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ACCESS TO PUBLIC INFORMATION AS A FUNDAMENTAL DEMOCRATIC RIGHT OF CITIZENS

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Abstract

Countries that insist on development of a democratic society for freedom of information, that is, the right to access public documents. Only informed citizens are able to make correct decisions about each government and evaluate their work.

That is why in this paper I will try to sublimate in one place all the documents starting from the Constitution of RNM through the Law on Free Access to Public Information as well as the international Conventions and Declarations on which these norms are based in our country.

The goal that the author wants to achieve is to see to what extent the international standards for informing citizens are incorporated in the part of transparency in the operation of the institutions and to what extent the possibility of "positive obligation" is applied by the holders of information of public interest, in terms of the commitment to inform the citizens, directly or through the media.

The data that is used in this paper is provided through a content analysis of the documents related to the given problem, as well as through an analysis of the answers given to a survey questionnaire addressed to a reference number of respondents made in the period May - September 2023.

Keywords: information, free access, documents, users.

1. INTRODUCTION

Information of a public nature is information in any form created or with which the owner of the information disposes in accordance with his competences.

In the sphere of our interest are the holders of information of a public nature, namely the bodies of the state government and other bodies and organizations established by law such as: local self-government units, public institutions and services, public enterprises as well as legal and natural persons who exercise public powers.

The right of access to information as a civil right is established in the Constitution of the Republic of Macedonia from 1991. Namely, in Article 16, paragraph 3, it is stated that: "**Free access to**

information, freedom to receive and transmit information is guaranteed" (Official Gazette of the Republic of Macedonia No. 52/91)

The initial activities that face transparency in the provision of public information are given in the Law on Local Self-Government (Official Gazette of RNM No. 5/2022), where in Article 6 of the obligations of Municipalities, council committees and the public services established by the Municipality that they should inform the citizens about their work, as well as about the plans and programs that are important for the development of the Municipality, without provision is within the Macedonian legislation until today.

A provision for transparency and access to information is also included in the Law on Public Sector Employees (Official Gazette of RNM No. 14/20). Namely in Article 10 paragraph 1, it is provided that **"Employees in the public sector when performing their work and tasks are obliged to ensure access to information of a public nature in a manner and under conditions established by law."**

However, we must point out that the full implementation of the constitutional provision arising from the mentioned Article 16 is established by the Law on Free Access to Public Information (Sl.C of RNM No. 98/19). It regulates the procedure for creating public information: information, requester and holder of information, regulates the exceptions to the right of free access to information of a public nature, regulates the two-level procedure, the position and work in the second-level procedure, etc.

2. INTERNATIONAL LEGAL FRAMEWORK FOR REGULATING THE RIGHT OF FREE ACCESS TO INFORMATION

The freedom to obtain and provide information is a basic human right. Every country in which democracy reigns, international organizations including the United Nations stand for its respect, as well as its application in domestic legislation in an appropriate form through legal norms and laws.

Freedom of information or the right to receive information are defined as the right of access to information owned or created by public institutions. Within the UN, it is an integral part of the fundamental right to freedom of expression, which was established by Resolution 59¹ of the United Nations General Assembly adopted in 1946 as **"Freedom of information is a fundamental human right and...a cornerstone of all freedoms for advocated by the United Nations."**

In order to adequately guarantee this right within all member states of the United Nations, freedom of information is also provided for by Article 19 of the Universal Declaration of Human Rights, which states that **"Everyone has the right to freedom of opinion and expression . This right includes freedom to hold opinions without influence, and to seek, receive and impart information and ideas through any media, regardless of frontiers."**

An important document that guarantees freedom of information is the International Covenant on Civil and Political Rights adopted in 1966. Article 19 regulates the freedom of expression, whereby:

¹General Assembly, Resolutions adopted by General Assembly during its first session

"1. No one can be harassed for their opinions.

2. Every person has the right to freedom of expression. This right, regardless of frontiers, includes the freedom to find, receive and impart information and ideas of all kinds in oral, written, printed or artistic form, or in any medium of one's free choice.

