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

Consultation of the Parties

Comments of Montenegro 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 Montenegro

The Consultation of the Parties to the Council of Europe Convention on Access to Official Documents recommends that Montenegro:

3.1. clarify in the Law on Free Access to Information the duty of the public authority to help the requester identify the requested official document, in line with Article 5, paragraph 1, sub-paragraph i, of the Convention (see paragraphs 26 and 54 of the AIG report);

- Under the applicable Law on Free Access to Information, Article 20 prescribes assistance to the applicant in realizing the right of access to the requested information. If the request is unclear, unreasonable, or incomplete for any reason, the public authority is OBLIGED to instruct the applicant on how to resolve the identified deficiencies within 8 days from the date of submission of the request. Once the applicant rectifies or corrects the request, the procedure shall continue accordingly, and the time limit for processing shall commence from the moment the request is corrected. Furthermore, the public authority is OBLIGED, without delay and no later than within five days from the receipt of the request, to forward the request to the competent authority, if it is aware which authority has jurisdiction over the matter, and to duly inform the applicant thereof. In every possible manner, the public authority shall assist the applicant in order to enable access to the requested information.
- Furthermore, the said Article stipulates that “if the public authority is not in possession of the requested information, it shall, without delay and no later than within five days from the receipt of the request, provided it is aware of the authority competent to act upon the request for access to information, forward the request to the competent public authority and duly inform the applicant thereof.
- Exceptionally, if the applicant fails to act in accordance with the instruction provided and in the manner indicated, in order to obtain access to the requested information or document that is in the actual possession of the public authority, the public authority may reject the request.
- Note: It should be emphasized that under the new Draft Law, which is currently in parliamentary procedure, Article 23 prescribes the time limit obliging the public authority to, without delay and no later than within five days from the date of receipt of the request, invite the applicant to resolve the identified deficiencies.
This is aimed at ensuring that the applicant obtains access to the requested information in the shortest possible time.

3.2. bring Article 29(2) of the Law on Free Access to Information providing for refusal of applications for the same information within a period of six months into compliance with the condition of Article 5, paragraph 5, sub-paragraph ii, of the Convention that such applications be manifestly unreasonable (see paragraphs 31 and 54 of the AIG report)

- Under the applicable Law on Free Access to Information, Article 29 sets forth the provisions governing the rejection of requests. Among other things, the said Article stipulates that “a request shall be rejected if the applicant has already been granted access to the same information within the previous six months.
- Note: It should be emphasized that under the new Draft Law, which is currently in parliamentary procedure, Article 33 prescribes a shorter period, now set at 90 days, for the rejection of a request in cases where the applicant has already been granted access to the requested information.