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The right to freedom of information: ensuring access to historical documents

Reply to Recommendation[1]: Recommendation 2270 (2024)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2270 (2024) "The right to freedom of information: ensuring access to historical documents" and has forwarded it to the Steering Committee for Human Rights and the Steering Committee for Education (CDEDU) for information and possible comments. The Committee of Ministers fully agrees with the Assembly on the importance of the principle of transparency.

2. The Committee recalls the Council of Europe's existing normative instruments in this area, in particular its Recommendation Rec(2002)2 on access to official documents and the Council of Europe Convention on Access to Official Documents (CETS No. 205, "Tromsø Convention"), as well as the right to freedom of expression guaranteed by Article 10 of the European Convention on Human Rights (ETS No. 5). The Recommendation and the Tromsø Convention envisage a general right of access to official documents on request to everyone, without discrimination on any ground and without being obliged to give reasons. Both provide that access may be refused in accordance with a limitation set down in law that is necessary in a democratic society to protect a specified legitimate interest, unless there is an overriding public interest in disclosure, and both include provisions on procedures, including judicial procedures, for review of refusals of access and provisions on complementary measures.

3. The Committee considers that, given their definition of official documents as "all information recorded in any form, drawn up or received and held by public authorities", the provisions of Recommendation Rec(2002)2 and of the Tromsø Convention apply also to historical documents. The elements set out in paragraphs 1.1.5. and 1.1.6. of the Assembly Recommendation, however, are not addressed in either of these instruments, insofar as they relate to general activities rather than access to specific documents.

4. The Committee further recalls its Recommendation No. R (2000) 13 to member States on a European policy on access to archives, which states that "Acts and regulations concerning access to public archives should be co-ordinated and harmonised with the laws concerning related areas, in particular with that on access to information held by public authorities and that on protection of data." It considers that this approach could permit the development of a *lex specialis* legal regime regulating access to historical documents in particular, provided that any such regime was harmonised with the principles of Recommendation Rec(2002)2 and of the Tromsø Convention.

5. In this connection, the Committee of Ministers considers that the application of certain principles with respect to historical documents could be further explored, as recommended in paragraph 1.1.1. It invites the CDDH to bear this in mind, if appropriate, in the context of the mid-term review of the Programme and Budget in the autumn.

1. Adopted at the 1524th meeting of the Ministers' Deputies (2 April 2025).

6. The Committee calls on those member States that have not yet done so to sign and ratify the Tromsø Convention as soon as possible in order to advance access to documents held by public authorities more generally.

7. Finally, the Committee of Ministers would draw attention to the work underway of its Thematic Co-ordinator on Information Policy (TC-INF) with regard to the transparency and access to documents of the Council of Europe, and during which the Assembly Recommendation has been taken into consideration. The Assembly will be duly informed and, as appropriate, associated with the outcome of the discussions, in particular with regard to the draft Council of Europe Transparency Framework to be submitted to the 134th Session of the Committee of Ministers in May.