3. The realization of the freedoms provided for in point 2 of this article includes special duties and responsibilities. Consequently, it may also be subject to certain restrictions that must be determined by law, and are necessary for the reasons: a) respecting the rights or reputation of other persons; b) protection of state security, public order, public health and morality".

It is for these reasons that we consider the International Covenant on Civil and Political Rights to be an important document in terms of guaranteeing freedom of information.

In 1994, the Assembly of the Republic of Macedonia ratified the International Covenant on Civil and Political Rights and thus this document became part of our national legislation.

Another international document regulating this issue is the UNESCO Strategy 2008-2013, which promotes the universal human right to access information and knowledge.

Freedom of information is also a central theme of the World Summit on the Information Society, which affirmed freedom of expression and universal access to information as the foundations of an inclusive knowledge-sharing society. The relevance of freedom of information was also highlighted in the Brisbane Declaration on Freedom of Information - The Right to Know (2010), the Maputo Declaration on Promoting Freedom of Expression and Access to Information (2008), the Declaration on Media and Good Governance from Dakar (2005), as well as the Convention on Access to Information, Participation in Decision-Making and Access to Justice in All Matters Related to the Environment (1998). All these declarations stem from UNESCO's annual World Press Freedom Day celebrations.

In parallel with them, UNESCO works with governments and the civil sector to overcome all challenges, promote dialogue and debate, as well as advice on technical implementation and preparation of national legislation of the countries on freedom of information.

The Office of the High Commissioner together with the Human Rights Council on behalf of the UN monitor, regarding the situation in individual countries, at the annual meetings in Geneva are debated all problems and key issues.

The Council of Europe is also an international organization that regulates the law, that is, the freedom of information through its acts and basic documents that are further important for implementation in its member countries.

In the European Convention on Human Rights adopted in 1950, the Council of Europe guarantees freedom of information in Article 10:

"1. Everyone has the right to freedom of expression. This right includes freedom of opinion and to receive and impart information or ideas without any interference by public authority and regardless of national borders. This Article does not prevent States from granting operating licenses to broadcasting, television broadcasting and cinema enterprises.

2. The exercise of these freedoms, since it also carries responsibility, may be subject to formalities, conditions, restrictions or penalties determined by law and necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for protection from riot or crime, to the health or morals, reputation or rights of others, to protect against the disclosure of confidential information, or to maintain the authority and impartiality of the judiciary."

Freedom of information is part of several recommendations that are of particular importance for the development of the right to free access to information of a public nature. The recommendations were adopted by the Committee of Ministers and relate to information held by public authorities (Recommendation 19), communication with third parties about personal data held by public authorities (Recommendation 10), personal data collected and used for statistical purposes (Recommendation 18), as well as the European policy for access to information from the archive (Recommendation 13) as well as access to official documents (Recommendation 2).

These recommendations are important and applicable and include:

"1. Any person within the jurisdiction of a member state shall have the right, upon request, to obtain information held by public authorities, other than legislative bodies and the judiciary."

2. States Parties shall guarantee the right of any person, upon request, to have access to official documents held by public authorities. This principle should be applied without discrimination on any grounds, including national origin."

Of course, these recommendations also note that there are exceptions due to which "access to a certain document can be refused if the publication of the information contained in the official documents could harm or would likely harm privacy and personal data, national and public security, confidential data, economic and monetary policy of the country and the like".

A large part of these exceptions are part of the Law on free access to public information of the Republic of Macedonia.

The European Court of Human Rights understands and applies the freedom of information quite widely, while the restrictions should be legally supported in their form and strictly provided by a legal text.

According to the more recent jurisprudence of the European Court of Human Rights, it is noted that there is also a positive obligation for countries to advocate for the implementation of freedom of information through the media and not to prevent the investigative practice of journalists in any way in order to protect the public interest. .

