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FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE

1. INTERNATIONAL STANDARDS

To understand the right to information, at the very beginning, we must differentiate between two aspects of this right. The first aspect refers to the right of an interested person to documents that may be relevant for decision-making in a specific proceeding lead before a public authority. The second one is much broader and implies the right of the general public to have access to public documents that constitute information of public importance. The first aspect of this right is, in fact, just one form of effecting the right to fair trial, while the second one is a constituent part of freedom of information.

The right to information held by public authorities gained recognition as one of the fundamental human rights only recently.[2] The exception is Sweden, where the public right to information was legally recognised under the freedom of press regulations back as early as 1776.[3] The first free access to information statute was adopted in 1966 in the United States of America,[4] which was followed by similar legislation adopted in other countries as well. Over the past few decades, the legislative activity in this area has been increasingly intensive – both at the national and international levels. Furthermore, in some countries, the right to information is guaranteed in the constitutional texts.[5]

Therefore, which are the legal sources relating to the right to information of public importance at the international level?

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[1] Research Associate, Institute of Comparative Law, Belgrade.

[2] Toby Mendel, *Freedom of information (a Comparative Legal Survey*), United Nations Educational Scientific and Cultural Organisation (UNESCO), New Delhi, India, 2003, p. iii.

[3] M. Savino, *The Right to Open Public Administrations in Europe: Emerging Legal Standards*, Sigma Papers, No. 46, OECD Publishing. http://dx.doi.org/10.1787/5km4g0zfqt27-en, p. 7. The same regime applied also to Finland, which was a part of the Kingdom of Sweden at the time. Finland adopted their regulations on this issue in 1951.

[4] As pointed out by D. Banisar (*Freedom of Information Around the World 2006: A Global Survey of Access to Government Records Laws* (2006) Privacy International), President of the United States Lyndon Johnson stated on that occasion "I signed this measure with a deep sense of pride that the United States is an open society which the people's right to know is cherished and guarded."

[5] Spain, Estonia, Finland, Poland, Portugal, Romania, Slovenia. M. Savino, *The Right to Open Public Administrations in Europe: Emerging Legal Standards*, Sigma papers, No. 46, OECD publishing, p. 7.

1.1. Sources of Law

In its very first session in 1946, the UN General Assembly adopted Resolution 59(I), stating, "Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the United Nations is consecrated". Article 19 of the UN Universal Declaration of Human Rights[6] stipulates freedom of opinion and expression as follows: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Similar formulation is provided also in Article 19 of the UN International Covenant on Civil and Political Rights,[7] stating: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Moreover, the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression recognised the principles relating to freedom of information as the key elements of freedom of speech, but also as an important independent human right. In 2005, the UN organisation adopted the UN Convection Against Corruption. Article 10 of this Convention, under the title "Public reporting", encourages the state parties to take such measures as may be necessary to enhance access to information as one of the means used in the action against corruption. Access to information was given special importance in the Aarhus Convention.[8] The Convention came into force in 2001. Article 4 of the Convention requires the state parties to adopt and implement legislation that would ensure that public authorities, in response to a request for environmental information, make environmental information available to the public (including, copies of the actual documentation). Environmental information means any information on the state of elements of the environment, affecting or likely to affect the elements of the environment, the state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment.[9] The Convention stipulates also the obligation of state parties to ensure within the framework of the national legislation that environmental information is made available to the public without a legitimate interest having to be stated. To this date, the Aarhus Convention has been ratified or acceded to by 46 countries, including Serbia. The European Union also acceded to the Convention.

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[6] Universal Declaration of Human Rights. General Assembly resolution 217 A (III) of 10 December 1948.

[7] International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI) of 16 December 1966, *http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.*

[8] Zakon o potvrđivanju Konvencije o dostupnosti informacija, učešću javnosti u donošenju odluka i pravu na pravnu žaštitu u pitanjima životne sredine (Aarhus Convention ratified) 12 May 2009 *Official Gazette RS – International Contracts*, No. 38/09.

[9] Article 2 of the Aarhus Convention.

The Council of Europe organisation also recognises freedom of information as a fundamental human right under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[10] Article 10, Para. 1, of the Convention states, "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers." As with other rights and freedoms guaranteed by this Convention, the scope of the right to information is specified through the case-law of the European Court of Human Rights (ECHR). As pointed out by Mendel,[11] while the ECHR previously interpreted Article 10 of the Convention so as that it did not imply a positive obligation of the state to disseminate or disclose information to the public,[12] the recent case-law shows that the Court has considerably changed the approach. In the case of *Kenedi v. Hungary,*[13] the Court explicitly recognised the obligation of the state, in circumstances when the requested information is available and does not require the government to gather any data, to refrain from interfering with the flow of information requested by the applicant. This right was recognised to a certain extent back in 2006 when the Court in the case of *Sdružení Jihočeské Matky v. Czech Republic*[14] found that Article 10 of the Convention could imply the right to information held by a public authority. In the judgement in the case of *Társaság a Szabadságjogokért v. Hungary,*[15] in paragraph 35, the Court recognised that the Court had recently advanced towards a broader interpretation of the notion of freedom to information, which implied also free access to information.

However, the right to information is not regulated only by the European Convention for the Protection of Human Rights and Fundamental Freedoms. Quite on the contrary, the Council of Europe has been engaged for decades on developing the standards for access to information.[16] Two documents from that regulatory framework need to be singled out: Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents[17] and the Council of Europe Convention on Access to Official Documents from 18 June 2009. As pointed

[10] European Convention for the Protection of Human Rights and Fundamental Freedoms.

[11] T. Mendel, Freedom of Information as an Internationally Protected Human Right, available at *http://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf*, 25 November 2012.

[12] Cases Leander v. Sweden, 26.3.1987., 9 EHRR 433, p. 74, as well as Gaskin v. United Kingdom, 7 July 1989, 12 EHRR 36 and Guerra and Ors v. Italy, 19 February 1998.

[13] Application No. 31475/05, judgment 26 May 2009.

[14] Application No. 19101/03, judgment 10 July 2006.

[15] Application No. 37374/05, judgment 14 April 2009.

