

LEGAL ASPECTS REGARDING THE ACCESS OF INDIVIDUALS TO EUROPEAN DOCUMENTS

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***Abstract:** The right to information is a fundamental human right, guaranteed by international law and which has been transposed into Romanian law. Information has an essential role in social progress, in promoting social values, being also called "the oxygen of democracy". The individual's right to information underlies his participation in the life of society, in democratic accountability and information must flow in a free flow, in two directions, from society to the citizen and vice versa. In most democratic countries, and not only, this right is stipulated in legal texts of the highest level (constitutional texts), but unlike other rights, this is a relative right and not an absolute one, being susceptible to restrictions or limitations. The limitation of the right to information must be proportionate to the interest protected by this restriction on the exercise of the right.*

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1. Introduction

The free and unrestricted access of the person to any information of public interest is one of the fundamental principles of the relations between persons and public authorities, in accordance with the Romanian Constitution and with the international documents ratified by the Romanian Parliament.

Information of public interest means any information concerning the activities or resulting from the activities of a public authority or public institution, regardless of the medium or the form or manner of expression of information¹ and should not be confused with information on personal data, whereby means any information concerning an identified or identifiable natural person.

One issue under discussion in societies with a democratic tradition is the transparency of public institutions. When we refer to the subject of institutional transparency, we must take into account the fact that the Romanian society had an approach inclined especially towards the opacity of the institutions, limiting the access to information regarding the activity of public institutions and the decision-making process. The integration in the Euro - Atlantic structures determined the adoption of normative acts that would guarantee the right to information of the citizens and the freedom of expression. Also, the notion of "transparency" in the activity of state organizations was expressly enshrined (Alina Popescu, 2018).

2. The access to information of public interest

Ensuring by public authorities and institutions access to information of public interest is done ex officio or upon request, through the public relations department or the person designated for this purpose, respectively the spokesperson of the public institution or authority.

In order to ensure the access of any person to the information of public interest, the public authorities and institutions have the obligation to organize specialized compartments of information and public relations or to designate persons with attributions in this field. Access to information of public interest is achieved through:

¹ Article 2 lit. (b) of Law no. 544 of October 12, 2001 on free access to information of public interest published in the Official Gazette of Romania, Part I, until January 31, 2013.

a) display at the headquarters of the public authority or institution or by publication in the Official Gazette of Romania or in the mass media, in its own publications, as well as in its own Internet page;

b) their consultation at the headquarters of the public authority or institution, in spaces specially destined for this purpose.

Public authorities and institutions have the obligation to make available to interested parties the privatization contracts they have concluded by consulting at their premises, except for privatization contracts containing information in the field of national defense, security and public order, if they fall into the categories classified information, privatization contracts containing information on the deliberations of the authorities, as well as those concerning the economic and political interests of Romania, if they are part of the category of classified information, as well as contracts concerning commercial or financial activities, if their publicity affects the right to intellectual or industrial property, as well as the principle of fair competition.

The following are also exempted from free access by citizens:

a) information on personal data, according to the law;

b) information on the procedure during the criminal or disciplinary investigation, if the result of the investigation is endangered, confidential sources are disclosed or the life, bodily integrity, health of a person are endangered as a result of the investigation carried out or in progress;

c) information on judicial proceedings, if their publicity undermines the assurance of a fair trial or the legitimate interest of any of the parties involved in the proceedings;

d) information whose publication prejudices the measures for the protection of young people.

At national level, public authorities and institutions are obliged to provide persons, at their request, with information of public interest requested in writing or orally, but requesting and obtaining information of public interest can be done, if the necessary technical conditions are met, and in electronic.

For the information requested orally, the officials within the information and public relations departments have the obligation to specify the conditions and forms in which the access to the information of public interest takes place and may provide the requested information on the spot.

The information of public interest requested verbally is communicated within a minimum program established by the management of the public authority or institution, which will be displayed at its headquarters and which will be mandatory during the operation of the institution, including one day a week, after the program Operating.

The information of public interest requested verbally by the mass media will be communicated, as a rule, immediately or within 24 hours at most.

Information that favors or conceals a violation of the law by a public authority or institution may not be included in the category of classified information and constitutes information of public interest.

Information on the personal data of the citizen can become information of public interest only insofar as it affects the capacity to exercise a public office.

Public information of personal interest may not be transferred between public authorities except on the basis of a legal obligation or with the prior written consent of the person having access to that information.

At European Union level, the Treaty on European Union enshrines the notion of transparency, according to which decisions must be taken in the most transparent way possible and as close as possible to the citizen.

Transparency ensures better citizen participation in the decision-making process, guaranteeing greater legitimacy, efficiency and accountability of the administration to citizens in a democratic system, while contributing to the strengthening of the principles of democracy and fundamental rights.

