Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
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Final version

National security and access to information

Parliamentary Assembly

1. The Parliamentary Assembly recalls the importance of the principle of transparency, including access to information held by public authorities, for democracy and good governance in general and for the fight against corruption in particular.

2. It welcomes the fact that the Council of Europe was the first intergovernmental organisation to elaborate an international legal instrument on access to information, namely the Council of Europe Convention on Access to Official Documents (CETS No. 205), and recalls its Opinion 270 (2008) on the draft convention in which the Assembly had encouraged the Committee of Ministers to improve the text with a view to ensuring even greater transparency. The convention still requires four ratifications in order to enter into force.

3. The Assembly considers legitimate, well-defined national security interests as valid grounds for withholding information held by public authorities. At the same time, access to information forms a crucial component of national security, by enabling democratic participation, sound policy formulation and public scrutiny of State action.

4. Recalling the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, the Assembly strongly confirms that the systematic violation of human rights undermines national security and may jeopardise international peace and security. A State responsible for such violation shall not invoke national security as a justification.

5. Recalling its Resolution 1838 (2011) on abuse of State secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations, and its Resolution 1675 (2009) on the state of human rights in Europe: the need to eradicate impunity, the Assembly stresses the need to place reasonable limits upon the use of national security to justify restrictions to access to information.

6. In particular, the Assembly confirms its position, expressed in paragraph 4 of Resolution 1838 (2011), that information concerning the responsibility of State agents who have committed serious human rights violations such as murder, enforced disappearance, torture or abduction does not deserve to be protected as secret. Such information should not be shielded from judicial or parliamentary scrutiny under the guise of "State secrecy".

7. The Assembly welcomes the adoption, on 12 June 2013, by a large assembly of experts from international organisations, civil society, academia and national security practitioners, of the "Global Principles on National Security and the Right to Information" ("the Tshwane Principles"), which are based on existing standards and good practices of States and international institutions. The Tshwane Principles are designed to give guidance to legislators and relevant officials throughout the world with a view to reaching an appropriate balance between public interests both in national security and in access to information.

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1. *Assembly debate* on 2 October 2013 (32nd Sitting) (see Doc. 13293, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Díaz Tejera; and Doc. 13315, opinion of the Committee on Culture, Science, Education and Media, rapporteur: Mr Franken). *Text adopted by the Assembly* on 2 October 2013 (32nd Sitting).
See also Recommendation 2024 (2013).

8. The Assembly supports the Tshwane Principles and calls on the competent authorities of all member States of the Council of Europe to take them into account in modernising their legislation and practice concerning access to information.

9. The Assembly wishes to stress, in particular, the following principles.

9.1. As a general rule, all information held by public authorities should be freely accessible; in addition, business enterprises, including private military and security companies, have the responsibility to disclose information in respect of situations, activities or conduct that may reasonably be expected to have an impact on the enjoyment of human rights.

9.2. Exceptions to the rule of free access to information which are based on national security, or other equally important public interests, must be provided for by law, pursue a legitimate purpose and be necessary in a democratic society.

9.3. Limitations to the rule of free access to information, including the rule of the neutrality of the Internet, should be interpreted restrictively. The burden of demonstrating the legitimacy of any restriction rests with the public authority seeking to withhold information.

9.4. Rules on the procedure for the classification and declassification of information and the designation of persons authorised to perform these tasks should be clear and publicly accessible. Information may be withheld on national security grounds for only as long as is necessary to protect a legitimate national security interest. Public archives containing secret information should periodically review whether the legitimacy of secrecy still exists on national security grounds.

9.5. As a safeguard against overly broad exceptions, access to information should be granted even in cases normally covered by a legitimate exception, where public interest in the information in question outweighs the authorities' interest in keeping it secret. An overriding public interest can typically be found where the publication of the information in question would:

9.5.1. make an important contribution to an ongoing public debate;

9.5.2. promote public participation in political debate;

9.5.3. expose serious wrongdoings, including human rights violations, other criminal offences, abuse of public office and deliberate concealment of serious wrongdoing;

9.5.4. improve accountability for the running of public affairs in general and the use of public funds in particular;

9.5.5. benefit public health or safety.

9.6. Information about serious violations of human rights or humanitarian law should not be withheld on national security grounds in any circumstances.

9.7. A person who discloses wrongdoings in the public interest (whistle-blower) should be protected from any type of retaliation, provided he or she acted in good faith and followed applicable procedures.

9.8. Requests for access to information should be dealt with in a reasonable time. Decisions to refuse access should be duly motivated, open to appeal before an independent national authority and ultimately subject to judicial review. Upon receipt of a request for information, a public authority should in principle confirm or deny whether it holds the requested information.

9.9. Public oversight bodies in charge of overseeing the activities of the security services should be independent from the executive and have relevant expertise, robust powers of investigation and full access to protected information.

10. The neutrality of the Internet requires that public authorities, Internet service providers and others abstain from using invasive wiretapping technologies, such as deep packet inspection, or from otherwise interfering with the data traffic of Internet users.

11. Recalling Recommendation No. R (2000) 7 of the Committee of Ministers on the rights of journalists not to disclose their sources of information, the Assembly reiterates that the following measures should not be applied if their purpose is to circumvent the right of journalists not to disclose information identifying a source:

11.1. interception orders or actions concerning communication or correspondence of journalists or their employers;

11.2. surveillance orders or actions concerning journalists, their contacts or their employers;

11.3. search or seizure orders or actions concerning private or business premises, belongings or correspondence of journalists or their employers, or personal data related to their professional work.

12. The Assembly calls on all the member States of the Council of Europe which have not yet done so to sign and ratify the Council of Europe Convention on Access to Official Documents and to implement and, in due course, further improve the convention in the spirit of the Tshwane Principles.

13. The Assembly is worried about recent disclosures on large-scale surveillance of communications by secret services and resolves to follow up this important issue in due course.