

Promotion of the Aarhus Convention
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ACCESS TO JUSTICE IN INFORMATION CASES IN MONTENEGRO



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Basic Legislation	Official Gazette of MNE
Constitution of Montenegro	No. 01/07,38/13
Law on Free Access to Information	No. 44/12,30/17
Law on Administrative Procedure	No. 56/14....37/17
Law on Administrative Dispute	No. 54/16
Law on Environment	No. 52/16,73/19
Law on Environmental Impact Assessment	No. 75/18
Law on Industrial Emissions	No. 17/19
Law on Strategic Environmental Impact Assessment	No. 80/05, 59/11,52/16
Law on Courts	No. 11/15,76/20
Law on Misdemeanors	No. 1/11, 06/11...51/17
Law on Inspection Supervision	No.39/03, 76/09,57/11,11/15
Law on Free Legal Aid	No. 20/11,20/15
Law on Data Secrecy	No.14/08, 76/09... 48/15,74/20
Criminal Code	No. 70/03, 7/04, 47/06 40/08...49/18,3/20
Criminal Procedure Code	No. 57 /09, 49/10...58/15,28/18,116/20
Law on Liability of Legal Entities for Criminal Offences	No. 2/07, 13/07, 73/10,30/12,39/16

Constitution of Montenegro

► “everyone shall have the right to a healthy environment and to receive timely and full information about the status of the environment, to influence the decision-making regarding the issues of importance for the environment, and to legal protection of these rights, and that everyone, the state in particular, shall be bound to preserve and improve the environment”.

Law on Environment

- **„principle of access to information and public participation** - everyone shall have the right to be informed about the status of environment and to participate in the decision-making process whose implementation could affect the environment; and the data on the status of environment shall be public“.
- **„principle of protection of the right to a healthy environment and access to justice**: any citizen or groups of citizens, their associations, professional or other organisations have the opportunity to influence the relevant authorities and the court when decisions are made on issues relevant for the environment and legal protection“.



Law on Free Access to Information

- ▶ The basic instrument relevant for issues relating to access to information legislation is regulated by the **Law on Free Access to Information**.
- ▶ Access to information held by the authorities is based on the **principle** of free access to information, transparency in the work of the authorities, the public's right to know, fairness and equality and is implemented at the level of the standards contained in the ratified international Treaties on Human Rights and Freedoms and the generally accepted rules of international law.
- ▶ Any domestic or foreign legal and natural entity is entitled to access to information, without obligation to state the reasons and explains the interest of seeking information.

Request for access to information

- ▶ The public authority shall decide on the request for access to information, and deliver the decision to the applicant within **15 days** of the submission of a complete application.
- ▶ This period will be extended to 8 days if access to extremely voluminous information is requested; if the information containing data is marked as confidential; if finding the required information requires searching a large amount of information, which significantly complicates the regular work of the authorities.
- ▶ If access to the information is requested in order to protect life or liberty of persons, the authority shall issue a decision on the application and submit it to the applicant within 48 hours from the time of application.
- ▶ Decision rejecting a request for access to information contains a **detailed explanation of the reasons** why no access to the requested information is allowed.
- ▶ Decision contains instruction on **available legal remedy**.



Agency for Personal Data Protection and Free Access to Information

- ▶ If the party is not satisfied with the decision of the first instance authority, the party may **appeal** to an independent supervisory body - the **Agency for Personal Data Protection and Free Access to Information**, within **15 days** of receipt of the decision.
- ▶ **Exceptionally**, against a decision rejecting a request because the required information is marked as **data secrecy**, the party has the right to directly take action before the Administrative Court.
- ▶ Agency is required to **decide** and submit decision to the appellant within **15 days** of filing the appeal.



Agency for Personal Data Protection and Free Access to Information

► For the purpose of resolving appeals and performing supervision over the legality of decisions made in relation to requests for access to information, the **Agency shall have the right to request following:**

