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THE COUNCIL OF EUROPE CONVENTION ON ACCESS TO OFFICIAL DOCUMENTS

Izvleček:

Konvencija Sveta Evrope o dostopu do uradnih dokumentov

Članek analizira Konvencijo Sveta Evrope o dostopu do uradnih dokumentov, ki je bil sprejet v Tromsø na Norveškem 18. junija 2009, z namenom opredeliti pravice in načine dostopa do dokumentacije, ki jo ustvarjajo evropska zakonodajna telesa, sodne oblasti ter fizične in pravne osebe.

Ključne besede:

Evropska unija, Konvencija Sveta Evrope o dostopu do uradnih dokumentov, dostop, uradni dokumenti.

Abstract:

The Council of Europe Convention on Access to Official Documents

The paper reports and analyzes the "Council of Europe Convention on Access to Official Documents", the instrument given in Tromsø (Norway) on June 18th, 2009, to establish the right and the modes to access documentation produced by European legislative bodies, judicial authorities and natural and legal persons by European citizens.

Key words:

European Union, Council of Europe Convention on Access to Official Documents, access, official documents.

The "Council of Europe Convention on Access to Official Documents" stands as the very first European legal instrument binding Member Countries to recognise the right of access to official documents held by public authorities. It finds its origins in the 1950 European Convention on Human Rights, and its first political and legal expression in the Recommendation R(81)19 of the Committee of Ministers to Member States on access to information held by public authorities, followed by the Declaration of the Committee of Ministers on freedom of expression and information. In 2002, the Committee of Ministers adopted its Recommendation Rec(2002)2 on access to public documents, which was the main source of inspiration for the present Convention. The Steering Committee for Human Rights instructed by the Committee of Ministers of the Council of Europe drafted the Convention, which aimed to identify a core of basic mandatory provisions reflecting the legislation of a number of Countries and at the same time acceptable by Countries not already having such a legislation. An international monitoring mechanism is envisaged in the Convention in order to rigorously implement it, and its spirit consists in encouraging the Member Countries to equip themselves with, maintain and reinforce domestic provisions allowing a more extensive right of access, provided that a minimum core is

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nonetheless implemented. The result of the preparatory work consists in a compromise solution of an instrument, capable of being accepted by the Member Countries, constituting at the same time a starting point for an effective right of access to official documents in the whole European Union.

The article 255 of the Treaty establishing the European Community, implemented through Regulation 1049/2001 of 30 May 2001, grants the right of access to European Parliament, Council and Commission documentation to all the citizens and legal persons of the European Union. In 2008 the Commission published a “Report on the Results of the Public Consultation”, available on the dedicated website “Review of the Rules on Access to Documents”. The site guides in searching for the Commission documents, and a Guide explains how to exercise the right of access; links to the websites of other relevant European institutions (i.e. Parliament and Council) and to the single Members Countries’ rules on access are present.

The importance of such an instrument was also underlined by the same Vice President of the European Commission Margot Wallström on January 20th, 2009, at the Joint Meeting of the Civil Liberties Committee of the European Parliament and the Committees on EU Affairs of the Czech Senate and Chamber of Deputies. In her speech on “The Citizen’s Right to Know - Time to Improve Openness, Transparency and Access”, the Vice President, after summarizing the developing of the situation on access to the documentation in the European Union and in the EU institutions, pointed out four major issues which have given rise to questions or criticism: 1) the proposed definition of what is a document; 2) the balance between the right of access and the protection of personal data; 3) the right of Member States to oppose disclosure of documents they have sent to the institutions; and finally 4) some limitations to the right of access during limited periods of time.

The “Council of Europe Convention on Access to Official Documents” was finally released on June 18th, 2009, in Tromsø (Norway). It consists of a Preamble and three Sections, divided in 22 Articles: General provisions, Right of access to official documents, Possible limitations to access to official documents, Requests for access to official documents, Processing of requests for access to official documents, Forms of access to official documents, Charges for access to official documents, Review procedure, Complementary measures, Documents made public at the initiative of the public authorities, Group of Specialists on Access to Official Documents, Consultation of the Parties, Secretariat, Reporting, Publication, Signature and entry into force of the Convention, Accession to the Convention, Territorial application, Amendments to the Convention, Declarations, Denunciation, Notification.

Since transparency of public authorities is considered to be the core of good governance and the very indicator of the democracy of a Member Country, the Preamble states that the right of access to public documentation is essential to the exercise of fundamental human rights, and at the same time it strengthens the public authorities’ legitimacy. Under such point of view, all Member Countries should enforce the right of access to the public documentation produced and/or held by the public authorities.

The Convention is meant to set a minimum standard and a wider access to official documentation. Section I, after defining the goals of the Convention, gives the meaning of “public authorities”, being them administrative institutions at a national, regional, local level and also legislative bodies and judicial authorities as well, when performing administrative functions. A - very wide - notion of “official document” is also given: any information drafted, received and held by public

authorities, recorded on any sort of physical medium whatever be its form or format. Linked to the definition of public authorities, a very interesting passage occurs on article 3 (Possible limitations to access to official documents), paragraph 2: “Access to information contained in an official document may be refused if its disclosure would or would be likely to harm any of the interests mentioned in paragraph 1, **unless there is an overriding public interest in disclosure**”. Few words indeed, but quite significant and possibly subject to a very broad interpretation. Article 4 and article 6 state the relationship between applicant and public authorities: “An applicant for an official document shall not be obliged to give reasons for having access to the official document”, and “A public authority refusing access to an official document wholly or in part shall give the reasons for the refusal. The applicant has the right to receive on request a written justification from this public authority for the refusal”.

Section II establishes a monitoring system to ensure the effective implementation of the Convention by the Member Countries and to develop the right of access to official documents. It also governs the implementation of the Convention in the Member Countries, first of all by setting up an *ad hoc* Group of Specialists on Access to Official Documents (article 11), to monitor, report, request opinions from civil society, and formulate its own opinions about. The Secretary General of the Council of Europe will assist the Group of Specialists in carrying out its functions, together with the Member Countries.

Section III is dedicated to the signature and entry in force of the Convention, to the amendments and to the notifications. Article 17 states that “*the Committee of Ministers of the Council of Europe may, after consulting the Parties to this Convention and obtaining their unanimous consent, invite any State which is not a member of the Council of Europe or any international organisation to accede to this Convention*”, in this way giving a possibility of signing also to non-EU or incoming EU Countries.

As per October 13th, 2010, the “Council of Europe Convention on Access to Official Documents” was signed by Belgium, Bosnia and Herzegovina, Estonia, Finland, Georgia, Hungary, Lithuania, Macedonia, Montenegro, Norway, Serbia, Slovenia and Sweden, and ratified by Hungary, Norway and Sweden.

The complete text of the “Council of Europe Convention on Access to Official Documents” may be retrieved at the URL: <http://conventions.coe.int/Treaty/EN/Treaties/Word/205.doc>.