right to Information). This is in line with Article 7, paragraph 1, of the Convention.
37. The main principle of the Law on the Right to Information is that the services of the public administration are provided without payment. Fees for granting access to information may be applied by each public authority when such fees have been published on their internet website or on their premises for receiving the public. Fees are equivalent to the costs of reproduction of the information and, when applicable, the costs of its delivery. Information provided by electronic means is provided for free. Reproduction costs cannot be higher than the real cost of the material for reproducing the information. The Party has informed the Group that typically a fee of €0,02-0,03 per page is applied. Delivery costs cannot be higher than the average delivery cost in the market. Individuals who are registered in social assistance plans or who benefit from legal aid are given a number of pages for free or waived their fees according to a joint decision of the Minister of Justice and the Minister of Finances. The Commissioner for the Right to Information and the Protection of Personal Data (the Commissioner) examines in cooperation with the Minister of Finances the fees published by public authorities and as the case may be orders that they be changed (Article 13).
38. These principles are in line with Article 7, paragraph 2, of the Convention.

IX. Article 8 – Review procedure

39. Complaints against denials of access must be lodged with the Commissioner, who, in accordance with the Law on Personal Data Protection, is elected by the Parliament on a proposal of the Council of Ministers for a period of five years, renewable once (Article 33). The function of the Commissioner is incompatible with any other state function, membership of political parties and participation in their activities, or any other remunerated activity, with the exception of teaching (Article 34 of the Law on Personal Data Protection). According to the Law on the Right to Information, the Commissioner is the independent authority responsible for examining complaints and monitoring and supervising the implementation of this law (Article 9/1(1)).
40. Complaints against denials must be lodged within 30 working days of the notification of denial to the applicant or at the expiry of the time limits provided by the law for dealing with requests (see paragraphs 27 and 28 above). Failure to observe this deadline constitutes a ground for non-acceptance of the complaint (Article 27(5)a, i). The Commissioner has the power to request observations from the applicant and the public authority against which the complaint has been made, to hold hearings, where necessary, with the participation of the parties (Article 24(3)), to carry out an administrative inquiry, and to have access to and knowledge of information and documents that constitute the object of the complaint, including information which is classified according to the Law on the Classification of Information (Article 9/1(2) c and ç). The Commissioner decides on acceptance or refusal of the complaint within 15 working days of its submission. Where accepted, the Commissioner orders the public authority to provide the requested information, in full or partially, within a specified deadline (Article 27(b) and ç). The Commissioner may decide not to accept the complaint when it is not submitted in writing, it does not indicate the name and the address of the applicant, or it is dismissed as unfounded (Article 27(a) ii and iii, and (c)). The Commissioner's decision is binding on the public authority against which the complaint has been made, except when a court has decided to suspend its application (Article 27(6/1)).
41. The Commissioner's decision as well as failure to decide within 15 working days can be appealed to the competent administrative courts (Article 25 and Article 24(6)). No fees apply for lodging complaints with the Commissioner. A fee of approximately €27 is applied for lodging a complaint with the competent administrative court, plus a fee of €2 on average for the parties' notification; these costs are usually borne by the losing party at the end of the court procedure ..
42. Overall, the review procedure provided for by the Law on the Right to Information meets the requirements of Article 8 of the Convention concerning a review by an independent and impartial body, and an expeditious review procedure.

X. Article 9 – Complementary measures

43. The Party has provided information on a number of measures that contribute to the implementation of the requirement of Article 9, first paragraph, of the Convention to inform the public about its right of access to official documents and how it may be exercised. Each public authority should put in place a transparency programme in accordance with Article 4 of the Law on the Right to Information, consisting of the publication of categories of information on the initiative of the public authority. Also, each public authority must appoint one of its civil servants as coordinator for the right to information. The coordinator is tasked with dealing with all aspects of processing access requests. Also, the Commissioner's Office carries out activities to inform and raise the public's awareness on issues pertaining to the right to information.
44. The Commissioner regularly trains public authorities, civil society organisations and groups of interest on the implementation of the Law on the Right to Information. Legislation on the right to information is part of the curriculum of the Albanian School of Public Administration.

These measures contribute to the implementation of Article 9, paragraph a, of the Convention.

