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ACCESS TO INFORMATION EXCEPTION, SECRECY AS RULE

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COMMENT

**Cat named
Montenegro**

CAT NAMED MONTENEGRO



Photo: Vijesti



By: Vladan Žugić

France's Europe Minister **Nathalie Loiseau** has recently explained why she had named her cat Brexit, sarcastically commenting on the reluctant attempts of the United Kingdom to leave the European Union.

"He wakes me up every morning miaowing to death because he wants to go out, and then when I open the door he stays in the middle, undecided, and then gives me evil looks when I put him out," Minister wrote on her Facebook profile.

She also said that in this situation, she and citizens of France should have a certain amount of humor.

How would work explanation of French minister or any of her colleagues who influence enlargement policy when applied on situation with a cat called Montenegro.

"He wakes me up every morning miaowing because he wants to go in, and then when I look through peephole or open the door and tell him to clean his paws before he comes in, he immediately escapes from the yard and looks evil at me."

In recent weeks, focus of Montenegrin public has been directed towards London. But more due to the accused tycoon **Dusko Knezevic** and football match of two national teams from which remained bitterness for allegedly racist incident of a group of Montenegrin supporters, then the exhausting debates about Brexit.

British political elite influenced three years ago its public opinion so that the majority voted to leave the EU.

In the last months, the island seems to understand what policy without a strategy looks like and what are the benefits of the common European market of over 500 million people.

British Parliament has rejected all proposals presented by Prime



Minister **Theresa May** concerning the exit from the EU - from an agreement reached in November between official London and Brussels, then eight different Brexit options, to the proposal to remain in EU Customs Union or remain in European Single Market of goods and services according to the the Norway model.

Britain's withdrawal without any agreement with the EU - and by the end of that period, less than two weeks remain - would have enormous, first of all financial, consequences for this island nation.

When I look at these British troubles with wising up, immediately comes to my mind a statement of former Prime Minister and current President **Milo Djukanovic** from 2014 that Montenegro can stop negotiations with EU, as Island did. Or, some other analysis of problems within the EU, such as rise of populist or even neo-fascist movements... It's like Montenegro does not have enough of its own problems.

A cat named Brexit, although he has to, will not go outside because he knows how comfortable he is inside, whereas a cat named Montenegro will not go in because he knows that there can not make a mess without consequences.

As an example, **Slavoljub Stijepovic** only in Montenegro can work as the Secretary General of the President of the country, although he is suspected of assisting in money laundering.

Prime Minister Theresa May finally sent a call to opposition leader **Jeremy Corbyn** for an agreement.

Everything looks like to me that in Montenegro, Prime Minister **Dusko Markovic** or DPS leader Milo Djukanovic, under the influence of the West, will have to call the opposition leaders to discuss the way out of the crisis caused by the "Envelope" affair.

Trust into electoral process is a source of trust in all other processes.

IMPLEMENTATION OF EXISTING AND
ANNOUNCEMENT OF DRAFT NEW LAW ON
FREE ACCESS TO INFORMATION



Photo: Private archive



By: Jelena Kontić

The author is journalist of the independent daily 'Vijesti'

ACCESS TO INFORMATION EXCEPTION, SECRECY AS RULE

Civil society in Montenegro is the most critical, and most dissatisfied one in the region, when it comes to the manner in which exemptions from the right to access information are defined and applied. This was indicated by a regional survey in six countries within the WeBER project - improvement of capacity of civil society in the Western Balkans to monitor public administration - funded by the EU with the Dutch co-financing.

This result additionally warns the Government of Montenegro after the European Commission's opinion that the institutions are not guided by the principle of transparency and the right of public to know.

The common position of the civil sector dealing with this topic is that the latest amendments to the Free Access to Information Law in 2017 have particularly contributed to this. The Government announced the drafting of the new Free Access to Information Law, which should come to the Parliament by the end of this year.

