

# Declassification Procedures in Council of Europe Member States

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THE TREND in member states of the Council of Europe has been to establish declassification procedures that provide a time limit, trigger event, or mandatory period of review to ensure that publicly-held information does not remain indefinitely classified.



# Declassification Procedures in Europe

What follows are the results of a survey conducted in August-November 2012 by Amanda Jacobsen of the University of Copenhagen Faculty of Law. Experts from nineteen countries – see Annex for a list of countries and names and qualifications of experts – completed a detailed questionnaire and responded to follow-up questions. The survey shows that:

- 13 of 19 states – Albania, Denmark, France (except for information concerning weapons of mass destruction), Germany, Hungary, Italy, Netherlands, Norway, Romania, Russia, Serbia, Slovenia and Sweden – include in their laws or regulations a mandated maximum period for classification.
- 9 states – Czech Republic, Denmark, France, Hungary, Italy, Moldova, Poland, Serbia and Slovenia – require periodic review of classified documents before the conclusion of the maximum period. Most require review at least every 5 years. Slovenia requires yearly review for information classified as top secret.
- Of the 6 states that allow indefinite classification, 3 states – Czech Republic, Moldova and Poland – nonetheless require review of the classification decision at least every 5 years.
- The 3 states that allow indefinite classification without periodic review are Belgium, Spain and Turkey.

Country	Maximum period of declassification	Possibility of extending period	Review period
Albania	Classifier <u>must</u> set an initial declassification date, may be extended, but not indefinitely.	N/A	After period of classification that was initially assigned has expired.
Belgium	None.	N/A	None.
Czech Republic	None (but an initial declassification date may be set by the classifier).	N/A	Every 5 years.
Denmark	75 years.	Yes.	By law, "regularly."
France	50 years.	No.	By law, every 10 years (not yet fully in practice).
Germany	30 years.	Yes, but only for a maximum of one more 30-year period.	No prescribed period – classified docs should be reviewed when the initial period expires, or when relevant circumstances change.
Hungary	30 years for Top Secret information.	Yes, period for top secret information may be extended twice for up to 90 years.	Every 5 years.
Italy	15 years (under state secrets privilege); 10 years for all other classified information.	Yes; state secret classifications may be extended for 15 years; other information for up to 5 years.	Every 5 years; every 15 years for state secrets.
Moldova	25 years for Top Secret information, 10 years for secret info.	Yes, for certain info, there is no limit on amount of times the classification period may be extended	Every 5 years.
The Netherlands	10 years.	Yes.	None.

Norway	30 years.	Yes.	After 40 years, and every 10 years thereafter.
Poland	None (but an initial declassification date may be set by the classifier).	Yes.	Every 5 years.
Romania	Up to 100 years.	Yes.	By law, "periodic checks" are required, but there is no stipulated period.
Russia	Maximum is 30 years.	Yes, upon a decision of the Inter-Departmental Commission for State Secret Protection.	No.
Serbia	30 years.	Yes.	Yearly, or every 3, 5 or 10 years, depending on the level of classification.
Slovenia	An initial declassification date or event <u>must</u> be set by the classifier, up to 40yrs.	Yes.	Every 3 years; yearly for Top Secret information.
Spain	None.	N/A	None.
Sweden	40 years generally, 150 for info of exceptional military info.	Yes.	No.
Turkey	None.	N/A	No.

# Survey of Declassification Procedures in Council of Europe Member States

## Editor

**Amanda Jacobsen** is a Research Fellow at the University of Copenhagen, Faculty of Law, where she focuses on national security and access to information. Previously, she worked as a legal researcher for the Office of the Prosecutor at the UN International Criminal Tribunal for Rwanda; cooperating counsel with the Centre for Constitutional Rights; and in private practice in Washington, D.C., primarily in government contract litigation.

## Country Experts

### Albania

**Ilir Gjoni**, an MP for the Albanian Parliament, has over 20 years of experience in various government and nongovernment institutions. He graduated in 1985 from Tirana University, Faculty of History and Philology and has two Master degrees: one in Diplomacy acquired at the Mediterranean Academy of Diplomatic Studies and the other in National Security Affairs from the Naval Postgraduate School in California. He has worked in diplomacy (MFA) for almost ten years and in journalism as an international news editor in one of Albania's biggest independent newspapers. His working experience also includes acting as a senior government Legislator (2001-2005 and 2009 to date), as well as Chief of Staff to the Prime Minister (1999-2000) and both Defense and Interior Minister (2000-2002).

