

Analysis of Charging Regime for Access to Information in Montenegro

1. Overview

Montenegro's Law on Free Access to Information states clearly at Article 2 that *"it shall be carried out at the level of standards set out in ratified international agreements on human rights and freedoms and in generally recognized rules of international law."*

This analysis by Access Info Europe of the charging regime for copies of information provided in response to freedom of information requests finds that although it is broadly in line with international standards, the actual costs charged are high, particularly given the state of the Montenegrin economy and the level of purchasing power of the average Montenegrin citizen. Hence the proposed charges should be reviewed and be reduced to be in line with the actual costs of making a photocopy. Wherever possible, documents should be produced in electronic format or scanned and sent by mail and as such, access should be free of charge.

Furthermore, the charging regulation fails to take into account that the cost of collecting the fees may often be higher than the amount of money recuperated. For this reason, many access to information regimes do not collect charges for a small number of photocopies or scans of documents. Some access to information regimes specifically provide for the first pages to be free of charge. This is something that should be written into the regulation in Montenegro.

A further related matter, is that far too much information in Montenegro is still provided in paper format, or is in paper documents that have to be scanned in order to be provided electronically. This is out of step with modern administrative practices and indeed out of line with Montenegro's commitments under the Open Government Partnership. As such there should be a focus on ensuring that the documents that are the subject of request are made available in electronic format at no charge.

2. International Standards on Charging

The right of access to information is a fundamental right linked to the right to freedom of expression, something that has been confirmed by various international human rights tribunals (European Court of Human Rights, Inter-American Court of Human Rights) as well as the UN Human Rights Committee, and relevant bodies such as the UN Rapporteur on Freedom of Expression and the OSCE Representative on Freedom of the Media.

As such, and as with all fundamental rights, there is a positive obligation on governments to ensure that it may be exercised with minimal obstacles by all members of the public. A charging regime for accessing information threatens to be a serious obstacle for many people, and as such risks constituting a violation of the right of access to information.

2.1 UN Human Rights Committee

The UN Human Rights Committee recognised the right of access to information as a fundamental right in its General Comment 34 (29 July 2011), linking this right to the well-established right to freedom of expression set out in Article 19 of the International Covenant on Civil and Political Rights.¹ In other words, our right to free expression is contingent on information and when this information is held by public bodies, we have a right to access it, with only limited exceptions.

The Human Rights Committee further specified (General Comment 34, paragraph 19) that there is an obligation on governments to ensure that there are no undue obstacles to access to information: "*States parties should make every effort to ensure easy, prompt, effective and practical access to such information.*"

They link this requirement to the question of costs: "*Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information.*"

Other international standards and comparative law (as analysed below) makes clear that what is reasonable is to charge real costs. Wherever possible, information should be provided free of charge by electronic means, and then, so as not to discriminate against those without internet access, everything should be done to reduce costs for those receiving paper copies.

2.2 Council of Europe Convention on Access to Official Documents

The most important reference on this question is the Council of Europe Convention on Access to Official Documents, which was signed by Montenegro on 18 June 2009 and ratified on 23 January 2012.

As already noted above, Montenegro has made a commitment under this Convention to ensure that charges for copies of official documents are reasonable, and do not exceed the actual costs of reproduction and delivery of the documents.

The specific provision is Article 7 of the Convention:

Article 7 – Charges for access to official documents

1. *Inspection of official documents on the premises of a public authority shall be free of charge. This does not prevent Parties from laying down charges for services in this respect provided by archives and museums.*
2. *A fee may be charged to the applicant for a copy of the official document, which should be reasonable and not exceed the actual costs of reproduction and delivery of the document. Tariffs of charges shall be published.*

¹ UN Human Rights Committee General Comment No. 34 – Article 19: Freedoms of Opinion and Expression CCPR/C/CG/34, Paragraphs 18 and 19.

The actual costs of reproduction are understood to be photocopying costs or, in the case of use of other formats, the cost of the material used (for example a disk). Delivery costs are postage costs (or a courier or other method of delivery if offered and if selected by the requester).

The Explanatory Report to the Convention makes clear that "the public authorities should not make any profit" and hence there is an obligation to ensure that tariffs are based on a genuine assessment of real material costs, with no other costs taken into account.

3. Charging regime in Montenegro's Law on Free Access to Information

The charging regime set out in Article 33 of Montenegro's Law on Free Access to Information is broadly in line with international standards.

