

**Five NGOs submitted
comments on the Draft
Law on Free Access to
Information**

GOVERNMENT PROPOSES LAW ON WITHHOLDING OF INFORMATION

Podgorica, November 2019.

“We expect the Government to withdraw the proposed amendments to the Law and harmonise them with the Constitution and international standards.”



institut alternativa





Five non-governmental organizations submitted to the Ministry of Public Administration numerous comments to the Draft Law on Free Access to Information, as they proposed amendments contrary to the Constitution of Montenegro, international conventions, as well as the practice of the European Court of Human Rights.

The draft introduces systematic restrictions on access to information, new grounds for withholding information, abolishes existing citizens' rights and obligations of authorities, while it does not resolve issues in practice that lead to multiple violations of rights and the absence of any liability. Almost all proposed amendments to the Law narrow the existing rights of citizens.



Main issues

1



Systematic restrictions

2



Classified information

3

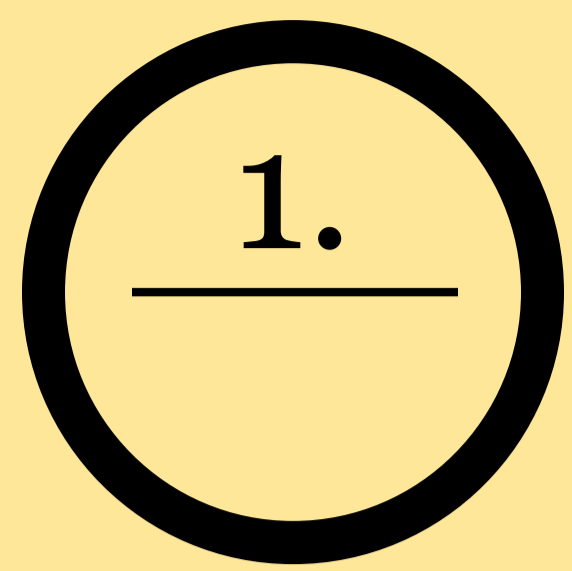


Repeal of existing rights and obligations

4



"Useful ambiguities" kept

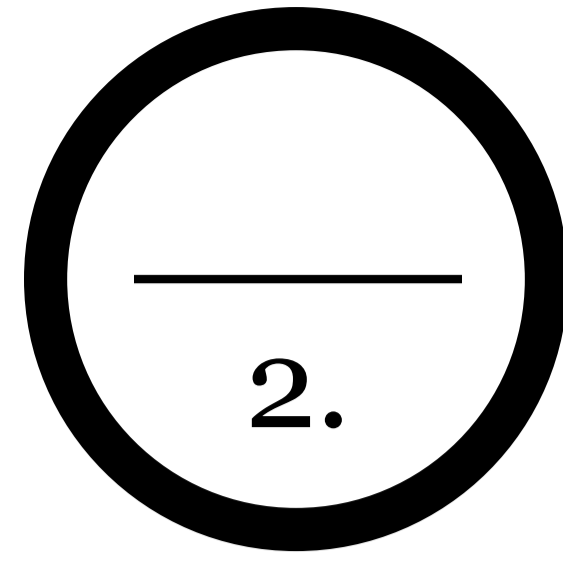


Systematic restrictions

The draft threatens the entire system of access to information:

- “Abuse of the right” to access information is introduced as a basis for rejecting a request, while general and imprecise formulation allows these provisions to be applied arbitrarily in almost every case;
- Definition of information is narrowed and it leaves room to determine in each individual case whether the requested information is "of public importance";

According to the European Court of Human Rights, the law must be "predictable", i.e. formulated with sufficient precision to enable any person to regulate their conduct in accordance with it, as well as to provide legal protection against arbitrary interference by public authorities with the exercise of human rights guaranteed by the Convention. However, the Government's law proposal has been drafted precisely to allow for the unrestricted arbitrariness of the authorities in deciding on access information.



Classified information

The draft law allows an unlimited number of information to be declared classified:

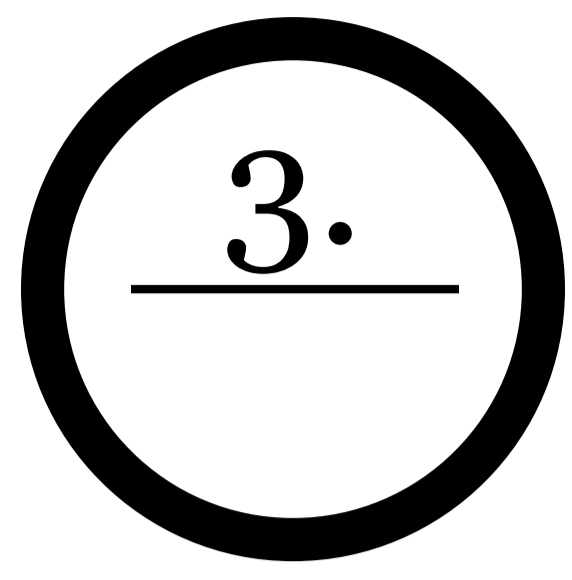


- **Absolute restrictions on access to information in the intelligence and security sector are introduced, as well as information exchanged in cooperation with international organizations or other countries;**
- **It is envisaged that the basis for withholding information may be introduced by other laws, which means that the list of exceptions is unlimited;**
- **The term business secret is not prescribed, which in practice is most often cited as a reason for restricting access to information, although no law defines what can be declared a business secret.**

International standards provide a precise list of possible restrictions to the right of access to information.

The draft stipulates that for information declared classified for the protection of privacy, security, defence, foreign, monetary and economic policy, no harm test will be conducted.

According to international standards, it must be determined whether there is a greater public interest in making the information public than the interest protected by withholding information.



Repeal of existing rights and obligations

The draft law repeals citizens' rights and obligations of institutions:

- **The obligation of political parties** to disclose information about their financing is repealed, and they are therefore excluded from the reporting entities to the law in the eve of the election year;
- **The obligation of institutions to proactively publish** public registers, expert opinions on drafts and bills, as well as data on revenues of public officials in their possession **is repealed**;
- **The costs of the proceedings are repealed**, so citizens will have to pay the lawyer's fees themselves, even when their Constitutional right has been violated, and bear the burden because they have initiated proceedings against an unlawful decision of an authority;

In addition, the Draft **extends the time limits for deciding** both on requests and appeals, which delays access to data to such a degree that it makes it difficult to obtain information.

International standards stipulate that a party must have access to a court also regarding compensation and reimbursement of expenses incurred by another party, in this case the state or authority. Any restriction on access to a court must have a legitimate goal, and the funds used must be proportionate to that goal.

4.

"Useful ambiguities" kept

Issues in the implementation of the Law that lead to multiple violations of the rights and lack of accountability of the authorities have not been resolved:



- There is no obligation of meritorious decision-making on appeals that would interrupt long-standing proceedings in which authorities persistently violate the law, even though their decisions have been repeatedly overturned.
- The issue of supervising the implementation of the Law is not addressed, although the provisions on misdemeanour liability are not implemented in practice, thus, citizens' rights to access information are violated without any consequences.

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