### Belgium

**Frankie Schram** has studied history, philosophy, musicology, law, political science and public management. He is member and secretary of the Federal Commission on access to and reuse of administrative documents, member and secretary of the Federal Appeal Commission on the Access to Environmental Information in Belgium and member of the Flemish Supervising Commission of electronic administrative data-exchange. He is also visiting professor at the Public Management Institute of the Faculty of Social Science of the KU Leuven and visiting professor at the Faculty of Political and Social Science at the Faculty of Law of the University of Antwerp. He was for several years the president of the group of experts on access to official documents of the Council of Europe. His research domains are freedom of information, complaint management, participation, regulation management and integrity management.

### Czech Republic

**Oldřich Kužilek** is a consultant for government openness and privacy, a former theater director, radio presenter, and Czech and Czechoslovak politician for the Civic Forum. He was a deputy for the Civic-Democratic Alliance (ODA), a member of the Deputy Federal Assembly, and later served on the Czech National Council and the Chamber of Deputies.

## Denmark

**Pernille Boye Koch** is an Associate Professor and lecturer in Constitutional Law at the Faculty of Law, University of Southern Denmark, where she has been since 2004. In 2010, she was a Special Consultant to the Danish Folketing Administration, where she advised on constitutional matters and parliamentary rules. In 2010, she also co-authored a book on the Danish judiciary, entitled *Separation of Powers in Theory and Practice: An International Perspective*. She has published articles, among others, on freedom of association in Denmark, freedom of religion in Denmark, and on judicial oversight and independence.

## France

**Bertrand Warusfel**, a Professor at University of Lille II in Paris, teaches European Intellectual Property and Ecommerce Law. He is a member of the Scientific Council of the Institute of Intellectual Property Research Centre, the French Group of International Association for the Protection of Intellectual Property, and the Association of European Patent Practitioners. He is also a member of the Scientific Committee Papers Security, on the editorial board of the journal *Intellectual Properties*, and the Director of the Association of Sciences-Po. He is the former Scientific Director of the Centre for Security and Defense Research (Faculty of Law of Paris V) and a former member of the committee drafting the French directory of international relations.

## Germany

**Eric Töpfer** is senior researcher at the German Institute for Human Rights in Berlin, Germany. His research is focused on policing, new surveillance and civil liberties at the domestic and European levels. He has written extensively on video surveillance and European police cooperation, including articles in the *European Journal of Criminology*, *Kriminologisches Journal* and *Bürgerrechte & Polizei/CILIP*.

**Nils Leopold** is on the Board of Directors of the Humanistische Union, Germany's oldest civil rights organization, where he previously worked as the Executive Director of the federal chapter. He is also currently the Senior Advisor to Konstantin von Notz, the spokesperson on interior politics at the German Bundestag in Berlin. Previously, Leopold practiced law in Berlin. Since 2005, he has also been an Officer at the Data Protection Commission of the federal state of Schleswig-Holstein, Germany, from which he is currently on leave.

## Hungary

**Ádám Földes** of Transparency International has worked in the field of human rights since 2003, conducting research, advocacy and policy development on issues related to access to information, protection of personal data, and state secrecy. Between 2004 and 2008, he led the Freedom of Information and Personal Data Protection Program of the Hungarian Civil Liberties Union. Ádám has engaged in law reform, providing expert opinions at ministerial and parliamentary level, monitoring levels of access to information in practice, and managing strategic litigation and

campaigning. He holds a J.D. from ELTE University, Budapest, where he wrote his thesis on video surveillance, and also holds a Master's degree in Sociology from ELTE University.

### **Italy**

**Arianna Vedaschi** is an Associate Professor of Comparative Public Law at the University of Bocconi, Faculty of Law. She has her PhD in Legislation Drafting from the Università di Genova and her Masters in Law promoted by Italian Chamber of Deputies, the Italian Senate, and the Faculty of Political Science of Università degli Studi di Firenze. She was previously a researcher in Comparative Public Law and is currently a member of the Regional Board of Electoral Guarantors - Lombardia, Corte d'Appello di Milano. She is also a member of the Faculty Board of the PhD in International Law and Economics. Since 1999, she has been a member of the editorial board of the journal *Diritto pubblico comparato ed europeo*.

### **Moldova**

**Viorel Cibotaru** is the Director of the European Institute for Political Studies of Moldova, the Director of the Invisible College of Moldova, and a Senior Associate Fellow of the Center for Democratic Control of Armed Forces in Geneva. He is cofounder of the Documentation and Information Center on NATO, and served previously as its Executive Director. Cibotaru is also a retired lieutenant-colonel of the Moldovan Armed Forces (promoted in 2006 to colonel), and while mobilized, served in the Ministry of Defense as Editor-in-chief of military weekly, Head of the PI and PR office, Head of the Foreign Relations Department, and Deputy Commander-in-chief of the Moldovan Peacekeeping Forces. From 1980 to present, he has also been teaching Journalism classes at the State University of Moldova.

