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Resolution 2535 (2024)[1]

The right to freedom of information: ensuring access to historical documents

Parliamentary Assembly

1. The Parliamentary Assembly highlights the importance of the principle of transparency, including access to historical information held by public authorities, for fostering a common historical heritage and a collective memory of the past, supporting reconciliation and rehabilitation processes, facilitating research and academic activities, and improving public confidence in State institutions, good governance and accountability.

2. The Assembly unequivocally recognises the right of access to information as a universal human right, particularly when it comes to State-held information. As a general rule, all information held by public authorities should be freely accessible.

3. Recalling its Resolution 1954 (2013) "National security and access to information", the Assembly considers that only legitimate, well-defined limitations to the right of access to information, such as genuine national security interests and appropriate protection of individuals' privacy, may be held to be valid grounds for preventing public access to information held by public authorities. Full disclosure must be the rule and limitations for legitimate reasons must be the exception. Exceptions shall be interpreted restrictively; they must be provided for by law, pursue a legitimate purpose and be necessary in a democratic society. Exceptions based on national security and privacy grounds may cease to be legitimate or necessary after a certain period of time and in any event cannot be applied indefinitely. The burden of demonstrating the legitimacy of withholding information rests on the relevant public authority.

4. Information about serious violations of human rights or humanitarian law and crimes committed by State agents should not be withheld on national security grounds in any circumstances, especially when such violations or crimes occurred in the past under authoritarian regimes. In such cases, the right of society at large to historical truth should always prevail.

5. The Assembly recalls that the right of access to State-held information is constantly evolving at the international level. This means that non-compliance with developing jurisprudence of the European Court of Human Rights (the Court), the United Nations Human Rights Committee and other human rights bodies may lead to findings of a violation of the right to freedom of information and expression. In this respect, the Assembly notes that the Court has developed its case law to further recognise the right of access to State-held information as part of the right to freedom of expression, in particular the freedom to receive and impart information, guaranteed by Article 10 of the European Convention on Human Rights (ETS No. 5). This recognition is based on the circumstantial factors of each case, including the purpose of the request, the nature of the information sought, the role of the person requesting the information and whether the information requested is readily available to the State. Non-governmental organisations (NGOs), journalists, academic researchers and authors enjoy a high level of protection if they disseminate information of public interest.

1. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 7 March 2024 (see Doc. 15929, report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Klotilda Bushka).
See also Recommendation 2270 (2024).

6. The Assembly calls on member States to uphold the main principles that govern access to information and to apply them in the context of historical documents. These are: maximum disclosure; proactive publication of information; strict guidance on exceptions; and a reasonable cost for accessing information.

7. Member States should actively develop policies that advance everyone's right to freedom of information. The public, especially those individuals and groups who may be affected by such changes, should be duly informed of any changes in the legal framework on access to information or in the archival system. Any changes in law and policy on access to historical information should only be approved after extensive consultation with historians, researchers, NGOs and civil society organisations that rely on having access to such information.

8. A request for an explanation of the reasons for asking for specific information or for an outline of research topics may be useful in identifying the relevant documents to be furnished. However, the provision of detailed reasons should not be a requirement for accessing information that is clearly in the public interest, such as historical documents. Access to historical documents should be granted regardless of the reasons for seeking such information.

9. Specifying reasons for requests for access to classified historical documents may also help the competent authorities to apply limitations of access restrictively, as required. Any denial of access to historical documents should be duly justified, open to appeal before an independent national authority and ultimately subject to judicial review.

10. Access to historical documents for researchers, historians, NGOs and all those who obtain them with a view to disseminating them in the public interest should be expeditious and not overly burdensome or involve complicated bureaucratic procedures.

11. The Assembly calls on all member States of the Council of Europe which have not yet signed or ratified the Council of Europe Convention on Access to Official Documents (CETS No. 205, "Tromsø Convention") to do so as rapidly as possible. This includes those whose legislation already complies with the standards therein, as such ratification would strengthen international safeguards for the right of access to State-held information. The Assembly also supports the activities of the Council of Europe's Access Info Group in securing signatures and ratifications of the Tromsø Convention through the promotion of best practices of member States regarding laws on access to information, including archives and historical documents. Recalling its Resolution 1954 (2013) "National security and access to information", the Assembly invites member States to consider introducing specific improvements to the Tromsø Convention in the spirit of the Global Principles on National Security and the Right to Information ("Tshwane Principles") and other international legal developments on the right of access to information.

12. The Assembly underlines the importance of open archives and public information for transparency, democracy and the rule of law. It calls on member States to demonstrate the political will to allow the widest possible access to historical documents.

13. Historical documents and archives should be kept in their countries of origin. In cases where they are held in other countries due to State succession and border changes, they should be returned to mitigate the difficulties relating to the physical distance which can hinder the establishment of historical truth. The Assembly calls on member States to negotiate the return of their archives in good faith. Meanwhile, governments and civil society should foster international collaboration in opening archives for public inspection, irrespective of their location.

14. The Assembly further underlines the importance of civil society groups working to preserve historical memory and urges member States to support this work, including financially.

15. Individuals and civil society organisations involved in the research and preservation of historical memory must, moreover, be protected from harassment or persecution. In this respect, the Assembly strongly condemns the dissolution, in the Russian Federation, of the human rights organisation Memorial, and the persecution of numerous members engaged in documenting the crimes committed during the Soviet era and beyond.

16. The Assembly underlines the importance of co-operation with civil society and between States in order to achieve transparency and ensure that different perspectives are taken into account.

17. Finally, the Assembly urges member States to digitalise their archives and allow as many documents as possible to be accessible online.