The European Union, like the Council of Europe, since its foundation has been committed to transparency and accountability of its bodies through the application and guarantee of freedom of information. Already in the founding treaty of the European Union, the guarantee of access to information and public documents is found. Namely:

"1. Every citizen of the EU and every natural or legal person who resides or is registered in a member state has the right of access to the documents of the European Community, the Council"

and the Commission, respecting the principles and conditions that will be established on the basis of points 2 and 3;

2. The basic principles and limitations based on public or private interest for access to documents will be determined by the Council, within the decision-making procedure provided for in Article 251 within two years of the entry into force of the Treaty of Amsterdam

3. Each said authority shall adopt in its rules of procedure specific provisions regarding access to documents."²

The development of law within the European Union develops in accordance with the policies and cooperation between the states. It is necessary for member states and their citizens to exchange information, which is precisely why freedom of information is among the first to be developed in all documents.

In the most important document of the EU, the Treaty on the Functioning of the EU or better known as the Lisbon Treaty, freedom of information occupies a very high position. So, according to Article 15 of the Agreement **"the basic principles for the promotion of good governance and ensuring the participation of the civil sector, European institutions should maintain their work transparently at the highest level, and that the European Parliament and other institutions should strive for active transparency and ensure the publication of all documents related to legislative procedures"**. (2010/C 83/01)

Freedom of information is also part of the European Charter of Human Rights, specifically in Article 42, the right of access to documents of all natural and legal persons, citizens of the EU by all EU institutions, bodies, agencies and authorities is guaranteed. This document provides access to information in any form, including written, electronic or other forms of document availability.

The European Union is developing the so-called secondary right, in which the freedom of information is unequivocally included and specially emphasized.

So, Regulation No. 1049/2001 aims to facilitate "full possible public access" to EU documents especially in cases where EU institutions act in a legislative capacity. At the same time, they try to preserve the efficiency of the decision-making process of the institutions, by preserving the secrecy of the internal consultations and consideration of the institutions where necessary to preserve their ability to perform their tasks (Article 4).

One of the most important documents that regulates the right to free access to information of a public nature is the Directive 2003/98/EC³ on the reuse of information from the public sector. The focus of this directive is to introduce a general rule whereby all documents that are available through public sector bodies can be reused for any purpose, only if they are not copyrighted by third parties.

²(2010/C 83/01) TREATY ON EUROPEAN UNION AND THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (2010/C 83/01)EN 30.3.2010 Official Journal of the European Union C 83/1

³European legislation of re-use of public sector information, <https://ec.europa.eu/digital-single-market/en/european-legislation-reuse-public-sector-information>

- establishment of the principle that state authorities do not charge more than the costs incurred during personal data requests. In practice this means that most of the data should be offered for free or almost free, unless the costs are justified;
- to achieve mandatory provision of data in the most commonly used, machine-readable format, in order to reuse and effectively use the data;
- introduction of regulatory supervision for the implementation of the principles;
- a massive expansion of the scope of the Directive, in order to include libraries, museums and archives for the first time.

Freedom of access to information (2003/4/EC) is also regulated by a directive of the European Union with the formal title "Directive 2003/4/EC of the European Parliament and of the Council of January 28, 2003 on public access to information on the environment and for the repeal of Council Directive 90/313/EEC."⁴

The purpose of the Directive is to ensure that environmental information is systematically available and disseminated to the public. The Directive requires Member States to ensure that public authorities are obliged to provide environmental information in their possession upon request by any legal or natural person. The Directive on free access to environmental information is mandatory for EU member countries, i.e. its non-fulfillment will be sanctioned by the EU Commission. Thus, for example, in 2005 the European Commission sanctioned Italy, Spain and five other member countries for inadequate implementation of this Directive.

In 1998, the European Community signed the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters known as the Aarhus Convention (Aarhus, 25 June 1998).

