

A RECOMMENDATION WORTHY OF GREAT CONSIDERATION

Making public authorities more transparent and open to the public is an idea that the European institutions have very much taken on board. The European Commission, the Parliament and the European Council have shown that they are very much party to the benefits brought by transparency and good practice in access. They have done so by setting an example with their own documentation and using procedures to give anybody access to it. They have also done so by approving bills geared to promoting the practice of access to public documents in the Member States themselves. Yet do Strasbourg or Brussels really need to remind us constantly of something so obvious as the fact that the public should have access to public authority documents? It seems that they do because in many countries there is still a great contradiction between solemn declarations of principles in favour of transparency and effective practice. A heavy, thickly opaque and secret curtain that does not befit modern societies like ours too often still prevents many European citizens from being able to observe and control how their authorities work.

It was in this line of active encouragement of the right to access that last February the Committee of Ministers of the Council of Europe adopted Recommendation (2002)2 on access to public documents. This recommendation has a very broad scope and complements that approved two years previously on access to archive documentation (Rec(2000)13). Despite its non-regulatory character, Recommendation (2002)2 is a benchmark for all heads of authorities in the 44 countries that belong to the Council of Europe.

The recommendation, which contains an extensive preamble and eleven sections, is intended to lead to progress towards the establishment of a minimum common basis for transparency among European countries, regardless of the fact that in some countries, particularly those in the north of Europe, very much higher and more satisfactory levels have been attained. Many paragraphs of the text include a whole series of principles while a wide margin is left for these to be specified in each state's internal standards. It indicates, for example, that requests for access must be addressed to the authority that holds the documents, regardless of whether or not they are to be found in an archive (section VI.1), and that this authority must always work with fair criteria (VI.2). As an exception, the Recommendation uses a more precise and imperative tone and leaves no room for interpretation, when it states that enquiries need not be justified (V.1), or that making them should involve as few formalities as possible (V.2) and that they must be free (VIII.1).

Interestingly, the Recommendation presents the option of establishing exceptions to the right of access. These are classified into ten groups. However, it indicates that these exceptions must be established by law and must be proportional to the control that is aimed at. This is another way of stating that

exceptions to access can neither be arbitrary nor may they be abused to the extent that they ultimately become not the exception but the rule.

In reality, some of the Recommendation's criteria are already covered by the regulations applicable in Catalonia. This is the case of the requirement to justify refusals (VI.7), or the option of providing partial access to information if part of that included in the documents is reserved (VII.2). Elsewhere, the Recommendation reveals some of the weaker or most lacking points of our regulations. This is the case, for example, of the statement (VI.3) that all requests for access must be dealt with quickly, an idea hardly in keeping with the two-or three-month margin that the Law on Archives and Documents or Law 30/1992 give our authorities to respond. It is also the case (section IX.1 and 2) of the requester's right to appeal by means of a fast and low-cost procedure against denial of access. The Recommendation introduces some figures that are unprecedented in our country but commonplace in more advanced countries. An example is consideration for the greater public interest (IV.2), which may justify the release of information that was initially protected, or the requirement to guide users to alternative, easily accessible sources (VII.3).

In the last part of the text, among the statements in section X. Complementary measures, the Recommendation includes references of great interest that relate the exercise of the right of access with more general issues. Here, all archivists, and particularly those who work in implementing and managing electronic document management systems, will read paragraph X.2 with satisfaction. This paragraph details how public authorities are required to manage documentation efficiently, to follow clear, predetermined conservation and evaluation procedures, and to draw up lists and records of all documents.

The thick, heavy curtain that hides too many public documents from public view has already been mentioned. It is a moth-eaten, dust-ridden curtain that was hung up in times gone by. With the above-mentioned Recommendation, the Council of Europe asks Member States to make it work. It is a resolute invitation to do so and a recommendation very worthy of consideration in order to adapt our authorities and their relations with the public to the standards of openness and accessibility that befit advanced democracies.

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