



THE TROMSØ CONVENTION AND ARTICLE 10 ECHR: DIFFERENT APPROACHES TO ACCESS TO OFFICIAL DOCUMENTS

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CONTENT

- The importance of access to official documents
- Access to information in the ECHR and ECtHR case law (background)
- Access to information in the Tromsø convention
- Conclusions & topics of discussion



WHY IS RIGHT OF ACCESS TO OFFICIAL DOCUMENTS IMPORTANT?

- Link to political freedoms, particularly freedom of speech that contains the right to disseminate and receive information and opinions
- Participating and influencing societal activities
- A prerequisite for criticising the exercise of power and the actions of the authorities
- Legal certainty and legal protection
- Open and good governance; prevention of abuse
- Strengthening the legitimacy of public authority activities
- Utilisation of public information resources





ACCESS TO INFORMATION IN THE ECTHR'S CASE LAW HAS BEEN PROTECTED UNDER SEVERAL CONVENTION RIGHTS

ECHR Article	Typical situations	Leading examples
Article 10 Freedom of expression	Access to official documents necessary for journalism, public debate or public watchdog functions	Társaság, Kenedi, Magyar Helsinki Bizottság
Article 8 Private and family life	Access to personal information or environmental information affecting private life and health	Gaskin, Guerra, Roche
Article 6 Fair trial	Access to documents necessary for effective judicial protection or enforcement of court judgments	Kenedi, Gillberg
Article 2 Right to life	Access to information necessary to protect life and physical safety	Öneryıldız, Vilnes and Others



MAGYAR HELSINKI BIZOTTSÁG V. HUNGARY (GC, 2016): ART. 10 MAY PROTECT ACCESS TO OFFICIAL DOCUMENTS – BUT ONLY UNDER SPECIFIC CIRCUMSTANCES

The Court's assessment criteria

Purpose of the request

Necessary for the exercise of freedom of expression

Nature of the information

Matter of public interest

Role of the applicant

Public watchdog (e.g. journalist, NGO, researcher)

Availability of the information

Information must be ready and available



MAGYAR HELSINKI BIZOTTSÁG V. HUNGARY (GC, 2016), CONTINUES

Consequence

- No general right of access
- Protection depends on the circumstances of each case
- Article 10 protects access as an instrument of freedom of expression, rather than as an autonomous right
- => Access to official documents is protected only where it is instrumental to the exercise of freedom of expression



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THE TROMSØ CONVENTION: FROM CASE LAW TO COMMON STANDARDS

- The Tromsø Convention takes a different approach
 - Establishes a general and autonomous right of access
 - Combines substantive rights with procedural guarantees
 - Makes the right **practical and effective**



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



THREE CORE STANDARDS OF THE TROMSØ CONVENTION

Standard	What does it mean?
Universal right of access	Everyone has the right to request official documents, without demonstrating a special interest or status
Transparency as the rule	Access is the general principle; restrictions are exceptional, limited and justified
Effective protection	Procedural guarantees and independent review ensure that the right is practical and enforceable



TROMSØ CONVENTION: **SUBSTANTIVE** **GUARANTEES**

- The right itself
 - Everyone has the right of access to official documents (Art. 2)
 - No obligation to state reasons for the request (Art. 4)
 - Right to remain anonymous (Art. 4)
 - Openness is the rule, secrecy the exception
- Limitations must
 - Be prescribed by law
 - Pursue a legitimate aim,
 - Be necessary in a democratic society (Art. 3)

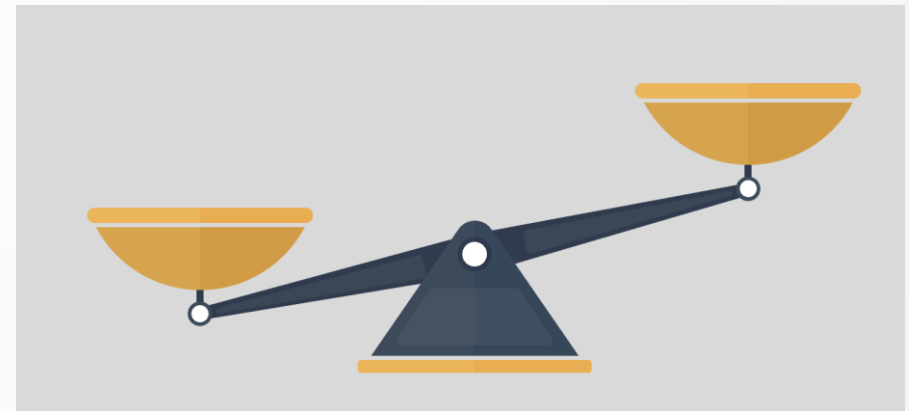
=> The Convention establishes a general right of access to official documents held by public authorities