[16] V. Banisar, *op. cit*, p. 11. Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents, available at *https://wcd.coe.int/ViewDoc.jsp?id=262135.*

17 Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents, available at *https://wcd.coe.int/ViewDoc.jsp?id=262135.*

out by Šabić,[18] the Recommendation is a refined summary of the best international standards in this field, and it will hence be considered in more detail further below. The Recommendation was in fact used as a basis for the aforementioned Convention, which still has to enter into force - which requires 10 ratifications, while it has been ratified by only 6 countries to this date.[19] That is why in this paper the references to the Council of Europe standards will be considered as references to the relevant case-law of the ECHR and the Recommendation (2002)2.

The European Union recognised the issue of access to information from the date of its establishment – the Declaration on the Right of Access to Information[20] was adopted together with the Maastricht Treaty. Truth be told, the Declaration was only a recommendation that the Commission should prepare a report on the measures that would ensure the improvement of access to information held by public authorities. However, based on this Declaration, the Council and the Commission adopted a Code of Conduct that further specified the terms under which the information held by those authorities can be requested. Free access to information was guaranteed also in Article 255 of the Treaty Establishing the European Community to all natural or legal persons residing or having their registered office in a Member State - however, the detailed rules relating to the implementation of that right were to be adopted by the Council within two years from the effectiveness of the Amsterdam Treaty.[21] That was done when the Council and the European Parliament adopted the Regulation No. 1049/2011 regarding public access to European Parliament, Council and Commission documents.[22] The approach adopted in the Regulation corresponds to the Nordic concept of access to information.[23] Although in June 2009 the Commission proposed that the Regulation should be revised, after a heated public debate this idea was abandoned, and the Regulation still remains in force. The case-law of the ECHR and the Ombudsmen's opinions were crucial for the implementation of the full scope of this right.[24] The Treaty of Lisbon confirmed the commitment of the European Union to the implementation of the right to information – Article 15 reiterates that

18 R. Šabić, "Zaštita prava na slobodan pristup informacijama prema Zakonu o slobodnom pristupu informacijama od javnog značaja," *Pravni zapisi* 1/2012, p, 55.

19 *http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=205&CM=1&DF=&CL=ENG*

20 Declaration No. 17 on the Right of Access to Information, available at *http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html#0101000037.*

21 *http://eur-lex.europa.eu/en/treaties/dat/11997E/htm/11997E.html#0173010078.*

22 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, *OJ L 145,* 31 May 2001*,* pp. 43–48.

23 M. Augustyn, C. Monda, *Transparency and Access to Documents in the EU: Ten Years on from the Adoption of Regulation 1049/2001*,
http://www.eipa.eu/files/repository/eipascope/20110912103927_EipascopeSpecialIssue_Art2.pdf

24 For a detailed review of the case-law of the European Court see the case T-36/04, API v. Commission

any citizen of the Union, any natural or legal person residing or having its registered office in a Member State shall have the right to access documentation of the EU authorities, bodies, and agencies.[25] Furthermore, the Charter of Fundamental Rights[26] in Articles 41 and 42 explicitly guarantees the right of every person to have access to his or her file and documents of the EU institutions. As emphasised,[27] in less than two decades, access to information in the EU law has evolved from a situation of a mere favour being granted to the individual by the institutions into one of a true subjective fundamental right.

In addition to having adopted the regulation guaranteeing the right to information held by public authorities, the European Union introduced through its Directives the obligation of Member States to incorporate into their national legislation regulations ensuring access to information in particular sectors - for example, in the environmental sector;[28] the Directives regulate also the issues of processing of personal data,[29] and the terms for re-use of public sector information.[30]

1.2. Contents of the Standards

The first important standard relating to free access to information implies that the person requesting information is not obliged to state reasons for the request.[31] This is an important standard as it reflects the very essence of this right – access to information must be free and it cannot be conditional. At the same time, the formal requirements for the submission of requests must be minimal.[32] That means that it is enough that the request is submitted in writing – either on a piece of paper or electronically,[33] and even if the request is not precise enough, the public authority cannot ignore it, and has to assist the applicant to specify his/her request more

25 Consolidated version of the Treaty on European Union, Official Journal of the European Union C 83/13.

26 Charter of Fundamental Rights of the European Union, 2010/C 83/02.

27 M. Savino, *op. cit*, p. 8.

28 Directive 2003/4/EC of 28 January 2003 on public access to environmental information, repealing Council Directive 90/313/EEC.

29 Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

30 Directive 2003/98/EC of 17 November 2003 on the re-use of public sector information.

31 Section V 1. Council of Europe Recommendation, Article 6 of the Regulation No. 1049/2011 regarding public access to European Parliament, Council and Commission documents.

32 Section V 2. Council of Europe Recommendation.

33 This is, for example, stipulated explicitly in Article 6 of the Regulation.

precisely,[34] i.e. to identify the document containing the requested information.[35] However, if that is not possible, the authority is not obligated to fulfill the request.

Any pubic authority that receives requests for information, i.e. documents, should consider the requests without any discrimination, on an equal basis.[36] The requests should be considered without any delay, i.e. a request must be handled within a reasonable timeline that is known in advance,[37] and if that cannot be done within the specified timeline, the applicant should be informed thereof.

The request for access to information of public importance can be denied if it is obvious that it is unreasonable. In that way the public authorities are protected from unreasonable requests that would present an unreasonable burden for the authority or that present the blatant abuse of the right – this could include also the cases when the applicant resubmits the same request several times. [38]

Even in the case of a partial denial of the request, the justification of the reasons for the denial must be given.[39] This view is based on the Recommendation R (81) 19 regarding access to information held by public authorities. The only exception is allowed in cases when the justification could release information exempt from the right to free access to information, which will be further discussed below.

For access to information to be truly free, it must not imply high costs for the applicant. That means that no fees can be charged for access to information[40] - therefore, any insight into original documentation must be free of charge. However, a public authority may charge the applicant for the issuance of copies of documentation, but such fees must be reasonable, and cannot exceed the real costs incurred by the public authority for performing such action.[41]

In case the request is not considered within the specified timeline, or in case it is denied, it is necessary to ensure a fast and inexpensive procedure before a court or another independent and unbiased authority.[42] After a careful analysis of the existing national legal remedy systems and the procedures in case of denial of a request for access to information of public importance, the OECD[43] recommends that the states

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[34] Article 6, para. 2, of the Regulation.

[35] Section VI 5 of the Recommendation.