3. DOMESTIC REGULATION REGULATING THE RIGHT OF FREE ACCESS TO INFORMATION

The right to free access to information is regulated in the Constitution of the Republic of Macedonia. In Article 16, paragraph 3, it says ***"Free access to information, freedom to receive and transmit information is guaranteed."***

Failure to provide free access to information means disrespecting and violating the highest legal act - the Constitution of the Republic of Macedonia. Starting from the Constitution, achieving free access to information of a public nature is an obligation arising from other laws as well. These are first of all: the Law on Free Access to Information of a Public Nature (Sl.C of RNM No. 98/19), the Law on local self-government (Official Gazette of RNM No. 5/2022) and the Law on Public Sector Employees (Official Gazette of RNM No. 14/20)

3.1. For the full implementation of the constitutional provision arising from Article 16, but also for the purpose of harmonizing Macedonian with European legislation, the Parliament of the

⁴ Directive 2003/4/EC of European Parliament and of the council of 28 january 2003. <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF>

Republic of Macedonia in January 2006 adopted the Law on Free Access to Public Information, and its application began on 1 September of the same year. The law on free access to information of a public nature governs the procedure for making information public, defines the term information, requester and owner of information; regulates the exceptions to the right of free access to information of a public nature, regulates the two-level procedure, the position and operation of the second-level procedure, etc. The law on free access to information of a public nature has been changed five times since its adoption until today, in the direction of its greater alignment with European and international standards.

What is important to note is that Macedonia can boast of a solid legal text in this area, but with very weak application and respect of its provisions.

3.2. The Law on Local Self-Government provides for the openness and transparency of Municipalities in Article 6, where the obligations of Municipalities, council commissions and public services established by the Municipality, etc., to inform citizens about their work, as well as plans and programs, without compensation are enumerated. which are important for the development of the Municipality. In accordance with this law, the Municipality is obliged to provide citizens with access to basic information about the services it provides in the manner and under the conditions regulated by the statute. This provision is valid within the Macedonian legislation until today.

3.3. The 2015 Law on Public Sector Employees also included the provision for transparency and access to information. In Article 10 paragraph 1, it is provided as one of the basic principles of work of public servants. The principle governs the public in the operation by giving an obligation that:

"1. Employees in the public sector are obliged to provide access to information of a public nature in the manner and under the conditions established by law when performing their work and tasks.

2. Employees in the public sector, in the performance of work and tasks at the workplace, handle personal, official and classified data in a manner and under conditions established by law."

4. ANALYSIS OF THE SITUATION IN THE REPUBLIC OF N. MACEDONIA

Access to information of a public nature as a basic democratic human right is intended for informing citizens about the ways of working and spending public finances of the authorities. We must be aware that only informed citizens can make correct decisions about any government and evaluate their work.

Until the adoption of the legal framework in this sphere in our country, this right was guaranteed to the citizens but without a specific and appropriate procedure for its application.

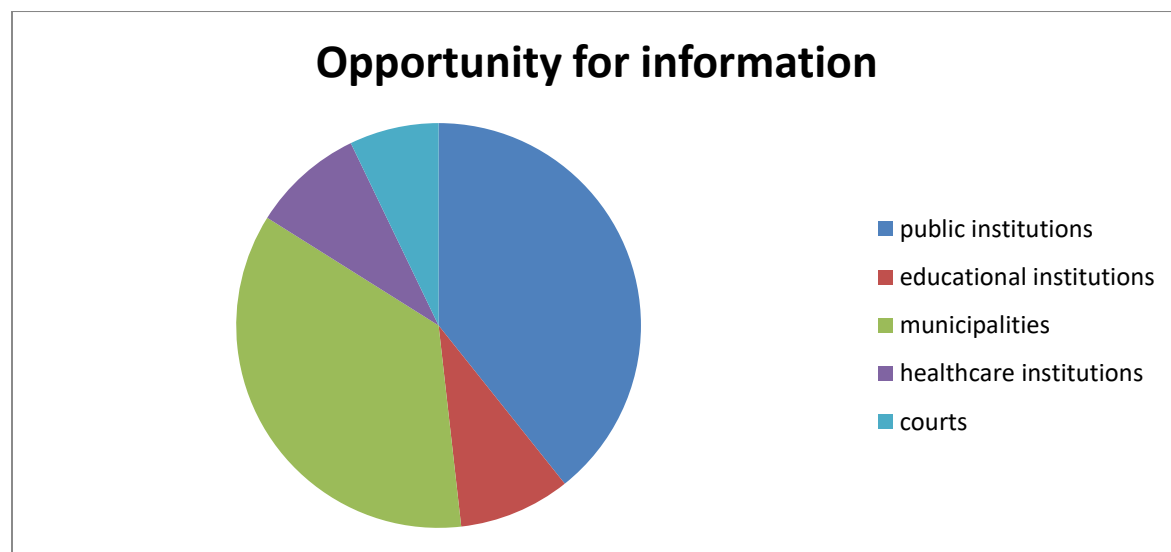
The citizens submitted the requests to the departments for archiving, without having an appointed person who would be able to adequately help the citizens in exercising this right.

