Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Opinion 270 (2008)[1]

Draft Council of Europe convention on access to official documents

Parliamentary Assembly

1. The Parliamentary Assembly welcomes the draft Council of Europe convention on access to official documents as the first binding international legal instrument which recognises the general right of access to official documents held by public authorities.

2. The Assembly fully shares the conviction expressed in the explanatory report to the draft convention which emphasises: "Transparency of public authorities is a key feature of good governance and an indicator of whether or not a society is genuinely democratic and pluralist, opposed to all forms of corruption, capable of criticising those who govern it, and open to enlightened participation of citizens in matters of public interest. The right of access to official documents is also essential to the self-development of people and to the exercise of fundamental human rights."

3. Effective access depends on the nature and extent of the exemptions permitted, which must be carefully circumscribed and narrowly construed and applied. Practical impediments to access to official documents, including time factors, cost, or any other burdens must also be addressed. The Assembly is satisfied that the draft convention recognises all of these requirements.

4. Whilst admitting that there is little value in an overly ambitious text that states are either unable or unwilling to sign or adhere to, the Assembly stresses that the draft convention should not fall short of reasonable requirements in a democratic society, bearing in mind that many member states of the Council of Europe have already provided a legal basis for access to official documents.

5. The Assembly considers that the definition of "public authorities" in the draft convention is too restrictive in that, apart from the government, it includes only the administrative functions of legislative and judicial bodies and of natural and legal persons. Since one of the key purposes of the right of access to information is to ensure accountability, it is important that as many bodies as possible, in so far as they operate in the public sphere, be encompassed by the convention.

6. The Assembly subscribes to the European Court of Human Rights' observation that information is "a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest". It therefore recommends that a time limit for the handling of requests be included in the convention.

7. The Assembly welcomes the provision foreseen in Article 8 of the draft convention setting out the right to a review of decisions by a court or other independent and impartial body established by law against the refusal of access to a document, expressly or impliedly, in whole or in part. But the scope of this provision needs further clarification and the review body should be granted the power to order disclosure of the requested official document.

8. Since an effective right of access requires a delicate balance of many individual components, and the removal of even one of them could upset the balance and undermine this right, the Assembly considers that no reservations should be allowed to the convention.

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1. *Assembly debate* on 3 October 2008 (36th Sitting) (see Doc. 11698, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr De Vries). *Text adopted by the Assembly* on 3 October 2008 (36th Sitting).

9. The Assembly considers that the current draft has some shortcomings which need to be resolved in order not to miss the opportunity to enshrine modern standards for access to information in what will be the first binding international legal instrument in this field. The Assembly finds the issues raised sufficiently important to recommend to the Committee of Ministers that it send the draft back to the Steering Committee for Human Rights (CDDH) for further consideration with respect to:

9.1. broadening the definition of "public authorities" to include a wider range of activities of these authorities and hence widening the scope of the information made available;

9.2. including a time limit on the handling of requests;

9.3. clarifying and strengthening the review process provided in Article 8.1.

10. The Assembly further recommends to the Committee of Ministers that the draft convention be amended as follows:

10.1. in Article 1, before paragraph 1, add a new paragraph as follows: "This convention safeguards the right of access to official documents held by public bodies. All official documents are in principle public and can be withheld subject only to the protection of other rights and legitimate interests";

10.2. in Article 9, to delete sub-paragraph (a) and to add a new paragraph after "exercised", as follows: "They shall also take appropriate measures to ensure that public authorities:

[b] [to become new (a)]

[c] [to become new (b)]

[d] [to become new (c)]";

10.3. to add a new article after Article 20, reading as follows: "No reservations may be made with regard to this convention."

11. In the future, the Assembly invites the Committee of Ministers to solicit its opinion at an earlier stage of the procedure leading to the adoption of draft conventions in order to allow for a true dialogue without unduly slowing down the elaboration of new conventions.

12. The Assembly invites the Committee of Ministers to inform it of action it has taken in response to this opinion.