[36] Section VI 2 of the Recommendation.

[37] Section VI 4 of the Recommendation. The Regulation, for example, specifies the timeline of 15 days.

[38] Section VI 6.

[39] Section VI 7 of the Recommendation.

[40] Section VIII 1 of the Recommendation.

[41] Section VIII 2 of the Recommendation.

[42] Section IX 1 and 2 of the Recommendation.

[43] M. Savino, *op. cit*, p. 41.

should introduce in their national legislation a two-tier system – the first-instance procedure before an administrative authority, and the second-instance procedure before a court of law. Although it can be agreed in principle that such system would surely provide the best guarantees for the protection of the right to information of public importance, the restrictions and the legal traditions in the national legal systems impose the need for this analysis to be based on a less elaborated standard, provided in the Council of Europe Recommendation, nonetheless always keeping in mind the OECD recommendations. This stance is also supported by the methodology used for ranking of laws on free access to information of public importance,[44] which assesses whether there is a right to "internal legal remedy" – to the body which is superior to the body that did not make the information of public importance accessible, and whether there is the right to "external legal remedy", i.e. possibility of filing a legal remedy to some independent body.

As other human rights, the right to information of public importance is subject to restrictions. In which cases could the states stipulate restrictions of this right?

Firstly, all restrictions on free access to information of public importance must be clearly and explicitly specified by law,[45] and at the same time such restrictions must be necessary in a democratic society and proportional in relation to the objective they seek to protect, which can include the following:

- national security, defence and international relations
- public safety
- prevention of criminal activities, investigations relating to such activities, and criminal prosecution for such activities
- disciplinary investigation
- privacy and other legitimate private interests
- commercial and other economic interests
- equal treatment of parties to a legal proceeding
- nature, i.e. environment
- national economic and monetary policy and currency policy
- inspection, control or oversight by public authorities

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[44] *http://www.rti-rating.org.*

[45] Section IV1 of the Recommendation.

- confidentiality of deliberations within different public authorities relating to the examination of an issue. [46]

The right to information may be denied if the release of information contained in the document would or could affect any of the aforementioned interests, unless it is in the predominant public interest to make such information available to the public.[47] The rules on the restriction of the right to information of public importance so formulated constitute a standard that is not only contained in the relevant Council of Europe documents, but is also recommended by the OECD.[48] It reflects the principle of seeking balance between the right of the public to know and the need to protect the aforementioned interests, not differentiating between the protection of the national security interests and the protection of intellectual property rights. The European Union in its regulations, on the other hand, adopted a somewhat different approach, granting a higher degree of protection of the legitimate pubic interest (national security, military issues, but also protection of privacy[49]) compared to the issues that essentially constitute private interest, such as, for example, commercial and economic interests (for example, intellectual property rights). Therefore, with respect to the allowed restrictions of the right to information of public importance, the view that should be accepted is that no category of information is exempt from the free access regime per se, while adopting at the same time the standard that the bodies deciding on exemptions must interpret these restrictions strictly.[50]

It has to be noted that the Council of Europe Recommendation emphasises also the obligation of the state to ensure that the public is informed about their right to information, and that civil servants are educated about such public rights and the procedures for the provision of information.[51] Furthermore, the Recommendation encourages public authorities to make information available on voluntary basis if that is in the interest of improving transparency of the public administration, and to encourage informed public participation in the decision-making on all issues of public importance.[52]

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[46] Compare Section IV of the Recommendation, Article 3 of the Council of Europe Convention, and Article 4 of the EU Regulation.

[47] Section IV 2 of the Recommendation.

[48] M. Savino, *op. cit*, p. 23 and p. 40.

[49] The reasons for this should be found in the detailed and comprehensive EU regulations relating to personal information protection.

[50] M. Savino, *op. cit*, p. 40.

[51] Section X of the Recommendation.

[52] Section XI of the Recommendation.

2. COMPARATIVE LEGAL ANALYSIS OF THE FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE

2.1. Sources of Law on Free Access to Information of Public Importance

In most countries whose legislation is analysed, the right to information is guaranteed by the constitution.[53] The exceptions are Macedonia, whose Constitution guarantees in Article 16 the right to information only in the broader sense of the word, and Bosnia and Herzegovina, whose Constitution nonetheless stipulates in Article 2 that in Bosnia and Herzegovina the European Convention for the Protection of Human Rights and Fundamental Freedoms is directly applicable, while Article 3, which lists the protected human rights and fundamental freedoms, does not even have a reference to the broad concept of a right to information.

All these countries, in addition to the constitutional guarantees, have separate statutes that regulate free access to information of public importance in more detail. These statutes were adopted after 2000, mainly as a part of much wider legislative changes that are related to the accession to the European Union. At the same time, the European trend of the detailed legal regulation of free access to information of public importance emerged at that very time, and it can be argued that these countries, although their main motivation was to align their legislation with the *acquis communautaire*, as one of the key requirements in the EU accession process, incorporated relatively quickly the emerging international standard in their legislation. The first counties to do that were Bulgaria[54] and Bosnia and Herzegovina[55] – in 2000, while Macedonia was the last.[56] Serbia adopted the statute in 2004,[57] Montenegro in 2005,[58] Croatia

[53] Constitution of the Republic of Croatia, *Official Gazette 85/10* – clarified text, Article 38, Constitution of the Republic of Bulgaria, Article 41, para. 2, Constitution of Montenegro, Article 51, Constitution of Kosovo, Article 41, Constitution o f Serbia, Article 51, para. 2.

[54] Закон за достъп до обществена информация Обн. ДВ. бр.55 от 7 Юли 2000г., изм. ДВ. бр.1 от 4 Януари 2002г., изм. ДВ. бр.45 от 30 Април 2002г., изм. ДВ. бр.103 от 23 Декември 2005г., изм. ДВ. бр.24 от 21 Март 2006г., изм. ДВ. бр.30 от 11 Април 2006г., изм. ДВ. бр.59 от 21 Юли 2006г., изм. ДВ. бр.49 от 19 Юни 2007г., изм. ДВ. бр.57 от 13 Юли 2007г., изм. ДВ. бр.104 от 5 Декември 2008г., изм. ДВ. бр. 77 от 1 октомври 2010 г., изм. ДВ. бр.39 от 20 Май 2011 г.

