

Access Info Europe

Calle Cava de San Miguel 8, 4c
28005 Madrid
Spain



Mr Andreas Mylonas, Permanent Secretary
Ministry of Justice and Public Order
Athalassis Avenue 125
1461 Strovolos
Nicosia, Cyprus

Also sent via email: perm.sec@mjpo.gov.cy

13 June 2017

Dear Mr Andreas Mylonas,

Thank you for your reply of 25 April 2017 to our letter supported by 30 civil society organisations on Cyprus' draft Access to Information Law.

In response, we clarify below that the Council of Europe Convention on Access to Official Documents does not in fact permit absolute exceptions, and we urge you to bring the draft Access to Information Law into line with the Convention before the draft is presented to the plenary of the Parliament.

We also call on the Cypriot government to sign the Convention on Access to Official Documents as a sign of its commitment to recognising this fundamental right, something that has been confirmed by the European Court of Human Rights, whose jurisprudence Cyprus is bound to uphold.

Exceptions

You state in your letter that for the five absolute exceptions in the draft Law, "*their absolute effect ceases after the lapse of 20 years, following Article 3(3) of the Council of Europe Convention.*"

This is a clear misinterpretation of the Convention on Access to Official Documents, which does not permit absolute exceptions. Rather it very clearly requires in Article 3(2) that there must always be a harm and public interest test for every exception, and that these must be applied on a case-by-case basis.

What Article 3(3) permits is for states to establish a time limit after which an exception may never be applied. This is made clear in the Explanatory Memorandum at Paragraph 40 which states "*This paragraph refers to Parties' duty to consider setting maximum time limits for limitations on the right of access to official documents. Access can never be refused after the expiration of any time-limit laid down in law.*"

Whilst some of the exceptions in the Cypriot law are subject to harm and public interest tests (Article 19.4.b in the draft law) the problem here is that the absolute exceptions do not have these tests and hence are out of line with international standards.

Whilst it is true that the Convention is not yet in force (although a couple of states are on the point of ratification and so it should very soon enter into force), the international standards can also be

derived from best practices. Many countries across Europe and globally have no absolute exceptions.

The prohibition on absolute exceptions is also in line with recent jurisprudence of the European Court of Human Rights recognising the right of access to information as an inherent part of Article 10 of the European Convention on Human Rights protection of freedom of expression, which may only be limited in exceptional circumstances justified by particular democratic necessity.

Furthermore, the absolute exceptions as contained in the draft Law are illogical as it is impossible to assume by default that all information regarding a particular interest should not be released. Sometimes the release of information may not cause any harm, and there may be specific public interest overrides in having access to that information.

Access Info Europe therefore strongly recommends that the draft Access to Information Law not contain absolute exceptions before being presented to Parliament.

We call on you to ensure that the draft Law contains harm and public interest tests for all exceptions before being presented to Parliament.

The Council of Europe Convention on Access to Official Documents

It is disappointing to read that, despite the fact the Cypriot Government has taken into consideration the Council of Europe Convention on Access to Official Documents in preparation of its access to information law, it appears to have no intention of signing or ratifying it.

It would be prudent, given the fact that legislation is currently being prepared to regulate the right of access to information and that only one more country needs to ratify the Convention in order for it to come into force, that the Government of the Republic of Cyprus seek to ensure that the proposed legislation meets this minimum European standard.

Access Info Europe and the undersigned organisations will be taking a keen interest in the development of this draft Law as it passes through the Parliament.

We look forward to engaging with the Cypriot government not only in the adoption of the law, but also its successful implementation in the years to come.

Yours sincerely,



Helen Darbishire
Executive Director
Access Info Europe

Undersigned Organisations:

