

ARTICLE 19 Comment on Alternative Montenegrin Exceptions Proposal

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Earlier this month, ARTICLE 19 provided comments on the latest Draft Law on Free Access to Information of Montenegro.¹ In that analysis, we critiqued the regime of exceptions on a number of grounds, including the following:

- the list provided by the Draft Law was not exclusive and it recognised exceptions in other laws;
- some of the exceptions, although touching on a legitimate ground, could be more detailed and hence narrower in scope;
- the exception in favour of relations with foreign States did not include a harm test;
- the exception in favour of personal information could be more narrowly drafted; and
- some necessary exceptions were missing while others were drafted too narrowly.

We have now been asked to comment on an alternative, fairly draft regime of exceptions. These exceptions do represent an improvement in some respects on those described above both inasmuch as they are more comprehensive and more detailed. The former is important if the access law is to override secrecy laws to the extent of any inconsistency, which we recommend. At the same time, the new draft regime of exceptions does not specify whether or not this would be the case. The latter is important to keep the exceptions narrow. We would still recommend that some exceptions point more precisely and clearly to the harm sought to be avoided.

The new exceptions are, however, weaker than the original set in one important respect, namely inasmuch as they posit a much weaker harm test (“could cause harm” as opposed to “causes substantial harm”) and some do not include a harm test at all (e.g. the one covering information provided in confidence by other States or an international organisation). Indeed, the exception relating to law enforcement, one even refers to disclosures prohibited by other laws.

The public interest override in the new regime of exceptions is good, if we understand it correctly (some of the formatting appears to have been lost). It posits a specific list of situations where the public interest is engaged, followed by a general public interest override.

¹ Available at: [IS IT ONLINE!?!]