45. Article 4 of the Law on the Right to Information contains detailed rules on information concerning matters or activities for which they are responsible that must be published by each public authority on their internet websites. This must include, *inter alia*, information on their organization structure, functions and duties; the full texts of international and domestic laws and policies; on how to submit access requests and their processing; information on the physical location of the public authority and the contacts of the coordinator for the right of information; data regarding the qualifications and salaries of officials who are under a legal obligation to declare their assets, and the pay structure for other officials; data on annual budget and expenditure for the current and preceding years; information on public procurement procedures or competition-based concession procedures or public-private partnerships; and the list of contracts entered into by the public authority with the relevant amounts of money. These measures contribute to the implementation of Article 9, paragraph b, of the Convention.
46. The Law on the Right to Information (Article 18(l)) provides for a fine of approximately 1500-3000 euros for destruction of official documents with the aim of avoiding the exercise of the right to information. Management and storage of official documents is carried out pursuant to the technical, professional, and methodological norms of the law on archives. The Party has provided detailed information about the technical standards that should be followed to ensure the preservation of official documents, for example the prevention of fire and damage by physical or biological factors, the shelves for their storage, the temperature and humidity norms in the storage areas, etc. The Party has also supplied detailed information about the duty of each public authority to appoint expert committees which, on the basis of the general archiving rules for retention periods and for documents of historical importance, draw up their lists of documents with national historical importance and of documents to be stored temporarily, for which retention periods are also determined. These provisions are in line with Article 9, paragraph d, of the Convention. They also contribute to the implementation of Article 9, paragraph c, of the Convention.

XI. Article 10 – Documents made public at the initiative of the public authorities

47. Various requirements of the mandatory transparency programme (see also paragraph 43 above) contribute to the implementation of this provision of the Convention. For example, the annual reports on the implementation of the budget, the reports of state audits, the publication of contracts entered into by a public authority (Article 7 (1), sub-paragraphs dh and e, of the Law on the Right to Information); information and documents to which access is requested frequently; and information whose publication the public authority deems to be useful (Article 7(1), sub-paragraphs k and l, of the same law).
48. The AIG notes that the Party has taken measures to implement Article 10 of the Convention.

XII. Conclusions and recommendations

49. The definitions of public authorities and official documents contained in the Law on the Right to Information are in line with the requirements of Article 1 of the Convention.
50. The Law on the Right to Information implements the principles and the requirements of Article 2 of the Convention.
51. The limitations on the right of access provided for in Article 17 of the Law on the Right to Information correspond to those envisaged by Article 3, paragraph 1, of the Convention. In particular, those laid down in:

- a. Article 17(1), sub-paragraph a, of the Law corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph f, of the Convention;
 - b. Article 17 (1) b, c and ç, correspond to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraphs f and g, of the Convention;
 - c. Article 17(2), sub-paragraph a, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph a, of the Convention;
 - d. Article 17(2), sub-paragraph b, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph c, of the Convention;
 - e. Article 17(2), sub-paragraph c, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph d, of the Convention;
 - f. Article 17(2), sub-paragraph ç, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph e, of the Convention;
 - g. Article 17(2), sub-paragraph d, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph h, of the Convention;
 - h. Article 17(2), sub-paragraph dh, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph i, of the Convention;
 - i. Article 17(2), sub-paragraph e, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph k, of the Convention;
 - j. Article 17(2), sub-paragraph ë, corresponds to the legitimate aims provided for in Article 3, paragraph 1, sub-paragraph a of the Convention.
52. The harm tests and public interest tests provided for in Article 17(1) (2) of the Law on the Right to Information meet the requirements of Article 3, paragraph 2, of the Convention.
53. Conclusion on Article 17(3) of the Law on the Right to Information will be completed after the Party provides the requested information.
54. The Law on the Right to Information meets the requirements of Article 4 of the Convention.
55. The Law on the Right to Information meets the requirements of Article 5 of the Convention. However, it does not provide for the right of applicants to receive on request a written justification for the refusal which contains information on how the legal provisions relied upon for the refusal apply to the request. Conclusion on Article 17(6) of the Law on the Right to Information will be completed after the Party provides the requested information.
56. Conclusion on Article 14 of the Law on the Right to Information will be completed after the Party provides the requested information.
57. The Law on the Right to Information implements the principles of Article 7 of the Convention.
58. The AIG considers that in general the provisions of the Law on the Right to Information are in line with Article 8 of the Convention.
59. The AIG notes that the Party has taken measures to implement Articles 9 and 10 of the Convention.