At the insistence of the non-governmental sector in the country, the Government of the Republic of Macedonia adopted the legal solution for Free Access as part of documents related to public policies and the work of state bodies - strategies, action plans, international partnerships. In this

area, the leading institution of the activities and responsible for their implementation is the Commission for Free Access to Public Information.

The Ministry of Information Society and Administration prepared the Strategy for Reform in Public Administration 2018-2022.⁵ The text includes a special area "Transparency and accountability" where the largest part of this area is occupied by the issue of freedom of information, that is, the right of access to information of a public nature. As a result of the strategy, an Action Plan has been prepared for its implementation, which focuses on achieving the goals for greater transparency and availability of information.

The data show that the citizens are not sufficiently familiar with the opportunity they have to search for and receive information. Most of the respondents believe that they can seek and receive information from municipal and public institutions, while they consider courts, educational institutions and healthcare as a place from which they should not seek information.



In this part, the role of the Commission for the protection of the right to free access to public information is important, which, among other things, has the obligation to educate and train the holders of information, but also to promote the right to free access to them.

5. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

The use of the right to free access to information by citizens is still at a low level. A large percentage of the citizens do not know about the existence of this law and most likely because of this they do not use it. In the percentage of utilization of this law, the representation of civil organizations in this country is the largest.

The silence of the administration is still present. The largest percentage of requests are "rejected" due to non-action by the holders of information and their silence about the requested information.

⁵ Strategy for Public Administration Reform, Ministry of Information Society and Administration, <http://mioa.gov.mk/?q=node%2F4542>

In fact, the largest percentage of complaints to the Commission for Free Access are submitted on this basis.

The "proactive approach", which should be applied by the institutions in the framework of their daily work, is an ignored tool and an ignored article of the law by the holders. Although basic steps have been taken to increase the proactive approach, a long-term approach in this direction is still necessary.

The Commission for Free Access to Information does not have the right to lead and impose criminal sanctions for non-compliance or consistent implementation of the Law, although it is its responsibility to take care of its implementation in every sense. Such incompetence of the commission further complicates the already difficult access to public information.

It is necessary to pay much more attention to the full implementation of the Law on Free Access to Public Information.

Holders of information should be properly trained, in order to properly use the exceptions to free access, so that they do not abuse them and there is no inappropriate violation of citizens' rights.

In this sense, the law has the necessary mechanisms, but attention should be paid to proper implementation, so that "access to information will be the rule, not the exception."

Active transparency during proper implementation of the Law will enable a proactive approach by the institutions, and also it will build their awareness of transparency and accountability.

The Commission, as a body responsible for the appropriate implementation of the Law, should receive more competences in order to increase the efficiency and effectiveness of its operations. It should be possible for the Commission to be able to issue criminal sanctions following the example of other authorities. For this purpose, it is necessary to harmonize the Law on Free Access to Public Information with the Law on Violations.

Continuous basic and advanced training for its implementation is necessary in order for each holder of information to act appropriately according to this law. With this approach, the need for requests for access to information of a public nature will be reduced, as well as for complaints due to inappropriate behavior by the holders.

6. LITERATURE

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