

Thank you chair, Good afternoon Ladies and Gentlemen

It is a great pleasure to be here to talk to you about the right of access to information, also called freedom of information, a right which is an inherent part of the right to freedom of expression, and which permits individuals to request information from public bodies, as well as a right that places an obligation on public bodies to publish information proactively.

This right has been recognised as such by key human rights bodies, including the UN Human Rights Committee, the European Court of Human Rights, and the Inter-American Court of Human Rights. It is positive to see that the European Court of Human Rights specifically referred to OSCE standards in developing its jurisprudence.

In the OSCE region there are currently 53 countries, 54 with Kosovo, which have access to information laws; the European Union also recognises the right of access to its documents and has a corresponding regulation. When I first spoke in public about this right at an OSCE meeting here in Warsaw in November 1993 there were just 12 laws in the OSCE region. Credit is definitely due to the OSCE and in particular to the RFOM for contributing to the development of these laws over the past 25 years, as part of its work to develop democratic institutions.

The most recent country to adopt a freedom of information law was Cyprus in December 2017. The countries that still don't have laws are Andorra, the Holy See, Turkmenistan, and also Luxembourg, which has had draft law in parliament for the past 12 or so years, and which is the last European Union country without such a law; it is recommended that Luxembourg make this a priority.

The laws that do exist, I have to say, vary both in quality on paper and in implementation in practice. The Nordic countries, with their long tradition of openness, tend to be better on implementation, answering requests rapidly and comprehensively. And also in less developed democracies which nevertheless have strong laws on paper – such as Slovenia, Croatia, and Serbia – information can be obtained, something that's also thanks to the role that the independent oversight bodies, the information commissioners in those countries. Our data shows that independent information commissioners make a significant difference with implementation, so I would encourage countries to consider establishing them. To make a specific recommendation here, Bosnia and Herzegovina could follow its neighbours in this regard, and I know that this is being discussed there.

What our monitoring also shows is that it is often countries with both weak laws and lacking a tradition of transparency where responsiveness to requests is poor. As an example, a 2017 monitoring in Italy based on 800 requests revealed a 73% level of administrative silence, so no response, with around 60% in central government bodies. This is clearly not satisfactory, in spite of recent laudable improvements to the legal framework. Our analysis indicates that in many countries more resources need to be put into training public officials and into records management in order to make this right a reality in practice.

Another country is Austria, which according to detailed comparative analysis by Access Info and the Centre for Law and Democracy has the weakest access to information law in the OSCE region and also has poor implementation. It is positive that the 2017 election monitoring report by the OSCE/ODIHR had as one of its four priority recommendations that Austria strengthen the legal framework for the right to information.

The role of the RFOM is also absolutely essential, in monitoring levels of respect for this right and in conducting legal analyses, both when there are positive changes (such as those proposed currently in Macedonia FYROM) or negative changes (as previously in Hungary for example). It is essential that the RFOM have sufficient resources to undertake this work, particularly as we know it can have a positive impact, as I saw in the country where I live, Spain, when, in 2013, the draft transparency law was improved following OSCE recommendations. It is particularly important to intervene, and to do so rapidly, where this essential right is threatened, and here I would highlight recent proposed changes in Poland, and those introduced in the past year in Montenegro, which restrict the scope of the law.

One action that most OSCE Participating States could also take is to sign and ratify the Council of Europe Convention on Access to Official Documents, which will soon come into force upon ratification by the 10th country, which looks as if it will be Ukraine. Whilst we have some Nordic and eastern European countries that have ratified this convention, there are still a number of important European states, including the UK, France, Germany, Spain, the Netherlands, and Italy, that have not done so, and I would call upon them to take a leadership role here, particularly given their leadership in other fora where transparency is being promoted, such as the Open Government Partnership. It's important to note that for none of these countries are legal changes required for ratification of at least the basic provisions of the Council of Europe Convention, which they themselves developed.

The use of access to information laws by members of the public has various positive impacts for democratic development.

First, being able to obtain information permits members of the public to be better informed – something that is essential in the era of fake news – and hence to participate actively in decision making, contributing to better democratic governance. To this end, however, it's important that the delivery of information be timely. The average timeframe for responding to requests in the laws of the OSCE region is 17 working days, which would be acceptable, although in practice timeframes are often much longer. In Germany recently it took an average of 149 days to respond to a series of requests about decision making, something that is a huge obstacle to active participation. Indeed, the best solution here would be to significantly increase proactive publication of information, as our research shows that far too little information is available on line.

Legal reform is needed in some countries – here I highlight outliers for official response times, namely Greece with a 2-month timeframe, and Monaco with one of the world's longest at 4 months for responding to requests.

Last but not least I'd like to focus on the role of journalists and civil society in making use of the right to information to expose corruption and violations of human rights. Here the connection with freedom of expression is evident. In our work with journalists, however, we see that there is still much information that is hard to obtain, about, for example, financial spending and public procurement contracts, about lobbying, or about who are the real owners of companies. This is something that needs to change. Indeed, the quantity of important information that still enters the public domain via leaks is an indicator of the failure to properly uphold the right of access to information. The implementation of laws must be improved, while in the meantime of course there is a need for stronger protection of whistleblowers.

Another concern that has arisen during the course of 2018 is that of the possible negative consequences for journalists who make requests for information as part of investigations in problems such as

organised crime. The killing of journalist Jan Kuciak and his partner in Slovakia seems to have been linked to his requests for information, as these requests indicated that he had an investigation underway, and they may have found their way into the wrong hands. Access Info had identified multiple instances across the OSCE region of journalists who have come under pressure after submitting requests. The pressure could be threats directly to the journalist and or contact made by senior public officials to the editors of a media outlet urging them to call off the investigation. This kind of reaction is unacceptable and a clear violation of freedom of expression, and is something that I'd urge the OSCE RFOM to investigate further.

To finish, I'd like to highlight the very positive role that the OSCE is playing in promoting the right to information among the journalistic community. This is being done, inter alia, by the supporting the Legal Leaks Toolkit, developed by Access Info and n-ost, with the RFOM, which guides journalists on how to submit request, as well as providing tips on safety of data and on personal safety. It is now available in a total of 14 languages – all the versions are on line – and we have conducted extensive trainings and provide ongoing support for those trained. This year, thanks to the RFOM and the support of some Participating States, we have updated the toolkit – I have some copies here of the concise version with graphics and key guidance for anyone who wants its – and we hope that we will be able to conduct more trainings on this in the future.

I'd like to close by thanking you for the opportunity to be here today to talk about the right of access to information, which is not only a fundamental right in itself, but which is also essential for defending all the other human rights that the OSCE works to promote and uphold. Thank you.