[55] Zakon o slobodi pristupa informacijama u Bosni i Hercegovini, *Službeni glasnik BiH*, No. 28/00, 45/06 and 02/09.

[56] Закон за слободен пристап до информации од јавен карактер, *Сл. Весник на РМ* No.13/2006, 86/2008 and 6/2010.

[57] Zakon o slobodnom pristupu informacijama od javnog značaja, *Službeni glasnik RS*, No. 120/2004, 54/2007, 104/2009, 36/2010.

[58] Zakon o slobodnom pristupu informacijama, *Sl.list RCG* No. 68/05. Montenegro has adopted a new statute (Zakon o slobodnom pristupu informacijama Sl.list RCG No 44/12) which is applicable as of February 17, 2013; until then, the old statute is in force. The provisions of both statutes shall therefore be analysed.

back in 2003,[59] while Kosovo adopted its first statute on free access to information in 2003, followed by the second one in 2010.[60] In addition to the statute, all the countries adopted also the relevant bylaws – the regulations that stipulate the fees for access to information, and rules of procedure/statutes of the oversight bodies for free access of information of public importance. It is interesting to note that these countries' regulations rank quite high on the RTI rating list[61] - Serbia's statute on free access to information of public information is ranked the best, with 135 out of maximum 150 points,[62] and Croatia, with 114 points and the 9th place, Bosnia and Herzegovina with 102 points, Kosovo with 106 points, and Macedonia with 108 points also rank relatively high. The lowest ranked countries among those whose legislation is analysed in this study were Bulgaria with 92 points and Montenegro with 89 points.[63]

2.2. Exemptions from the Right to Information of Public Importance and Confidentiality of Information

In addition to the constitutional provisions and legislation that regulate explicitly the access to information of public importance, all countries have stipulated also the potential exemptions from this right. These are the usual exempted categories, and the stipulated exemptions in all the countries are in line with the international standards. The exception to this is Bulgaria, whose legislation differentiates between official and administrative information, implying also different regimes of exemptions from the right to official and public information. More specifically, official information, contained in regulations, become available by the very act of publishing, while access to administrative information can be restricted if it relates to a public authority's preparatory documents, reports, or consultations, and in case such documents contain opinions or statements that relate to ongoing or future negotiatiations. Furthermore, in Bulagria the Access to Public Information Act explicitely does not apply to such information that may otherwise be obtained in administrative procedure, and to information kept by the National archives of the Republic of Bulgaria.

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59 Zakon o pravu na pristup informacijama, *Narodne novine*, No. 172/03, 144/10, 77/11.

60 Zakon o uvidu u javnim dokumentima, No. 03/L-215.

61 *http://www.rti-rating.org/index.php*, accessed on 8 January 2013. RTI Rating is a website launched by two non-profit organisations - Access Info Europea and Centre for Law and Democracy, with the idea to provide RTI advocates, reformers, legislators and others with a reliable tool for assessing the overall strength of the legal framework in their country for RTI. RTI Rating includes information concerning relevant regulations of 89 countries, and the ranking is based on a self-developed methodology.

62 *http://www.rti-rating.org/view_country.php?country_name=Serbia*, accessed on 8 January 2013.

63 Even though changes to the Montenegro ranking can be expected due to the adoption of the new statute - the ranking relies on the 2005 statute.

All the analysed countries also have laws on confidential information,[64] which clearly raises the issue of the relation between the laws making the information held by public authorities available to the public and the laws based on which information gets confidentiality labels. However, in almost all of the analysed countries, even the information that is exempt form the right to information may be made available if that is in the public interest. That requires the so-called public interest and proportionality test, which starts from the assumption that the information was justifiably exempt from the scope of application of the law, and determines the need to deviate from the exemption. In contrast to that, the Serbian legislation stipulates the general assumption that any limitation of the right to information constitutes an exemption from the rule, and even in case of information that has been declared confidential, access to information is limited only if its disclosure could result in grave legal or other consequences affecting the interests protected by law and that prevail over the interest to ensure access to information.[65] A similar formulation is contained also in the Montenegrin law of 2005 and the Kosovo law. The new Montenegrin statute, however, exempts some categories of information from the harm test. Namely, personal data concerning public officials that are related to the performance of public office and the incomes, property or conflict of interest of such persons and their relatives covered by the statute governing the conflict of interest, and also data concerning the distribution of public funds (except for social help, health care and protection from unemployment) are presumed to always be subject to the right of the public to know - hence, the harm test is not applied to them.[66] Furthermore, this statute expressly prescribes that the harm test is not applied if the information was declared classified by another state or an international organisation.[67] The new Montenegrin statute also prescribes the longest allowed statute of limitations for limiting access to certain categories of information (e.g. until a proceeding is completed, until an intellectual property right expires), which is a useful solution.

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[64] In Bulgaria - Закон за защита на класифицираната информация, *Обн. ДВ*. бр.45 от 30 Април 2002г., попр. ДВ. бр.5 от 17 Януари 2003г., изм. ДВ. бр.31 от 4 Април 2003г., изм. ДВ. бр.52 от 18 Юни 2004г., доп. ДВ. бр.55 от 25 Юни 2004г., доп. ДВ. бр.89 от 12 Октомври 2004г., изм. ДВ. бр.17 от 24 Февруари 2006г., изм. ДВ. бр.82 от 10 Октомври 2006г., изм. ДВ. бр.46 от 12 Юни 2007г., изм. ДВ. бр.57 от 13 Юли 2007г., изм. ДВ. бр.95 от 20 Ноември 2007г., изм. ДВ. бр.109 от 20 Декември 2007г., изм. ДВ. бр.36 от 4 Април 2008г., изм. ДВ. бр.66 от 25 Юли 2008г., изм. ДВ. бр.69 от 5 Август 2008г., изм. ДВ. бр.109 от 23 Декември 2008г., изм. ДВ. бр.35 от 12 Май 2009г., изм. ДВ. бр.42 от 5 Юни 2009г., изм. ДВ. бр.82 от 16 Октомври 2009г., изм. ДВ. бр.93 от 24 Ноември 2009г., изм. ДВ. бр.16 от 26 Февруари 2010г., изм. ДВ. бр.88 от 9 Ноември 2010г., изм. ДВ. бр.23 от 22 Март 2011г., изм. ДВ. бр.48 от 24 Юни 2011г., изм. ДВ. бр.80 от 14 Октомври 2011г., изм. и доп. ДВ. бр.44 от 12 Юни 2012г), in Bosnia and Herzegovina - Zakon o zaštiti tajnih podatka, *Službeni glasnik BiH* 54/05 i 12/09, in Croatia - Zakon o tajnosti podataka (Uredнички pročišćeni tekst, *Narodne novine*, 79/07 i 86/12), in Macedonia - Законот за класифицирани информации (*Службен весник на РМ*, 9/04, 113/07), in Montenegro - Zakon o tajnosti podataka (*Službeni list CG*, br. 14/08, 76/09, 41-10), in Serbia - Zakon o tajnosti podataka (*Sl. glasnik RS* 14/2009)

[65] Article 9, Para. 2, of the Serbian law; Article 8 of the Croatian law; Article 6 of the Macedonian law.

