

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

Consultation of the Parties

Comments of the Republic of Moldova on the conclusions and recommendations of the Consultation of the Parties on the implementation of the Council of Europe Convention on Access to Official Documents by the Republic of Moldova

Regarding the Conclusions and recommendations on the implementation of the Council of Europe Convention on Access to Official Documents by the Republic of Moldova (TC-CP(2024)07 of 3 October 2024), the Ministry of Justice of the Republic of Moldova reports the following:

1. In §3 of the Conclusions, the Consultation of the Parties recommends that the Republic of Moldova ensure the application of the harm test principle and the overriding public interest test principle, as enshrined in Article 3, paragraph 2, of the Convention, to the limitations permissible under Article 8(2) of the Law on Access to Information of Public Interest.

In the Republic of Moldova, the principle of proportionality – as enshrined in Article 3, paragraph 2, of the Convention – is fully applicable to the limitations permissible under Article 8(2) of the Law on Access to Information of Public Interest, in accordance with Articles 34 and 54 of the Constitution of the Republic of Moldova, which provide as follows:

Article 34

Right of Access to Information

(1) The right of a person to have access to any kind of information of public interest shall not be curtailed.

[...]

Article 54

Restrictions on the exercise

of certain rights or freedoms

(1) In the Republic of Moldova, no law may be adopted that would abolish or diminish the fundamental rights and freedoms of the individual and citizen.

(2) The exercise of rights and freedoms may not be subject to other restrictions than those provided by law, which comply with unanimously recognized norms of international law and are necessary in the interests of national security, territorial integrity, the economic well-being of the country, public order, for the prevention of mass disturbances and crimes, for the protection of the rights, freedoms, and dignity of other persons, for the prevention of the disclosure of confidential information, or for guaranteeing the authority and impartiality of justice.

[...]

(4) The restriction must be proportionate to the situation that determined it and may not affect the existence of the right or freedom.

According to these provisions, the legislature is obliged to comply with the following constitutional conditions:

- 1) Any limitation on access to information must be in accordance with the norms of international law;
- 2) The limitation must be necessary for safeguarding one of the legitimate interests listed in Article 54(2) of the Constitution; and
- 3) The limitation must be fully proportionate with the constitutional right of access to information of public interest, as guaranteed by Article 34 of the Constitution.

To ensure full compliance with these requirements – in line with the considerations set out in §38 of the Explanatory Report to the Convention – several constitutional and legislative safeguards are in place:

Any person has the right to invoke an exception of unconstitutionality, triggering the review by the Constitutional Court of the Republic of Moldova, in the context of judicial proceedings concerning a refusal based on the limitation in question. Judges may also raise such an

exception *ex officio*. If the Constitutional Court finds that the limitation does not satisfy the three conditions outlined above, the legal provision is struck down as unconstitutional.

All draft laws are subject to a robust public consultation procedure, in accordance with Law No. 239/2008 on Transparency in the Decision-Making Process, particularly involving representatives of civil society.

All draft laws registered in Parliament are subject to legal review by the Ministry of Justice and/or the Legal Directorate of Parliament, which ensures compliance with constitutional and international norms and standards. Furthermore, all draft laws affecting human rights and freedoms must be submitted for mandatory consultation with the Ombudsman.

Once laws are adopted, the Ombudsman, as well as, *inter alia*, the Minister of Justice, the Government, or any Member of Parliament, may challenge the constitutionality of any limitation before the Constitutional Court.

2. In §2 of the Conclusions, the Consultation of the Parties requests the Republic of Moldova to provide the necessary information on the content of the governmental regulation on access to environmental information, including any limitations on the right of access laid down in it.

The Regulation on Public Access to Environmental Information, approved by Government Decision no. 1467/2016¹

1, transposes into national legislation Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC.²

Accordingly, this Regulation closely follows the text of the Directive, including the limitations it sets out, which are provided in points 24–28 of the Regulation:

24. Public authorities may refuse a request for environmental information if:

a) the information requested is not held by or for the public authority to which the request is addressed. In such a case, where that public authority is aware that the information is held by or for another public authority, it shall, as soon as possible, but no later than 3 working days from the date of receipt of the request, transfer the request to that other authority and inform the applicant thereof;

b) the request is manifestly unsolvable;

c) the request is formulated in too general a manner, taking into account point 9;

d) the request concerns material in the course of completion or unfinished documents or data;

e) the request concerns internal communications, taking into account the public interest served by disclosure.

f) the request contains information attributed to state secret.

25. Where a request is refused on the basis that it concerns material in the course of completion, the public authority is obliged to provide the information it holds and to inform the applicant of the name of the authority preparing the material and the estimated date of its completion.

26. Public authorities may refuse a request for environmental information, if the disclosure of the information affects:

¹ https://www.legis.md/cautare/getResults?doc_id=114423&lang=ro

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0004>

a) the confidentiality of the proceedings of public authorities, where it is provided for by legislation;

b) international relations, national security or national defence;

c) the confidentiality of commercial or industrial information where it is provided for by legislation, regarding the protection of a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy;

d) intellectual property rights;

e) the confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for by legislation;

f) the protection of the environment to which such information relates, such as the location of rare species.

27. In each individual case, the satisfaction of the public interest through disclosure is weighed against the interest served by maintaining confidentiality.

28. Public authorities may not refuse a request for information relating to environmental emissions by invoking the reasons provided in point 26 letters a), c), e), and f).