Civil sector expresses concerns that restrictions in this area could become even more rigorous.

The Ministry of Public Administration states that by this Law 'the issues of importance to the manner and procedure of exercising this right have been regulated in comprehensive manner', and that the Law offers 'rather extensive opportunities for free access to information and represents good framework for the exercise of this right'.

However, the Ministry of Public Administration nevertheless observes that 'On the other hand, as recognized by the Public Administration Reform Strategy for 2016-2020 in the field of free access, certain problems are evident, such as the large number of cases of 'silence of the administration' in the procedures as per requests for free access to information'.

In its Non-Paper from November 2018, the European Commission

noted that, in the current practice, state authorities have proclaimed requested information to be secret, including those topics prone to corruption. 'Implementation of the Free Access to Information Law did not contribute to ensuring greater transparency and accountability of the public administration, as the authorities continue to proclaim the requested information as secrets, including topics that prone to corruption, thus excluding them from the scope of this law's application. A detailed revision of the legal framework in line with international standards is needed', as it is stated in the chapter related to fight against corruption.

Exception of access to information are: protection of personal data; security, defence, foreign, monetary or economic policy of the state; prevention of investigation and prosecution of perpetrators of criminal offenses; performing official duty in order to protect against disclosure of data; protection of business competition, protection of intellectual property, and if the information is business or tax secret, which is added by the amendments to the Law in 2017.

Tax and business secrets are particularly controversial, since it is not defined who checks the real reasons and truthfulness when some information is declared as business or tax secret. It is concerning, as stated in the civil sector, the tendency of inclining to deny entire document, i.e. full information, as free and to declare it as secret, although only part of what it is about could be legitimately 'protected' and labelled as 'secret'.

That even exceptions for exceptions exist proves the Article 17 of the Law, which relates to the prevailing public interest through seven paragraphs, and where the first one relates to disclosure of corruption, non-compliance with regulations, unlawful use of public funds or abuse of authority in the exercise of public office.



Programme Associate in the Centre for Civic Education (CCE), **Mira Popović**, points out that the Free Access to Information Law should serve as mechanism for improving the transparency and accountability of the government through seeking and obtaining all information related to the public sector's conduct: 'Unfortunately, we are witnessing that

this space is narrowing, as the latest amendments have rendered the Law more restrictive than before. Particularly problematic are certain solutions that leave the possibility for an arbitrary interpretation of the secrecy provisions. In short, transparency is not a priority of this government, and subsequently we could say responsibility as well because these are closely interconnected institutes.'

Photo: S. Prelević



Radenko Lacmanović, member of the Council for the Protection of Personal Data and Free Access to Information, reminds that Montenegro was amongst the first countries in the region, and was not lagging behind the European ones, when the Free Access to Information Law was passed in 2005.

The next was adopted in 2012, and the interlocutors agree that it

Ministry of Education did not know who and how spends our money

Lacmanović also recalled the experiences when an NGO submitted a request for free access to the Ministry of Education regarding the budget spent within all budget headings.

At that time, the Ministry's response was that it did not have this data, which was later determined by the Administrative Inspection as well.

Such conduct within the institutions testifies the level of accountability in regard to citizens' money, files on employees' salaries, construction of new ones or reconstruction of existing educational units and similar issues.

In this example, it is not only visible that the institutions are not transparent towards citizens, but also that they are not accountable to them.

has affirmed the right of public to know in adequate manner.

'The law changed in 2017 again, but in the manner that was not familiar to us in the Agency. I worked on this Law which has passed the Secretariat for Legislation and the Government without a single letter of amendment. However, when the Law arrived to the assembly planary, it suddenly changed up for the worse, without explanation, and we do not know due to which notions', says Lacmanović. He also states that introduction of business and tax secrets into the Free Access to Information Law is 'wide manoeuvring space for first-instance authorities to abuse'.

Civil sector enlists also the specific examples.

