

Statement

Law on access to information under the risk of disappearance

According to a new draft Law, it shall be abrogated, and the official information shall become “wares”, being delivered at the will of public institutions’ leaders who shall have unlimited rights and no concrete obligations

Recently, the Ministry of Informational Development has elaborated draft *Law on access to information*, and the Government has submitted it for opinion to the ministries and departments, other public institutions, neglecting repeatedly civil society structures.

Under the pretext of creation a “unitary document” in the field of regulation informational social relations, this draft law is destined, in fact, to cancel the **Law on access to information** (No.982-XIV from 11.05.2000, Monitorul Oficial No. 88-90/664 from 28.07.2000) that, allegedly, “does not fully ensure legal regulation of citizens’ access to information and thus can not guarantee the realisation of this right”.

This defamatory affirmation included in Informative Note that accompanies the draft, does not contain any argument in this respect and represents a real aberration. We recall that the *Law on access to information* has been elaborated during three years, with participation of civil society, Ministry of Justice, notorious experts from international organisations, including Council of Europe, USA, Sweden, Norway, United Kingdom, being unanimously voted by MPs from the Parliament of XIV legislature. The respective normative act, although quite complex, has already offered some results. More revelations of the press regarding illegal actions committed within a number of public authorities and institutions, more requests of suing at law those who refuse persons’ access to information – these are the reasons of “creating” new normative acts that, in fact, are destined for maximum obstruction of free access to official information and governors’ activity.

Paradoxically, but real – instead of focusing on concrete and efficient organisation of activity towards real implementation of free access to information, overcoming of secret mania syndrome, guarantying institutional transparency, the Government stimulates the monopolisation over official information.

Thus, the new draft law does not have the goal of **enhancing the process of population’s information and control undertaken by the citizens as regards the activity of public authorities and institutions; stimulation of formation of opinions and active participation of population in decision making process in a democratic spirit**, as it is envisaged in the Law on access to information.

There are 9 basic principles of elaboration of laws on free access to information, synthesised by international organisations in the respective field and that constitute the fundament of the Law in force. Thus, the respective laws shall meet the following conditions:

1. *They shall be guided by the principle of maximum transparency.*
2. *Public institutions shall be obliged to spread ex officio important documents.*
3. *Public institutions shall actively promote the transparent governing.*
4. *The exceptions shall be strictly delimited and formulated.*
5. *The requests for information shall be processed rapidly and correctly, any refuse being realised by an independent forum.*
6. *People shall not be discouraged to submit requests due to exorbitant prices.*
7. *Public institutions’ sessions shall be opened to public.*
8. *Laws that do not observe the principle of maximal transparency shall be amended or rejected.*
9. *Persons who offer information about some irregularities or who point them out shall be protected.*

The draft *Law on access to information* does not meet any of these principles, and does not take into consideration the provisions of the *Law-model of free access to information* elaborated by “Article XIX”. Obviously that the authors have not consulted the legislation of other countries, including that of Bulgaria, Romania, Hungary, Estonia, Latvia, USA, Sweden, Norway, other 46 countries where laws on access to information exist.

Unlike the Law In force, the draft has an eclectic, ambiguous, declarative and general nature, allows an extremely large room for interpretation and, practically, excludes any concrete obligations of public authorities and institutions in the process of information of the public, being in direct contradiction

in its essence with Recommendation REC (2002) 2 of the Council of Europe Committee of Ministers towards member states on the access to public documents.

The draft introduces the notion **owner of information** – “individuals, legal entities or the state that hold the right to possession, use and disposal of information”. Therefore, within informational rapports the subjects shall participate in the capacity of *owners*, possessors and users, but the principal argument in favour of freedom of information is the fact that **official information do not belong to public authority or institution, but to the population!**

In reality, the draft pursues the restriction of official information; according to it, the juridical rapports that occur as a result of delivery or acquirement of informational service shall be established via a **contract concluded** between the owner or possessor of informational products and the user, the price and the modality being also envisaged in the respective contracts. Documentary information becomes a subject of patrimonial right of owners and is included, together with informational products and resources, within their property.

More than that, documentary information is recognised as **wares**, and the “**possessor of documentary information is entitled to establish rules of information processing, the modality of access to them, other conditions as regards the information**”.

The draft, in order to be in unison with another draft law - on state secret and service secretes – introduces the notions “**service information and professional secret**”. According to the draft, «**service information represents documentary information, destined for internal use, to which the access is limited for service purposes**», objective that is not attested by Council of Europe Committee of Ministers Recommendation towards member states on access to public documents.

In fact, the list of service information from the draft includes information with limited accessibility (state and commercial secret, criminal investigation information). In such case, what is its purpose? In order to include, for example, “information obtained as a result of state control”! The weirdest is the fact that “**information gets the status of service information on the basis of normative act of the respective legal entity leader with public or private right**”. Consequently, practically, any information can be arbitrarily attributed to service (secret) information by any leader of public institution! The leader of a legal entity “**can adopt the decision regarding the access to service information for persons who do not activate within the respective legal entity, provided that it shall not cause any prejudices to the interests of state, state structures and local public administration authorities, as well as other legal entities**”. On the basis of what? Just at the discretion and will of the leader of institution?

The draft introduces a new interpretation of freedom of expression: “State, public and private mass media means shall ensure public character of information for citizens and all organisations, **without highlighting any categories of this information users...** The transparent nature of information supposes free access to periodical editions, TV-radio informational programmes, as well as **the possibility to get acknowledged with the sources of obtaining the information...** While publishing the information, it shall be **indicated** by whom and when the published information has been documented and who can offer explanations regarding the published information... State and local public administration bodies are obliged to submit, for spreading purposes, to the organisations responsible for TV-radio or periodical press emission, the information at their disposal concerning the events and facts that represent **potential interest** for society”. At the same time, the draft law does not mention such key-elements as “**pluralism of opinions, public interest, independent and free press, free access to information, freedom of expression, maximal transparency etc.**”

According to the draft, the user of information is obliged to present “the requisites or other characteristics of required information necessary for the execution of interpellation; **veridical** personal data about itself...” It is also stipulated that “the rights of users of information shall be respected by legislation **on the protection of consumers’ rights...** Requests for information related to state and local public administration authorities’ activity shall be subject to the legislation **on petitions**”.

In order not to add supplementary troubles to civil servants, the draft includes the following innovation: “**In case if the requested information has been placed within systems of public use, the owner or possessor of information is entitled not to deliver the information, and in its reply to make the reference to the source where the required information has been placed**”. And naturally, the term of reply to the request for information has been extended – **30-45 days**. (The Law in force envisages placing at the applicant’s disposal the information and documents as of the moment when they will be available for delivery, but not later than **15 working days** from the moment of registration of request).

The payment for information shall include expenses for **searching** information, being established in the **contract** between the user and the owner or possessor of information.

We have referred just to some provisions of the draft *Law on access to information*, document that severely contradicts the Constitution of the country, international treaties to which the Republic of Moldova is party, Council of Europe recommendations, legislation in force, other countries' practice. In fact, it envisages **maximal secrecy of information of public interest**. Such draft Law, eventually adopted, shall contribute to severe prejudices to free access to information, freedom of expression, promotion and respect of human rights and freedoms, democratisation of society, shall stimulate the apathy of population, corruption and dictatorship of governors.

Centre "Acces-info"

Independent Centre of Journalism

Committee for Freedom of Press

Association of Independent Press

Association of Electronic Press APEL

Union of Journalists from Moldova

Centre for Journalist Investigations

Association of Pressmen Economists

Agency Media IMPACT

Centre "FOR Media"

Association of Journalists of Environment and Tourism