[66] Article 16, para. 2 of the Montenegrin statute of 2012.

[67] Article 16, para. 5 of the Montenegrin statute of 2012.

That means that in these three regulations the initial assumption is that the right to information prevails over the confidentiality of information, even if such information has been declared confidential in accordance with the applicable laws, and, therefore, the starting point is that information should always be available to the public. Such approach is recommended also in the Council of Europe Recommendation. However, we could not rightfully conclude that in the other countries the regulations are not aligned with the applicable international standards – this points only to different starting assumptions in the regulation of the exemptions.

Notwithstanding such *prima facie* alignment of the regulations with the applicable international standards, the practice has shown[68] that the confidentiality regulations and regulations on free access to information of public importance are usually not harmonised, and that public authorities often invoke the confidentiality of information as the grounds for denying requests for access to information, without any assessment of the interest of the public to know. Other problems include insufficiently elaborated statutory [69] or secondary regulation,[70] opening room for abuse. The conclusion that "in realistic situations, public authority officials and bodies would tend to deny requests for information if they personally perceive it in any way as personal data or confidential information, even when such information, in statutory terms, does not constitute confidential information or personal data."[71]

2.3. Procedures for Accessing Information of Public Importance

In all the analysed legislation, the procedure for accessing information of pubic importance is regulated in compliance with the relevant international standards. That means that all persons can submit a request to access information of public importance, without having to state the legitimate interest or to justify his/her request to the public authority.[72] While it is requested, as a rule, that that the request should be submitted in writing, some legislation allows also the possibility to submit the request orally, in which case, such requests, as a rule, a record must be made thereof. Although there is no agreed international standard relating to this rule, allowing requests for access to information to be submitted both orally and in writing appears to be a better

[68] See Section 3.6.

[69] Publication "Zakon o pravu na pristup informacijama u Republici Hrvatskoj: Primjena analize javnih politika u radovima studenata Fakulteta političkih znanosti", 2007, available at *http://www.dimonline.hr/publikacije.*

[70] *http://www.danas.rs/danasrs/iz_sata_u_sat/sabic_zakon_o_tajnosti_podataka_ne_funkcionise.83.html?news_id=42532*

[71] "Zakon o pravu na pristup informacijama u Republici Hrvatskoj: Primjena analize javnih politika u radovima studenata Fakulteta političkih znanosti", 2007, p. 94

[72] See Article 12 of the Macedonian law, Article 11 of the Croatian law, Article 15, para. 7, of the Serbian law, Article 24 of the Bulgarian law.

solution, and confirms to a greater extent to the tendency to eliminate all unnecessary formalities relating to access to information of public importance.

The legislation of the analysed countries consistently requires that a request should be precise enough, i.e. the information that is requested must be singular and easily defined or definable. In case the request is incomplete, the public authority may request from the applicant to complete the request – the specified timelines are mostly short and range from 3 days,[73] to eight[74] or fifteen,[75] or over 30 days in Bulgaria.[76] In accordance with the Bosnia and Herzegovina law, the applicant is informed that the public authority is not able to make the requested information accessible, including a reference to the relevant legal remedy.[77] Truth be told, the Bosnia and Herzegovina law does stipulate that the public authority should indicate specifically, in the information to the applicant that the request cannot be processed, all issues that could clarify the request."[78] It appears that this unduly lengthens the procedure for accessing information and takes it out of the regular procedure – the public authority and the applicant could make the same joint effort even at this stage of the procedure, rather than initiating a new procedure before another authority or resubmitting a new, more precisely stated request when the initial request could also be clarified; consequently, it can be argued that the Bosnia and Herzegovina law does not fully comply with the international standard that specifies that the pubic authority cannot ignore a request if it is not stated clearly enough, and that is has to assist the applicant to identify the documentation that contains the requested information.[79]

With respect to the timelines in which public authorities are required to handle requests, to the most part, they are specified explicitly by law, and can be assessed by all means as reasonable; these are, in most cases, 15 day timelines, with certain exceptions such as Montenegro, where the specified timeline for handling of requests in the 2005 statute is 8 days or, in exceptional cases, 48 hours,[80] and Macedonia, where Article 21 of the law specifies that the public authority holding the information must provide it immediately, i.e. within maximum 30 days. In our opinion, the Macedonian law specifies an unduly long timeline, even if we take into account the fact that the Macedonian law specifies also the timeline of 30 days for the applicant to complete his/her incomplete request, whereby it appears that the legislator's intention was to seek a balance between these two timelines.

[73] Croatian law, Article 12.

[74] Montenegrin Law, Article 17.

[75] Serbian Law, Article 15, para. 6.

[76] Article 29, para. 1.

[77] Bosnia and Herzegovina Law, Article 12.

[78] Bosnia and Herzegovina Law, Article 12, para. 2.

[79] See Section 1.2.

[80] When it is necessary to protect human lives or freedoms, the request must be handled immediately, and within maximum 48 hours - Article 16, para. 2 of the Montenegrin Law. The same exemption is stipulated also in Article 16, para. 2 of the Serbian Law.

The rules on the form in which public authorities decide on requests vary. Some of the regulations require public authorities to adopt a ruling, (Montenegrin Law of 2012, Article 30), i.e. decision (Bulgaria, Articles 34 and 38) irrespective of whether the request is accepted or denied. Some of the laws do not explicitly specify the form of a decision upon a request in case the request is accepted, but do specify that it in case the request is denied a ruling must be adopted and such ruling must be reasoned (Serbia, Article 16; Croatia, Article 15). All the Laws explicitly specify the obligation to provide the reasons for the denial of the request in writing, which is in compliance with the relevant international standards.