'This has given the idea to the Tax Administration to limit the insight of Institute Alternative into copies of 'Report on implementation of the Tax Administration Plan for debt management and strengthening payment measures for period 2017-2021', and 'Information on fulfilment of obligations of 16 municipalities from the contract on reprogramming of tax debt' under the excuse of those being tax secrets, although neither Tax Administration nor municipalities are profit sector that has interests other than interests of citizens. By this interpretation, the public sector bodies, which are primarily into service of citizens, are equated with private companies, and public is being deprived of information which is highly important for assessment of their efficiency', says **Dina Bajramspahić** from IA.



Photo: PR Centar

Milka Tadić Mijović, President of the Centre for Investigative Journalism of Montenegro (CIJ MNE), confirms this practice of implementing the Law for those who take over the control function of the democratic system.



Photo: B. Pejović

'Even until now, CIJ MNE had problems when data collecting data, due to the fact that many documents of public interest are inaccessible. This limits our researches and media freedom in

general. The Free Access to Information Law has led to difficulties in acquiring information, as well as proclaiming some information a secret without any specific explanation and waiting for answers for weeks' Tadić Mijović points out.

She concludes that legal solutions are deliberately going toward restricting access to information for the purpose of concealing illegal affairs of the authorities and related circles.

The Ministry of Public Administration specifies that the authority to which the request for certain information was sent is also competent to decide whether to disclose it. 'The burden of proof that the information should not be disclosed is on the organ of authority, and in this regard when the authority considers that the access to information is to be restricted, it is obliged to carry out the test of harmfulness and to explain in its decision the existence of excessive threat to some foreseen legitimate interest from disclosing this information, unless it is determined that there is a prevailing public interest, when there is an obligation of the organs of authorities to disclose information', states the Ministry.

The civil sector is united in the assessment that if the new Free Access to Information Law would further close the door to the public, the impact would be extremely negative, because it is completely contrary to European practices, principles of good governance and rule of law.

Illustration: www.businessinsider.com

If the announced amendments of the Information Secrecy Act are adopted, then citizens are an inconvenience to authorities

Civil sector has also expressed concerns that the Government will not inform the public when it starts working on new Free Access to Information Law, as it was case with the proposal for amendments to the Information Secrecy Act.

'This is not the only problem. Namely, the proposal for amendments to the Information Secrecy Act is so restricting, and if adopted, it would annul any meaning of existence of the Free Access to Information Law. If this is to happen, there will be no freedom of access – the access will be an exception, and secrecy the rule,' highlighted she.

Transparency International and 25 civil society organisations from Montenegro have appealed to the Government to withdraw the amendments to the Information Secrecy Act, because, as they noted, it would impede the laws on freedom of informing as well as the efforts in fight against corruption in country.

Their recommendation for the Government is to harmonize the laws with the Constitution of Montenegro and international standards and commitments undertaken by the country within international conventions.

Prime Minister **Duško Marković** said that the Government will consider objections to proposal for amendments to the Information Secrecy Act and that, if they prove to be founded, the Act will be returned into renewed procedure and worked on from the beginning. 'I have noted these observations, i.e. the strong objection. This law will be soon in the parliamentary committee. We will see what kind of discussion it will generate within the committee. We will not go to the Parliament with adoption of the Act until we clear every objection and every fact which this objection relies on. There is no reason for us to do so. We have nothing to hide', stated Marković to journalists after the Prime Minister's Hour.

Mira Popović says that the possible adoption of proposal for amendments to the Information Secrecy Act would lead to further closing of the system of authorities that will unnecessary and unfoundedly lower then already low level of transparency of work of public sector organs: 'The citizens would thus have less possibilities for insight into work of authorities, although those authorities are financed precisely by these citizens and these should be accountable to them, regardless of how much it can be unpleasant'.