### **Netherlands**

**Wouter Hins** is an Associate Professor of Constitutional and Administrative Law at the University of Amsterdam and a Professor by special appointment of Media Law at Leiden University. In 1991, he was awarded his doctorate by the University of Amsterdam for his thesis on the freedom of reception and foreign broadcasting. He is a member of the complaints committees of the Dutch Media Authority, the Netherlands Public Broadcasting, and the Ministry of Health, Welfare and Sport, and is also editor of the journal *Mediaforum* and responsible for the quarterly column 'Mediarecht' in *Ars Aequi*.

### **Norway**

**Ole Henrik Brevik Førland** is Senior Legal Adviser for the Norwegian Parliamentary Oversight Committee.

### **Poland**

**Adam Bodnar** is a graduate of the Warsaw University (M.A., 2000) and the Central European University in Budapest, Department of Legal Studies (LL.M. in Comparative Constitutional Law, 2001). Since 2006 he is a doctor of laws (Warsaw University). He works as an assistant professor (adjunct) at the Human Rights Chair of the Warsaw University Faculty of Law and Administration. He is also a visiting professor at the Central European University in Budapest. He is mostly interested in the protection of fundamental rights, jurisprudence of the European Court of Human Rights and European Court of Justice, EU citizenship, and the role of NGOs in pursuing public interest and freedom of speech.

## **Romania**

**Codru Vrabie** is a trainer and consultant in the field of public administration and public service reform from Romania. He has international experience in non-profit and public management, administrative capacity and institution building, strategic development, fighting corruption and transposing provisions of *acquis communautaire*. He also has professional training certificates in advocacy and training of trainers. In addition to his native Romanian, he speaks fluent English, understands French, converses in Bulgarian and has a smattering of other European languages.

## **Russia**

**Ivan Pavlov, JD, PhD** is the Founder and Chairman of the Freedom of Information Foundation, Russia's largest NGO dealing with FOI rights and governmental openness. Pavlov has authored more than 70 analytical publications on access to official information and governmental openness, and served as an adviser in the drafting and promotion of Russia's FOIA. He serves on a number of advisory boards and is actively engaged in work promoting transparency in government including as a human rights expert for the OSCE. Pavlov was also recently appointed to serve as an expert for the Russian governmental working group on Open Government. A qualified attorney, he has participated as legal counsel in a number of high profile cases on FOI, state secrets, and access to state historical archives.

## **Serbia**

**Marko Milošević** is a Researcher and Publications Coordinator with the Belgrade Centre for Security Policy in Serbia. He graduated from the Faculty of Philosophy, Department for Sociology in 2004, obtained his MA degree at the same Department in 2009, and is currently a PhD candidate in International and European Studies at the Faculty of Political Sciences, University of Belgrade. His areas of interest include privatization of security, multinational operations, new wars, social research, transparency in the security sector, and the defense industry.



## Slovenia

**Rosana Lemut Strle** has a Master's degree in Law and works with the Information Commissioner of the Republic of Slovenia as Deputy Information Commissioner. Her professional work is now primarily focused on personal data protection and access to public information. Before, she worked at the Health Insurance Institute of Slovenia as Director of the compulsory health insurance section. She is the author of numerous articles from the fields of health insurance and protection of personal data. In both fields, she is also active as a lecturer.

## Spain

**Susana Sánchez Ferro** is Professor of Constitutional Law at the Autonomous University of Madrid. She is an expert on the right of citizens to access government security information and has a monograph on State Secrets published by the Center for Constitutional Studies, in addition to several articles on the problems posed for a democratic state of law, the tension between national security and civil liberty. She served as consultant to the European Parliament in a study on the subject of parliamentary scrutiny of intelligence, and has been a Fellow of the Fulbright Commission and the U.S. Department of State.

## Sweden

**Iain Cameron** is a Professor of Public International Law at Uppsala University. He has been a member of the Council of Europe Commission on Democracy through Law since 2005. He has also been a Rapporteur for the journal *European Public Law* (1995-2009) and Expert in Commission of Inquiry into UN and EU Sanctions. He is the author of several books including *An Introduction to the European Convention on Human Rights* (2011), *International Criminal Law from a Swedish Perspective* (2011), and *National Security and the European Convention on Human Rights* (2000).

## Turkey

**Yaman Adkeniz** is a Professor of Law at the Human Rights Law Research Center, Faculty of Law, Istanbul Bilgi University. Previously, he was a senior lecturer at the School of Law, University of Leeds. Akdeniz is also the founder and director of Cyber-Rights.Org based in the UK, and the co-founder of BilgiEdinmeHakki.org, a pressure group working in the field of freedom of information law in Turkey. He authored the Report of the OSCE Representative on Freedom of the Media on Turkey and Internet Censorship (January 2010).

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