Another important international standard relating to access to information of public importance is that it must not imply high costs for the applicant. As stated above,[81] that means that while the public authorities cannot charge fees for the access to information itself, they can charge the applicant for the issuance of the copies of documents, whereby such fees must be reasonable and cannot exceed the actual costs incurred by the pubic authority for such action. This rule is implemented consistently in the laws of all the analysed countries.[82] Some of the countries also have separate rules on exemptions from payment of such fees for specific categories of applicants – in Serbia, for example, the categories exempted from such fees include the journalists, in case they request copies of documents for professional purposes, human rights associations, in case they request copies of documents necessary to implement the association's goals, as well as all natural and legal entities in case the requested information relates to threats to, i.e. protection of human and environmental health.[83] In Montenegro, persons with disability are exempt from the fees,[84] and, pursuant to the new statute, the exemption also covers persons in social need.[85] In Bosnia and Herzegovina, the first ten standard-sized pages copied are free of charge.[86] On the other hand, in Macedonia, the Law already specified explicitly that a pubic authority may request from an applicant to advance the payment for the provision of large-volume information[87] - in the other countries, this issue is regulated under bylaws.[88]

[81] See Section 1.2, and particularly footnotes 39 and 40.

[82] Bosnia and Herzegovina, Article 16; Montenegro/2005 Article 19, Montenegro/2012, Article 33; Macedonia Article 29; Serbia Article 17; Kosovo Article 21; Bulgaria Article 20.

[83] Article 17, para. 4.

[84] 2005 statute Article 19, para. 3, 2012 statute Article 33, para. 3.

[85] 2012 statute, Article 33, para. 3.

[86] Article 16.

[87] Article 29, para. 5.

[88] In Serbia, for example, if the necessary costs of issuing copies of the documents containing information of public importance exceed 500.00 Serbian dinars, the applicant is required to advance a deposit in the amount of 50% of the total necessary costs before the information is issued. (See The Price List (Troškovnik) specifying the necessary costs of issuance of copies of the documents containing information of public, which is an integral part of the Decree on Fees for Necessary Costs of Issuance of Copies of Documents, *Official Gazette RS* 8/2006). In Croatia, on the other hand, the applicants are requested to advance the total amount of the expected real costs of the provision of information, and if he/she fails to do so, it is considered that he/she has withdrawn the request. (Article 4 of the Criteria for Setting Fees from Article 19, Para. 2, of the Law on the Right to Information).

2.4. Legal Remedies in Case of Denying Access to Information of Public Importance

The issue of legal remedies in case the public authority denies the request for access to information of public importance is closely linked to the existence of an independent body that would supervise the compliance with the regulations on access to information of public importance. As stated above,[89] the international standards require that, in case the request for access to information is denied, the applicant has a right to appeal to an administrative authority, and subsequently to initiate a relevant court proceeding. It is preferable that the administrative authority that receives the request is not a regular second-instance authority, but an independent and impartial body. Most of the countries whose legislation is analysed have established separate independent bodies for this:

- the Commissioner for Information of Public Importance and Personal Data Protection[90] in Serbia;

- the Personal Data Protection Agency[91] in Croatia;

- the Commission for the Protection of the Right to Free Access to Information[92] in Macedonia;

- the Ombudsman[93] in Bosnia and Herzegovina; and

- in Kosovo, the People's Lawyer[94] – but only to a degree. Namely, in contrast to the other countries, whose laws explicitly specify that appeals against decisions denying the request for access to information or appeals against administrative silence are submitted to an independent body, the Kosovo law stipulates only that the People's Lawyer " assists the citizens to implement their right to access documents which has been denied", and that he/she is required to undertake the necessary measure for the promotion and support of the right to access public documents, and submit regular reports to the Parliament regarding the implementation of that right.[95] At the same time, Para. 4 of Article 17 of the same law stipulates that the dissatisfied party in the procedure for accessing information of public importance may file an appeal also

89 See Section 1.2.

90 *http://www.poverenik.org.rs*.

91*http://www.azop.hr* The Agency was granted this competence only after the adoption of the amendments to the 2011 Law on the Right to Access Information (Zakon o pravu na pristup informacijama, *Narodne novine* 77/11). Prior to that, appeals were filed to the manager of the public authority, and that solution was criticised. M. Vidaković Mukić, *Zakonsko uredjenje prava na pristup informacijama u Hrvatskoj, Bosni i Hercegovini i Srbiji i Crnoj Gori*. Materials from the event "28. Septembar Međunarodni dan *Građani imaju pravo znati*". Zagreb (HND Large Conference Hall): 28 September 2005.

92 *http://www.komspi.mk.*

93 *http://www.ombudsmen.gov.ba.*

94 http://www.ombudspersonkosovo.org.

95 Article 17.

to other institutions. As the Kosovo law stipulates that the Law on Administrative Procedure (Zakon o upravnom postupku)[96] applies accordingly to the procedure for accessing information of public importance, it has to be understood that Kosovo has adopted a combination of the two system, implying the protection of the right to access to information in accordance with the general regime applicable to the administrative procedure, and a partial application of the special regime to this right.

The Bulgarian law and Montenegrin law of 2005 do not stipulate the existence of an independent body responsible for the control of the implementation of the laws on access to information of public importance. In Bulgaria, therefore, appeals are submitted directly to an administrative court or to the Supreme Administrative Court, depending on the body that adopted the initial decision.[97] In Montenegro, appeals against acts by the first-instance authorities relating to the requests for access to information can be submitted to the authority responsible for the oversight of the first-instance authority's performance, and if there is no such authority, an administrative dispute can be initiated.[98] However, the situation in Montenegro had changed considerably with the adoption of the 2012 statute - this competence is entrusted to the Personal Data Protection and Access to Information Agency.[99] Such dual competence is also vested with the Serbian Commissioner for Information of Public Importance and Personal Data Protection and the Croatian Data Protection Agency; the solution can also be found in comparative law, where it has shown good results.[100] The practice of the countries in the region, however, shows that one of the main difficulties in the work of these bodies is the number of their employees, which is often insufficient and cannot handle the growing inflow of cases. Since the Montenegrin Agency has not yet started to work and there is no information on by how many employees will the existing number of 25 increase,[101] it remains to be seen whether Montenegro has learned some lessons from the Serbian and Croatian experiences.