Bajramspahić adds that these amendments will thus ease the exercise of absolute high-handedness of organs in deciding 'what the public has the right to know and it is implied that organs have some purpose of existence which citizens can not perceive, i.e. that citizens are impeding the organs from performing their function'. She adds that the corrective action of NGO and media would be considerably lower, which would lead also to reduction of level of democracy in Montenegro.

'We are already being labelled by relevant international documents as captured state (EU Enlargement Strategy), as hybrid regime (British Economist) and partially free country (Freedom House). Adoption of this proposal of Law will not contribute to the changing of these worryingly bad rankings', states Popović.

Consumer in Montenegro to be protected as the one in the EU



Photo: www.uip.gov.me



By: Rada Marković

The author is the Assistant Director of Administration for Inspection Affairs and Head of the Working Group for Chapter 28

In case of prohibition of provision of services, a ban has been extended by conditioning with payment of consumers debts that are over two years old

The new Law on limiting use of tobacco products shall put out of legal force tax provisions on the use of tobacco products

Chapter 28 - Consumer and health protection encompasses interests of citizens when it comes to consumer policy, in particular security, i.e. protection from unsafe products on market and economic interests of consumers, as well as public health.

Montenegro opened negotiations on Chapter 28 on 16 December 2014, with three closing benchmarks, one referring to consumer protection, and two to public health. The common for all three benchmarks is to harmonize national legislation with the European one by the accession date, and to establish adequate administrative structures and capacities for proper implementation of legislation.

When it comes to the first benchmark, the current issue is the Law on Consumer Protection whose changes provide complete transposition of Consumer Rights Directive, as well as Alternative dispute resolution for consumers. The proposal, which is in line with the comments of the European Commission (EC), has cross-sectoral harmonization and these days will be sent to the EC. It is planned that the Government should adopt it by the end of June 2019.

In addition to fulfilling the task of transposing European consumer legislation, this Draft Law is richer in the protection of rights and interests of consumers from bad practices that have been recognized in our market as such in our experience so far.

In this regard, certain provisions relating to consumer protection

in purchase of goods and services have been extended, but also procedures for general protection of consumer rights have been significantly improved. Thus, in the part of public services, obligation of trader is expanded to indicate separately on the account the amount of claims older than two years, as well as to submit, at the request of consumer, a detailed report on unpaid due receivables. In case of prohibition of provision of services, a ban has been extended by conditioning with payment of consumers debts that are over two years old, while the request for payment of receivables, which has been determined that the consumer is not obliged to pay, was declared by the Law as unfair business practice. Also, consumers' rights have been expanded, i.e. obligations of trader on the basis of products' malfunctioning. This Law expands also possibilities of protection of consumers outside the court procedure. Furthermore, in future, the Consumer Protection Council, instead of the Ministry, will be formed by the Government, which generally reviews annual reports on implementation of protection of consumers and delivers it to the Parliament for consideration.

In the part of supervision over implementation of the Law, the list of organs is expanded, so that, besides inspections and independent legal entities authorized to perform inspection supervision, supervision will be carried out by independent organizations and independent legal entities through authorized employees, in accordance with the special and / or law regulating inspection control. Moreover, when it comes to administrative

procedure for consumer protection in violation of rights related to malfunctioning of products, guarantee and damage to the product that is given for repair, possibility of proving a violation of the right by expertise was introduced, as well as the right of consumer to make a complaint if s/he is dissatisfied with the outcome of the proceedings.

Besides the Law on Consumer Protection, the Law on General Product Safety has been amended already, and the Law on Market Surveillance of Products. Hence, the Directive on General Product Safety, established RAPEX system in European Union, is completely transferred into our legal system. In this regard, it is important to note that for eight years already in Montenegro functions a system compatible with RAPEX, through which information on dangerous products on the market are exchanged between competent national bodies, and information are published on the website www.potrosac.me. Also, monitoring system for consumer complaints is operational for five years.

Additionally, in the coming period, the Law on Tourism and Hospitality is planned to be harmonized with the Directive on Package Arrangements, as well as the Law on Consumer Credits with the Directive on Housing Loan.