Within the institutions of the European Union, the right of access shall also apply to documents relating to the common foreign and security policy and to police and judicial cooperation in criminal matters. Each institution should follow its own security rules.¹

In order to improve the transparency of the work of the institutions, the European Parliament, the Council and the Commission should allow access not only to documents originating from the institutions but also to documents received by them. In this context, it must be remembered that Declaration no. 35 annexed to the Final Act of the Treaty of Amsterdam provides that a Member State may require the Commission or the Council not to disclose to third parties a document supplied by that State without its consent.

Therefore, as a general rule, the public should also have access to all documents of the institutions at EU level. However, certain public and private interests should be protected, as at national level, by a system of exemptions. Institutions should be allowed to protect their internal consultations and deliberations, where necessary to maintain their capacity to carry out their tasks. When assessing the need for an exemption, the institutions should take into account the principles enshrined in Community legislation on the protection of personal data in all areas of activity of the Union.

In view of these aspects, it appeared imperative to adopt a document with normative value, meant to regulate the free and unrestricted access of the person to any information of public interest and at European level.

To this end, Regulation (EC) no. Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents.

Thus, any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has a right of access to documents of the institutions, subject to compliance with the principles, conditions and limits imposed by this Regulation.

For their part, the institutions may, subject to the same principles, conditions and limits, allow access to documents for any natural or legal person not resident or established in a Member State.

As in the case of national legal provisions, this right implies access to the content of all documents held by an institution, ie drawn up or received by it and in its possession, in all areas of activity of the European Union.

And by correspondence with national law, except for the oral request, the documents shall be made available to the public either by written request or directly, in electronic form, or by means of a register. This provision applies to all documents held by an institution, ie drawn up or received by it and in its possession, in all areas of activity of the European Union.

As in the case of national provisions, there are also at European level certain documents exempted from free and unrestricted access of the person. They, bearing the title of "sensitive documents", cannot be consulted by any European citizen.

Sensitive documents are documents issued by institutions or agencies set up by them, Member States, third countries or international organizations, classified as "TRÈS SECRET / TOP SECRET" (Strict secret), "SECRET" (Secret) or "CONFIDENTIEL" (Confidential) under the rules in force within the institution concerned, which protect the

¹ Article 28 (1) and Article 41 (1) of the EU Treaty.

fundamental interests of the European Union or of one or more Member States in certain areas¹ and, in particular, in the areas of public safety, defense and military affairs.

Exceptions are also made.

Thus, the institutions shall reject requests for access to a document where disclosure could undermine the protection of the public interest as regards public safety, defense and military affairs, international relations, financial, monetary or economic policy of the Union or a State. member, privacy and integrity of the individual with regard to the protection of personal data.

Institutions shall reject requests for access to a document if the disclosure of the content could harm the protection of the commercial interests of a particular natural or legal person, including intellectual property, legal proceedings and legal advice, the objectives of inspection, investigation and audit, unless a higher public interest justifies the disclosure of the content of the document in question.

Access to a document drawn up by an institution for its internal use or received by an institution and relating to a matter for which the institution has not yet taken a decision shall be refused if disclosure of its contents would seriously affect the decision-making process of that institution. Unless a higher public interest justifies the disclosure of the content of the document in question.

Access to a document containing opinions intended for internal use during deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken, if disclosure of its contents would seriously affect the decision-making process of that institution, unless which a higher public interest justifies the disclosure of the content of the document in question.

All these exceptions apply only during the period when the protection is justified by the content of the document and can be implemented for a maximum period of thirty years. In the case of documents falling within the exceptions concerning privacy or commercial interests and sensitive documents, the exceptions may continue to apply, if necessary, even after the expiry of this period.

At the same time, a Member State may require an institution not to disclose the contents of a document issued by it without its prior consent, and if only part of the required document falls within one or more of the above exceptions, the others parts of the document are disclosed.

3. Conclusions

It is rightly considered that the right to information is justifiably subject to limitations, because in the broad framework of human rights ("universal, indivisible and interdependent") they must be approached in a balanced way, on the idea of balance of these rights, all of equal value, so that the exercise of a right, by an individual, does not infringe another right, of another individual. Another dimension of the fundamental right to information is its potential to alleviate disparities between nations, between regions of the same state, generally between individuals. Access to new information technologies, encouraging policies on free, effective access to information, can strengthen social development and encourage sustainable development (Popescu, 2018).

The corollary of free access to information must be the balance between transparency, the need to know and respect the rights and freedoms of others, as well as ensuring the proper functioning of institutions. We can conclude that the right to

¹ Article 4 (1) (a) of the Regulation.

information of citizens corresponds to a correlative obligation to inform, the state, but also other social actors (Popescu, 2018).

References:

1. Law no. 544 of October 12, 2001 on free access to information of public interest published in the Official Gazette of Romania, Part I, until January 31, 2013.
2. Popescu, A., 2018. *The right to information, Between guarantees and limitations*. Doctoral thesis, Bucharest. [pdf] Available at: <http://www.doctorat.ase.ro/Media/Default/sustineri%20teze%20doctorat/PopescuV/3.%20Rezumat_romana.pdf>.
3. Regulation (EC) No. 1049/2001 of the European Parliament and of Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.