So far, it has been shown that in Montenegro the main practical problem was not only the lack of the independent body, as the authorities that had denied access to information of public importance lost administrative disputes initiated against them by the applicants, but also the lack of sanctions[102] and enforcement mechanism. The situation is similar in Serbia, whose law has been assessed as the best in the world, and

[96] Article 15.

[97] Article 40 of the Bulgarian Law.

[98] Article 20 of the Bulgarian Law.

[99] Article 34 of the 2012 Law.

[100] United Kingdom, Germany, Slovenia, Estonia, Spain. *Cf*. M. Savino, p. 36.

[101] *http://azlp.me/index.php/o-agenciji/organizacija-agencije.*

[102] *http://www.slobodnaevropa.org/content/novi-cg-zakon-korak-unazad-u-slobodi-pristupa-informacijama/24636075.html.*

whose Commissioner is particularly active. In his 2012 report[103] the Commissioner has pointed out that the statutory mechanism according to which the Government, at the Commissioner's request, is to ensure the enforcement of the Commissioners' rulings[104] does not work in practice, and that none of the 17 cases during 2011 when the Commissioner had made such a request to the Government had yielded any results.[105] On the other side, one of the recommendations for the improvement of the Bulgarian legislation is precisely the establishment of an independent body that would control the implementation of the law on access to information of public importance.[106] Practice will show whether the changes to the legislative and the institutional framework in Montenegro shall yield positive results.

It appears that the main problem in all the analysed countries is in fact the inherited culture of confidentiality of information and lack of culture of transparent and open operation, and that the efforts on the promotion of the idea that information should be, as a rule, accessible, rather than confidential is equality important as a sound legal framework.

In the countries that have independent bodies responsible for the oversight over the implementation of the regulations on free access to information of public importance, in most cases, the timelines for acting upon appeals are specified so that they do not exceed 30 days (in Serbia and Croatia, the body is required to decide without any delay and within maximum of 30 days, in Macedonia the timeline is 15 days, the Kosovo law does not specify any timelines). The decisions of the independent bodies can be contested by initiating an administrative procedure, which is urgent. The Montenegrin statute of 2005 also specifies a short timeline for the second-instance authority to act upon an appeal against the first-instance decision

[103] *Cf*. Izveštaj o sprovođenju Zakona o slobodnom pristupu informacijama od javnog značaja i Zakona o zaštiti podataka o ličnosti za 2011. godinu, available at *http://www.poverenik.org.rs/images/stories/dokumentacija-ova/izvestajiPoverenika/2011/latizvestaj2011.pdf.*

[104] The solution is envisaged in Article 28 of the Free Access to Public Information Act and was introduced by the 2010 amendments: The Commissioner's rulings shall be binding, final and enforceable. Administrative enforcement of the Commissiner's rulings shall be carried out by the Commissioner by force (by an enforcement measure, that is, a fine), pursuant to the statute governing general administrative proceedings. In the proceedings for the administrative enforcement of a Commissioner's ruling an appeal concerning the enforcement may not be filed. If the Commissioner is unable to enforce his ruling in the manner prescribed in paragraph 2 hereof, the Government shall provide him assistance at his request, in the procedure for the administrative enforcement of such ruling - by resorting to measures within its competence, that is, by ensuring that the Commissioner's ruling is enforced by direct enforcement.

[105] Izveštaj o sprovođenju Zakona o slobodnom pristupu informacijama od javnog značaja i Zakona o zaštiti podataka o ličnosti za 2011. godinu, p. 91. *http://www.poverenik.org.rs/images/stories/dokumentacija-ova/izvestajiPoverenika/2011/latizvestaj2011.pdf.*

[106] Access to information in Bulgaria, p. 7, available at *http://store.aip-bg.org/publications/ann_rep_eng/2011.pdf.*

– three days, whilst the 2012 statute extends this timeline to 5 days; the decision has to be served to the applicant within 15 days from the appeal. The Bulgarian law does specify any timelines, and refers to the law on administrative procedure for all matters.

2.5. Publishing Information of Public Importance by Public Authorities

The relevant laws of the countries whose legislation is analysed regulate publishing information of public importance by public authorities differently. With that respect, two approaches can be singled out:

- the laws on access to information of public importance that stipulate the obligation of public authorities to inform the citizens about their right to information held by those public authorities and the instructions relating to the relevant procedure. This obligation is followed by the obligation to report to the relevant authority regarding the number of received requests for access to information of public importance and the actions undertaken upon those requests. This approach was adopted by Macedonia and Montenegro in its 2005 statute.

- the laws that, in addition to the above, stipulate also a broader obligation of public authorities to publish information relating to their organisation and actions (competencies, organisational structure, sources of financing, services provided to beneficiaries) by publishing annual information guides or annual reports, but also by making it available on their web sites. This approach is adopted in Serbia, Bulgaria, Croatia, Bosnia and Herzegovina, Kosovo and Montenegro, in its 2012 statute.

In accordance with the gathered information, but also based on their practice, the independent bodies responsible for free access to information of public importance publish their reports that, in addition to providing statistical reviews, point out to weaknesses in the practical implementation of the regulations on access to information, and provide recommendations for the improvement of the legal framework and the practice. Similar reports are prepared also by some nongovernmental organisations,[107] and both types of reports serve as useful tools for the identification of problems that occur in practice.