Regarding public health benchmarks, in legislative part, key issues relate to the area of communicable diseases and to substances of human origin, particularly in terms of organs, reproductive cells and reporting of serious unwanted events and reactions. Besides already adopted laws in this area, including Law on Protection of Population from Communicable Diseases, the Law on Infertility Treatment with Assisted Reproductive Technology is in the parliamentary

procedure. In the area of health protection, Law on limiting use of tobacco products is also important, i.e. its enforcement, which is still not the case with ban on smoking in public places. This is especially contributed by the Law, which among other issues introduced a tax on use of tobacco products in catering facilities, which practically suspended provisions of this law in part of ban of smoking in catering facilities. The new Law on limiting use of tobacco products, which is in drafting phase, shall put out of legal force provision on taxes on the use of tobacco products.

An important role in consumer protection has non-governmental sector, i.e. consumer organizations, which are irreplaceable in advising and informing consumers and also partner in raising awareness about the importance of consumer protection.

Therefore, it can be noted that Montenegro has well-regulated consumer policy and institutional system, but improvements in this sector represent continuous task, with the obligation to follow all the changes in the EU, aiming to have protected consumer in Montenegro at level of consumers in the EU.

In that direction, since the end of 2018, Montenegro has a two-year support through the project IPA 2014 *Technical Assistance for Harmonization and Implementation of the EU Legislative Framework in the Internal Market area*, and we can count on to prepare this chapter in that period for temporary closure. When it comes to project benefits, it is necessary to emphasize the application of legal provisions on collective protection of consumers in practice, which in the field of consumer protection, especially in terms of unfair commercial practices and unfair contractual provisions, is considered as high level of protection.



Balkanization of Europeanization - Europe Quo Vadis?



By: dr. Vladimir Vučković

The author is a lecturer at the Faculty of Social Studies of the Masaryk University, Czech Republic

Soon after the renewal of independence in 2006, Montenegro made visible progress in harmonization with the *acquis communautaire*, positioning itself as the leader of European integration processes amongst the Western Balkans states.

This small Balkan country then made rapid progress in accession negotiations with the EU as a result of the interdependence of two causative-consequential factors: the status of the state that is not disputed either on the internal or external plan, and the unanimous support of all relevant political parties concerning EU membership.

However, Montenegrin progress in the EU integration process does not seem to be depend on the capacity of domestic actors to cause domestic structural changes. On the contrary, it is in overall led project in which the EU positioned itself as a main actor of internal changes.

The conditions in which the EU impose pressure on Montenegro to reach standards of Copenhagen political criteria can be assessed as essentially asymmetrical and unequal. Obviously, this long-standing and unbalanced EU approach towards Montenegro, which lasts over decade, is primarily an output of the correlation between EU and domestic factors that significantly impedes effective application of EU norms.

On the one hand, Montenegro faces significantly more complicated, more demanding and more strict accession rules, EU's inefficiency and enlargement fatigue. Furthermore, a set of different internal problems, ranging from limited elements of statehood to strong influence of veto players, have significantly limited transformative power of the EU on domestic political change.

Therefore, the enlargement process with no aim and accession dynamics, without credible perspective of membership, can be defined as EU charade in the European integration process of Montenegro, but also of the entire region. Kind of vision of this EU farce towards the enlargement policy has resulted in challenging process of Europeanization of Montenegro during this integration phase.

This charade can be explained through 3 main arguments.

Firstly, though insufficiently consistent, the EU has tried to preserve legitimacy of integration processes. In order to preserve regional political stability, the Union was involved into conditionality process of Western Balkan region through application of various mechanisms, above all alignment with the *acquis*, support through TAIEX, TWINNING, IPA projects ...