It is positive that this regime prohibits charges for making requests, something which is also prohibited by international standards.

It is also entirely reasonable that the law establishes at Article 33 paragraph 2 that the only charges that may be made are those for the "*actual costs incurred by the public authority in relation to copying of documents, scanning and delivery of information to the applicant, pursuant to the regulations of the Government of Montenegro.*"

There are however ways in which this provision could be reformed to ensure that charges do not constitute an interference with the exercise of the right of all persons to information.

- *The regulation should state that a certain number of pages should always be free of charge.* The EU standard is that the first 20 pages should be free of charge, as is the case in Estonia. In the US, for non-commercial use, the first 100 pages are free of duplication costs, something that is also the practice for the first 100 pages in Poland.
- *The regulation should make it optional for public authorities to charge for copies rather than requiring them to do so.* Hence, if a public authority chooses to make a priority out of ensuring access to information, particularly certain kinds of information of high public interest.
- *The regulation should require public authorities to waive costs if the cost of collection more than amount of money recovered.* It is inefficient for public authorities do not waste time and money collecting very small sums from the public. In some countries, the information must be provided even if the funds have not yet been collected (Poland). In many others, public authorities do not have to collect costs if it would be more expensive to do so than the amount recuperated.

As a result of these considerations, we recommend that there be a revision of the charging regime in Montenegro to ensure that it does not pose an undue burden either on the requester (which would be a violation of their rights) or on the public authority (which would be an unnecessary cost and an interference with their efficiency in implementing the Law on Free Access to Information).

4. The Amount Charged in Montenegro

Access Info Europe is concerned that the amount charged in Montenegro is very high compared with other countries, especially taking the GDP of the country and the purchasing power of members of the public into account.

Based on these considerations, the amount to be charged should be significantly reduced, especially having in mind the average, commercial price of photocopying in local photocopy shops are 0,03 per copy of A4 page in grayscale.²

Comparative Pricing for Access to Information Requests

Country	A4 B&W	Other costs
Slovenia	€ 0,06	€ 0,63 (colour). Max price of converting from paper to electronic for A4 format is € 0,08 (b&w) or €,13 eur (colour)
Croatia	0,25 HRK = € 0,03	For A4 in colour it's 1,0 HRK = € 0,13
Poland	If it is imposed it is should not exceed € 0,05 to €0,10 per page.	Usually not charge for first 100 pages and information must be delivered in any case
Hungary	HUF 5/copied black and white page = € 0,02	Colour copies: HUF 25/page = €0,08
Serbia	3 dinars = € 0,02	Charges are often not collected
Scotland (central Government)	10 p = € 0,14	30 p = € 0,47
Ireland	€0.04 per page	
Canada	\$0.20 = €0.13 per page	

5. The right of access to information in electronic format

Montenegro's law on Free Access to Information makes clear that there is a right of access to information in electronic format. Indeed, it even permits the applicant to transcribe or scan the document themselves.

Article 21: Forms of Access

An applicant shall access the requested information by way of:

- 1) direct insight in original or copy of information in premises of the public authority;*
- 2) the applicant transcribing or scanning the information in the premises of a public authority;*
- 3) delivery of a copy of the information to the applicant by hand, mail or e-mail*

² Based on three offers obtained from commercial photocopy shops by Network for Affirmation of NGO Sector: „Student“ from Podgorica, „Savremeni Biro“ from Podgorica and „PrintCopy Center Radius“ from Podgorica.

Public authority shall grant the access to information in such a form referred to in paragraph 1 herein as might be preferred by the applicant, unless the preference expressed is technically impossible. In purpose of allowing access to information in the form preferred by the applicant, the public authority shall convert, where possible and appropriate, the existing format of information into electronic or analogue form (scanning, copying, etc).

This is a positive legal provision, which needs to be better implemented in Montenegro.

There should be much greater effort made by the authorities to ensure that documents are available in electronic format. Ensuring the availability of sheet-feed scanners in all public bodies and prioritising the scanning of information requested under access to information requests would be a way to speed up the digitisation of public information at the same time as ensuring that information of public interest is available in electronic formats. This would be consistent with the commitments to administrative modernisation made by Montenegro under various international commitments, including the Open Government Partnership.



This analysis was made for the Network for Affirmation of NGO Sector (MANS) from Montenegro, through a project funded by the European Union and Open Society Foundations' Think Tank Fund. Opinions expressed in the analysis cannot be considered as opinions of the donor who supported the project.