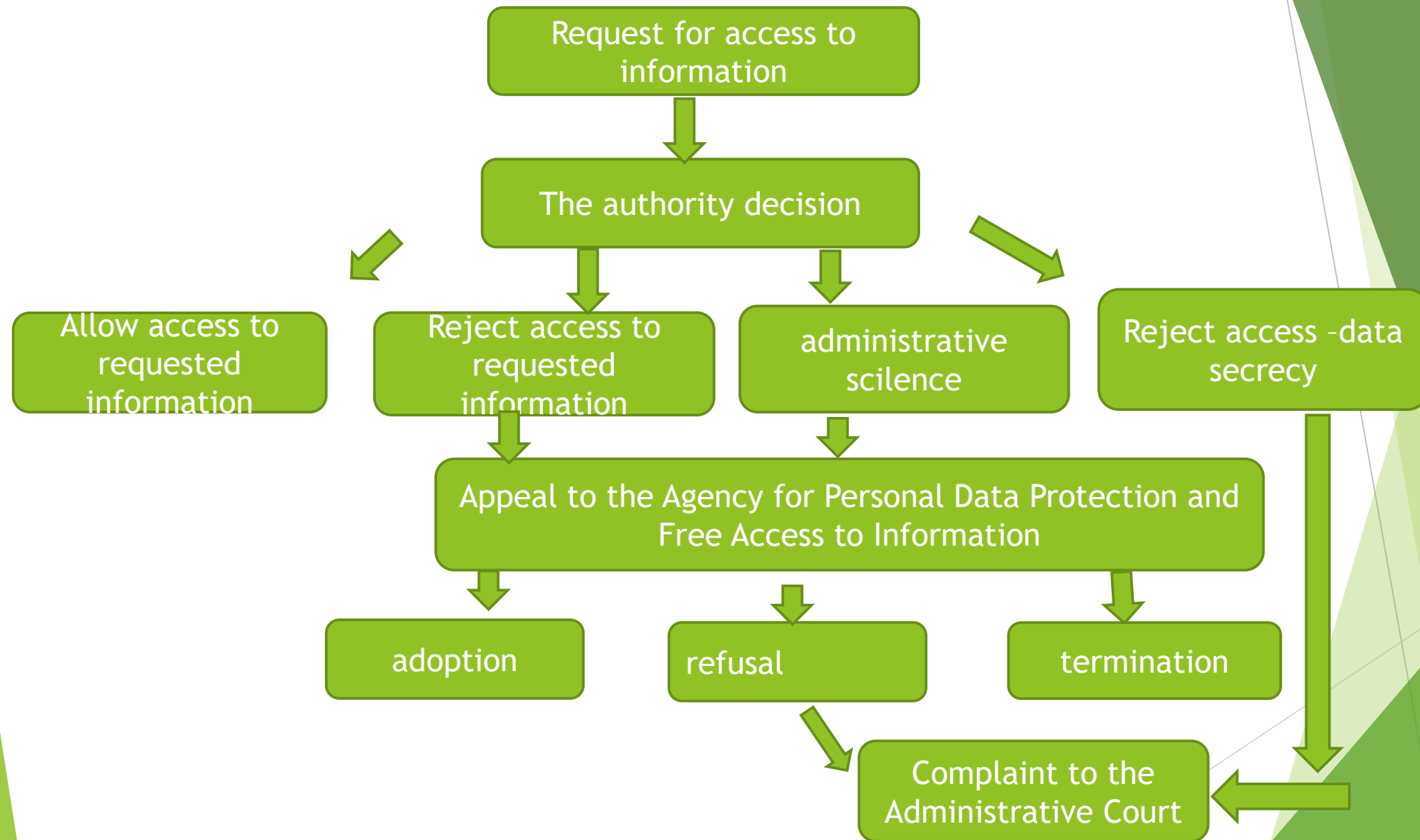
- ❑ that the public authority submit to it the complete information to which access is requested, or a part thereof and other information and data that are required for decision making;
 - ❑ that the inspection responsible for control of office operations establishes whether the public authority is in possession of the requested information;
- The public authority and inspection shall, within **five days** as of the day on which the request is submitted, deliver the requested information and data to the Agency.

RIGHT TO COURT PROTECTION

- ▶ If a party is not satisfied with the decision of the Agency may file a **complaint** against that decision with the Administrative Court of Montenegro.
- ▶ The complaint is filed within **20 days** of receipt of the decision.
- ▶ Proceedings on the complaint regarding access to information is **urgent**.



PROCEDURE -ACCESS TO INFORMATION



ADMINISTRATIVE AND PROCEEDINGS COSTS



- ▶ **No fee will be charged for a request for access to information.**
- ▶ The applicant bears only the actual costs of the authorities relating to copying, scanning and submitting the requested information, which is regulated by the Decree on compensation expenses in the process of access to information ("Official Gazette of MNE", 66/16).
- ▶ If the applicant is a person with disabilities or in social need, the authority shall bear the cost of the procedure for access to information.
- ▶ **Court Procedure** shall be conducted **without delay** and at the **lowest possible costs** for the parties and other participants in the procedure.

Penalty Provisions

The Law on Free Access to Information prescribes **misdemeanors** for which imposes fines:

- ❑ for **legal entity, responsible officer** in the legal entity, state body, local self-government body, local government body or a natural person and for **entrepreneur**, inter alia: if it fails to make a decision on a request for access to information or fails to submit the decision to the applicant within 15 days of the day on which the request is submitted; if it fails to provide an applicant with access to information or a part thereof, except in cases provided for in this Law.
- ❑ for the **Agency** as the legal entity, if fails to make a decision about an appeal and submit it to the applicant within 15 days of the day on which the appeal is submitted.

Challenges

- ▶ Length of the judicial review procedure (due to the large number of submitted complaints, not only related to the environmental matters);
- ▶ Understaffing in the review bodies;
- ▶ Lack of specialized environmental units within judiciary.

CONCLUSIONS

- ❑ Strengthen the capacity of courts and other review bodies, to ensure the timely and expeditious review procedures for access to information cases;
- ❑ Closer cooperation between public authorities, Agency for Personal Data Protection and Free Access to information and Administrative Court;
- ❑ Raising knowledge of environmental legislation among relevant authorities and judiciary;
- ❑ Raising awareness of citizens in demanding environmental information and awareness about importance of environmental protection;
- ❑ Developing a manuals on legal protection in matters related to environment, which would contain comparative legal and court practice as well.



THANK YOU!

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