=> No obligation to demonstrate a legitimate interest



LIMITATIONS TO ACCESS TO OFFICIAL DOCUMENTS: HARM TEST

- By law
- Necessary in a democratic society
- Proportionate to the aim of protecting some of the 11 listed interests such as for example
 - National security
 - Public safety
 - Investigation of criminal activities
 - Privacy and other legitimate private interests
- Harm test: access **may be refused** if disclosure would be **likely to harm** paragraph 1 interests, **unless there is an overriding public interest in disclosure** (balancing principle)





TROMSØ CONVENTION: PROCEDURAL GUARANTEES

A right without effective procedures is only theoretical

- Accessible procedures
- Prompt handling
- Reasoned decisions
- Partial access
- Independent review
- Effective remedies



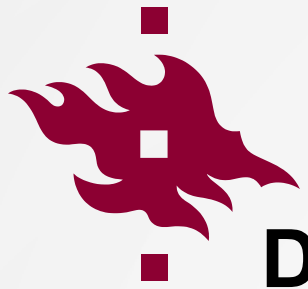


CONCLUSIONS

- The ECHR protects access to information on a case-by-case basis where it serves freedom of expression or other Convention rights
- The Tromsø Convention protects access to official documents because transparency is itself a democratic value
- The Tromsø Convention does not merely recognise a right – **it ensures that the right can be effectively exercised and enforced**
- The Convention protects both the **substance** of the right and the applicant throughout the access **procedure**