Secondly, nowadays, it is already clear that the Union has maintained the enlargement illusion at the top of its foreign policy agenda, primarily due to the strong interference of Russia, but also of China and Turkey... Using vocabulary of the theory of neorealism, it seems that EU and Russia are continuously trying to increase their power in the region by seeking new opportunistic occasions to weaken the power of their rivals. Although the EU has provided various technical and financial accession mechanisms to accelerate European integration dynamics amongst candidate countries, its reluctance to reaffirm credible membership perspective has consequently reflected on the Balkan inertia to redefine its geopolitical and foreign political interests.

It is not uncommon for semi-authoritarian leaders in Balkan to use to a great extent bargaining logic for the purpose of selecting policy of opportunism instead of alternative, choosing those international factors that are not questioning political legitimacy of the elite, nor interfere with internal political processes.

And the last argument for maintaining this farce of EU conditionality policy is based on the view that the Union has recognized Montenegro as an important regional actor of reconciliation and development of good bilateral relations within neighboring countries, which is one of the main conditions for progress in accession process. Consequently, the EU has started to present Montenegro as a reliable factor of regional stability and a positive example of European integration (but without any visible progress in the field of the rule of law!), therefore, as some kind of model in a highly troublesome region.

POTENTIAL FOR VIOLENT EXTREMISM AND RADICALIZATION IN MONTENEGRO

SAFE NETWORK FOR PREVENTION IS REQUIRED



Prepared by: Milica Zindović



Two-thirds of citizens in Montenegro believe that the use of violence for the sake of achieving political, social and religious aims is not justified. However, one-third of them states that there are situations when violence can be justified in order to achieve these objectives, which represents a potential for radicalization and requires a multisectoral preventive response, as indicated by the findings of [the public opinion research about attitudes towards violent extremism and radicalism](#) of the Centre for Civic Education (CCE), conducted with the support of the Active Citizenship Fund -fACT and US Embassu in Podgorica.

Unemployment, organized crime, bad economic situation, low standard of living, corruption, and poverty are among the biggest problems that Montenegro faces today, while 7 out of 10 citizens of Montenegro assess that even position of the youth is bad. In addition, there is concerning fact that half of the citizens does not expect any changes in the quality of life during the next year, while a quarter of them expects even deterioration.

When it comes to identity terms, citizens link their identity with the state of Montenegro and birthplace or region they come from, and then with their ethnicity. They consider themselves the least as citizens of Europe and cosmopolites.

The attitudes towards the presence of democracy in Montenegro are divided. There is a convincing number of citizens who believes that the principles of democracy are present only on paper, but the majority of them also believes that there is freedom of thought.

The greatest security threats include organized crime, economic crisis, corruption, as well as dysfunctional political system, while external threats are rarely stated as a security risk.

There is a decline in trust towards institutions, while the growing trust in civil society (NGOs and media) is noted. Church traditionally

generates the highest level of trust. Citizens least believe in NATO, political parties and Prosecution.

Social distances are also expressed, and respondents believe that discrimination is the most present on the basis of political opinion and material status, while over two-fifths of the citizens have the attitude that the discrimination based on ethnic or religious affiliation is quite or very common.

There is significant number of those citizens who believe that religion is generally important in life, and those supporting the position that religious rules are more just than the state rules. Therefore, potential for radicalization is especially noticeable when considering religious framework.

Amongst those who believe that threat of extremism and radicalism exists, the largest number thinks that threat with political background is the most present. Within the most responsible institutions that should work on prevention of violent extremism they list Ministry of Interior, and Police, followed by educational institutions, media, political parties, Prosecutor's office, non-governmental and international organizations, and judiciary.

The CCE representatives announced during presentation that on the basis of this research and analysis of the legislative and institutional framework, CCE will develop recommendations for improvement of the role of education system in prevention of radicalization and violent extremism, as well as access to transitional justice as closely related field.

The field research was conducted from 2 to 11 March 2019, including 1022 respondents. A three-step random representative sample was applied, within the adult population of 17 Montenegrin cities, and taking care about indicators of gender, age and regional representation.

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