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Hampering The 'Right to Know': Consequences of the Excessive Interpretation of the Notion of Exemption from the Right to Information

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Abstract : The right to know becomes gradually recognised as an increasing number of states adopts national legislations regarding access to state-held information. Laws differ from each other in the scope of the right to information (hereinafter: RTI). In all regimes of RTI, there are exceptions from the general notion of the right. States' authorities too often use exceptions to justify refusals to requests for state-held information. This paper sets out how states hamper RTI basing on the notion of exception and by not providing an effective procedure that could redress unlawful denials. This paper bases on two selected examples of RTI incorporation into the national legal regime, United Kingdom, and South Africa. It succinctly outlines the international standard given in Article 19 of the International Covenant on Civil and Political Rights (hereinafter: ICCPR) and its influence on the RTI in selected countries. It shortly demonstrates as a background to further analysis the Human Rights Committee's jurisprudence and standards articulated by successive Special Rapporteurs on freedom of opinion and expression. Subsequently, it presents a brief comparison of these standards with the regional standards, namely the African Charter on Human and Peoples' Rights and the European Convention on Human Rights. It critically discusses the regimes of exceptions in RTI legislations in respective national laws. It shows how excessive these regimes are, what implications they have for the transparency in general. Also, the objective is to divide exceptions enumerated in legislations of selected states in relation to exceptions provided in Article 19 of the ICCPR. Basing on the established division of exceptions by its natures, it compares both regimes of exceptions related to the principle of national security. That is to compare jurisprudence of domestic courts, and overview practices of states' authorities applied to RTI requests. The paper evaluates remedies available in legislations, including contexts of the length and costs of the subsequent proceedings. This provides a general assessment of the given mechanisms and present potential risks of its ineffectiveness. The paper relies on examination of the national legislations, comments of the credible non-governmental organisations (e.g. The Public's Right to Know Principles on Freedom of Information Legislation by the Article 19, The Tshwane Principles on National Security and the Right to Information), academics and also the research of the relevant judgements delivered by domestic and international courts. Conclusion assesses whether selected countries' legislations go in line with international law and trends, whether the jurisprudence of the regional courts provide appropriate benchmarks for national courts to address RTI issues effectively. Furthermore, it identifies the largest disadvantages of current legislations and to what outcomes it leads in domestic courts jurisprudences. In the end, it provides recommendations and policy arguments for states to improve transparency and support local organisations in their endeavours to establish more transparent states and societies.

Keywords : access to information, freedom of information, national security, right to know, transparency
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