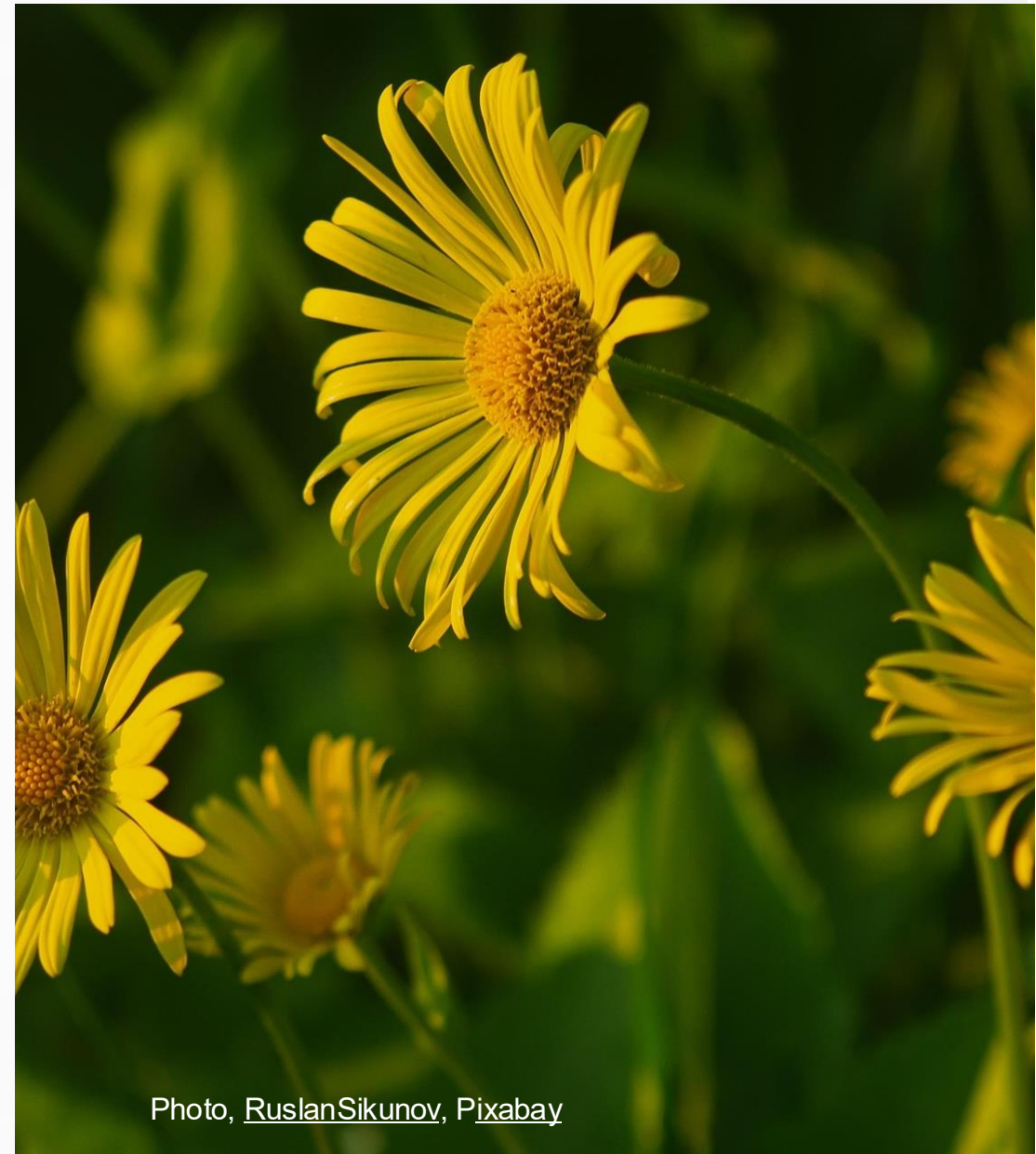


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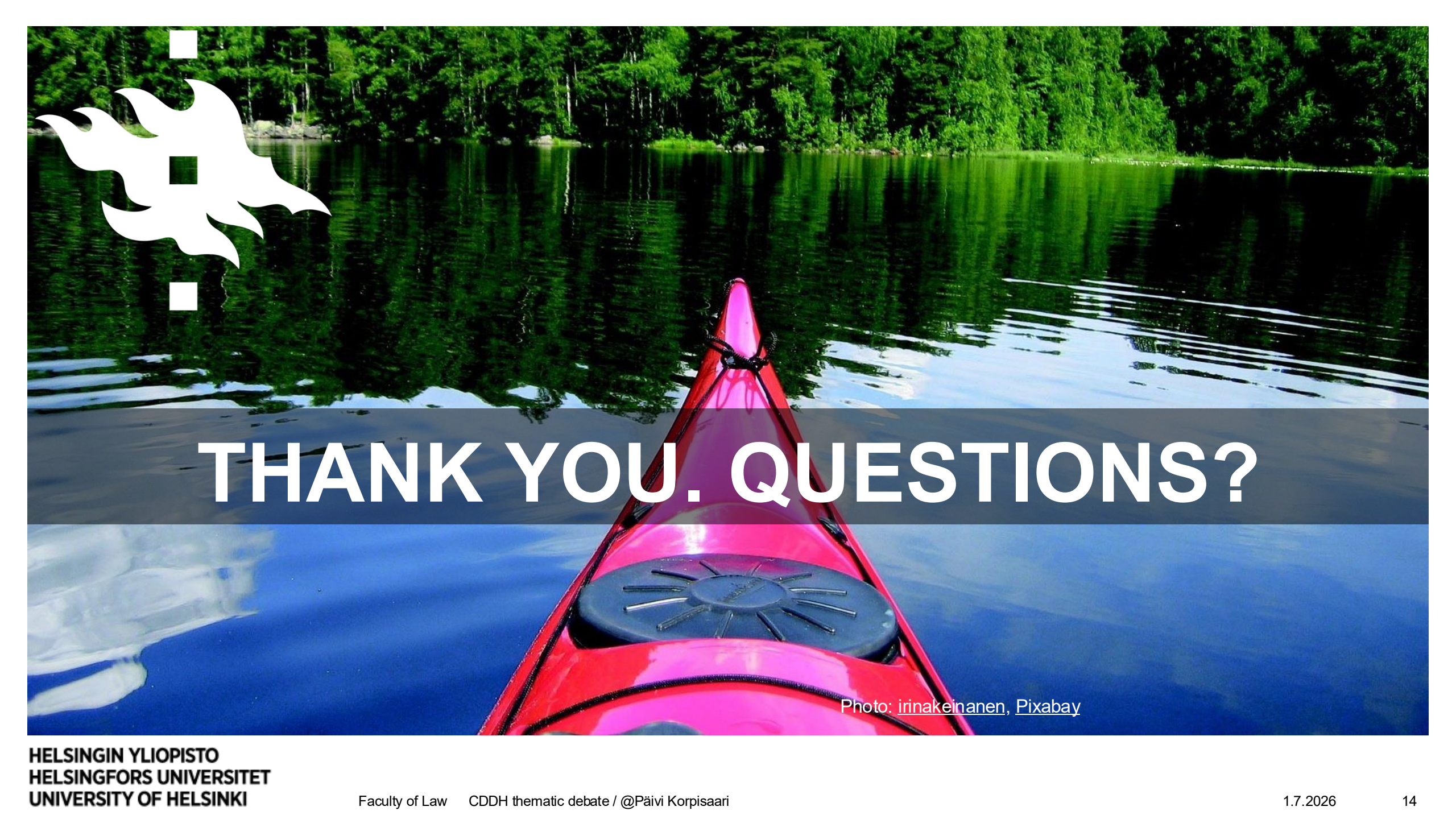


DISCUSSION

- What added value does the ECHR continue to bring alongside the Tromsø Convention?
- How can wider ratification of the Tromsø Convention be encouraged?
- Where should we draw the line between transparency and the protected space necessary for effective internal deliberation?
 - Is the concept of an official document still fit for the digital age?
 - How should AI-generated documents be treated?



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THANK YOU. QUESTIONS?

Photo: [irinakeinanen](#), [Pixabay](#)