[107] For example, Access to Information Programme in Bulgaria - *http://www.aip-bg.org or Mans in Montenegro - http://www.mans.co.me/*

2.6. Problems in Practice

As it could be seen in the previous analysis, the legal frameworks of the analysed countries are to a great extent aligned and are based on similar principles. Therefore, it should not be a surprise, especially taking into account common legal and social background of these countries, that their practical problems pertaining to the implementation of the right to information are also concurrent. With that respect, the following categories of problems can be singled out:

- a lack of access to the information that was declared confidential. In Montenegro, for example, the definition of confidential information from the Law on Classified Information (Zakon o tajnosti podataka) is not aligned to that from the Law on Free Access to Information (Zakon o slobodnom pristupu informacijama), and the Law on Confidentiality of Information (Zakon o tajnosti podataka) does no require he application of the harm test in case of requests for access to information.[108] In Croatia, for example, the Agency was not able to access confidential information, and was forced to deny the requests for access to such information to ensure that the process requirements for the initiation of administrative dispute process are met.[109] The Serbian Commissioner for Information of Public Importance and Personal Data Protection, in his performance report for 2011,[110] also pointed out that public authorities had denied requests for access to such information citing as the reason confidentiality or secrecy of information, often so declared by bylaws or even contractual clauses, in violation of law. An additional problem in Serbia is the fact that none of the bylaws that would regulate in more detail the criteria that public authorities should use when classifying information into various degrees of secrecy, has been adopted yet[111] It seems that the heritage of secrecy is still deeply rooted in the countries in the region.

- public authorities do not fully implement the legislative framework concerning free access to information of public importance and have been noted to be reluctant to act upon the decisions by independent bodies or court decisions adopted in the proceedings relating to information of public importance[112] A good illustration supporting the first claim is the practice of implementation of the Law on Free Access

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[108] *http://www.mans.co.me/wp-content/uploads/2011/07/Izvjestaj-o-primieni-ZoSPI-januar-april-2011.pdf.*

[109] *http://www.azop.hr/news.aspx?newsID=163&pageID=87.*

[110] *http://www.poverenik.org.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2011/latiz-vestaj2011.pdf.*

[111] Gajin, "Razvoj i međusobno usklađivanje normativnih okvira pristupa informacijama od javnog znača i zaštite tajnih podataka", zbornik radova *Pristup informacijama od javnog značaja i zaštita tajnih podataka*, OEBS i CUPS, Beograd, 2012, p. 12.

[112] *http://www.poverenik.org.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2011/latiz-vestaj2011.pdf.,http://www.mans.co.me/wp-content/uploads/2011/07/Izvjestaj-o-primieni-ZoSPI-januar-april-2011.pdf.*

to Information of Public Importance in Serbia, which concerns the application of the so-called "threefold test", whereby it is established whether the interest of the public to know is in conflict with another prevailing interest - as Gajin[113] points out, the number of decisions in which this test was indeed applied is minor, which means that the public authorities systematically ignore the central statutory institute. As for the public authorities' unwillingness to act upon the decisions adopted by independent bodies or courts, the main problem lies in the systems of sanctions and their enforcement. It is notable that in all the states under research the public authorities refuse to act upon the relevant decisions of independent bodies or courts in particularly sensitive cases. The reasons behind such refusal are of political nature, just as, in fact, are the mechanisms that should ensure their observance - they are also political and based on the main principles of democracy. Hence, some specific recommendations for improving the legislative framework cannot be given; however, there is room to stress once again the importance of further affirmation and acceptance of the right to free access to information.

- weaknesses relating to active transparency of the public authorities' actions.[114] Public authorities do not fully comply with their obligation to make data on their work available to the public in a comprehensive and timely manner, or do not comply with it consistently. For instance, a public authority shall publish an informative booklet (Informator) on its work, but shall not update it for the following 12 months, even though regular updating in fact takes up less time and is not technologically challenging. A negative example in that respect is even the Croatian Personal Data Protection Agency - information on the number of its employees or its organisational structure cannot be found on its website,[115] whereas the information on the use of public funds is detailed. A positive example, on the other hand, is the website of the Serbian Commissioner for Information of Public Importance and Personal Data Protection - it includes a detailed list of employees and their CVs[116] and a comprehensive and detailed information booklet.[117] It seems that the other public authorities are most reluctant to publish the very information that the general public is most interested in - data on the manner in which the public funds are being spent, and data on public procurement procedures in particular.

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113 S. Gajin, *op. cit*, p. 14.

114 *http://store.aip-bg.org/publications/ann_rep_eng/2011.pdf.*

115 *http://www.azop.hr/page.aspx?PageID=34.*

116 *http://www.poverenik.org.rs/sr/o-nama/organizacija.html.*

117 *http://www.poverenik.org.rs/sr/informator-o-radu/aktuelni-informator/1287--2012-.html.*

3. CONCLUDING REMARKS

In all the researched countries, as pointed out before, the statutes governing free access to information of public importance were adopted after the year 2000, generally as a part of legislative interventions related to the EU accession process. This also means that the legislative frameworks of these states are, for the most part, based on relevant international standards, the most prominent of which at this time is the Recommendation R(2002)2 of the Committee of Ministers to member states on access to official documents, constituting an expression of best European practice in this field. It is also notable that the majority of these countries make additional efforts towards improving both the legislative framework and relevant practice, as evidenced by the recent changes to relevant statutes in Croatia and Montenegro, but also by the positive practice of the independent bodies, most notably, of the Serbian Commissioner. It is unusual that in almost all these countries the adoption of statutes concerning free access to information had preceded the adoption of modern statutes governing the confidentiality of information, even though free access to information, as Vodinelic points out[118] is the youngest subject-matter concerning data. This can also be taken to be yet another confirmation of the claim previously made - that the culture of secrecy is still deeply rooted in all these countries and that, in order for the right to free access to information to be enjoyed fully in the future all the measures prescribed by law must be taken consistently, and these efforts should be coupled with additional activities aimed at increasing the awareness of public authorities on the importance and the necessity of free access to information.

As for a general assessment of compliance with relevant international standards, where A would signify full compliance with such standards, B partial compliance and C non-compliance, the legislative frameworks of Serbia and Croatia (and also the new Montenegrin legislation) can be assessed with an A, whilst the legislative frameworks of Macedonia, Bulgaria, Bosnia and Herzegovina and Kosovo, as well as the legislative framework that is still applied in Montenegro would have to be assessed with a B - primarily due to the fact that the legislative framework is not fully elaborated and could be improved with respect to the general principles concerning classified data, rules on proactive access to information of public importance, prescribed time limits for the public authority to decide on the request to access information, fees paid by the person who requests access to information, insufficiently developed institutional framework concerning the enjoyment of this right.

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118 V. Vodinelić, "Normiranje informacionog trougla", zbornik radova *Pristup informacijama od javnog značaja izaštita tajnih podataka*, OEBS, CUPS, Beograd, 2012, p. 19.