

Title:

Free Access to Privatisation Information in Montenegro: BEHIND THE CLOSED DOORS
Case Study Aluminium Plant Podgorica

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FREE ACCESS TO PRIVATISATION INFORMATION

BEHIND THE CLOSED DOORS

Case Study Aluminium Plant Podgorica

2006

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1. INTRODUCTION

Free access to information is one of the cornerstones in the development of an accountable government and an efficient democracy on its path to the European Union and obliged to comply with the requirements stemming from the United Nations conventions.

The basic goal of the project within which this publication has been made is the use of legal mechanisms to make available to the public full information on privatisation decisions concerning the key state-owned companies made on behalf of the citizens by their elected representatives.

The procedure for exercising access to information is guided by the Law on Free Access to Information, the Law on General Administrative Procedure and the Law on Administrative Dispute. It involves the following steps: request for information, appeal to the second instance body, if there is such a body, complaint with the Administrative Court and motion for extraordinary examination of Administrative Court's judgements by the Supreme Court.

The total of four persons were engaged on the project, and over 200 requests for privatisation information and over 50 appeals and complaints were filed in one year, while access to information was allowed in not more than 6% of cases.

The publication focuses on specific cases illustrating that ever since the Law on Free Access to Information came into effect, the relevant authorities keep persisting in endeavours not to impart information, thus making the whole privatisation process highly 'un-transparent'.

Most of the cases refer to access to information on the privatisation of the Aluminium Plant Podgorica (KAP), the largest economic entity in Montenegro accounting for, prior to privatisation, some 10% of the total employment in Montenegro, around 20% of GDP and some 40% of total exports. KAP is also the largest consumer of electric power accounting for almost 50% of total consumption, which eventually led to requests for the construction of a hydro-power plant on the Tara River, within the UNESCO World Heritage Site.

KAP is the largest water, air and soil polluter of the state declared in its Constitution as being ecological, and the existing data on impact of pollution to health of the population of Zeta Valley and Podgorica are not in the public domain. It is located in the immediate vicinity of the National Park Skadar Lake, one of the largest bird habitats designated as a Ramsar Site.

Although by announcing a public tender for the sale of 65% of the state-owned shares the Government sought a strategic investor, on 27th July 2005 KAP was actually sold to a British off shore company "Eagle Capital Group". The owner of that company is another off shore company, Cyprian this time, "Salomon Enterprises", allegedly also the owner of the Russian Russal. After signing the agreement, "Eagle Capital Group" changed its name into "En Plus Group" and moves their headquarters from Virgin Islands to British island Jersey. According to the press, in addition to the purchase price of 48.5 million euros, the new owners have undertaken to invest another 55 million, and the additional 20 million into the environment. The full KAP privatisation agreement was declared a business secret.

This publication also includes a case of an institution which is in charge of concluding privatisation agreements claiming not to be in the possession of the KAP Purchase and Sale Agreement, as well as a ministry not holding the document for which they staged a public discussion. On a specific case, we showed the effects and the results of endeavours for the free access to information, where the same institution first declared the pollution data a business secret only to publish it after a criminal complaint has been filed.

The publication contains some evidence that some of the documents defining the obligations of the new KAP owner regarding investments into the environment amounting to some 20 million euro differ both in terms of measures envisaged and the investment schedule.

The examples presented here, the transcripts of video and audio recordings, indicate that certain authorities allow inspection of documents only, as one form of access to information, thus preventing imparting information. After MANS has invoked the principles and standards contained in the international human rights treaties stipulating that the right of access to information includes the freedom to seek, receive, but also impart information, the Supreme Court's decision changed the jurisprudence in such cases and confirmed the obligation on the part of public authorities to enable access to information in the manner requested.

This publication aims to show the problems currently experienced when attempting to access information on privatisation as one of the single most important transition processes and thus encourage changes in legislation and relevant practices. We believe it illustrates well that public authorities have yet a long way to go to be in compliance with own legislation, but more importantly, it reveals almost complete unwillingness to allow the public to be informed about the conditions under which state-owned companies are privatised.

2. CHRONOLOGIC SEQUENCE OF THE CASES DISCUSSED

PRIVATISATION AGREEMENTS
Privatisation Council
Request for information submitted to the Privatisation Council on 20 December 2005
Response of the Privatisation Council, 17 January 2006
Complaint against the Council, 16 February 2006
Administrative Court's judgement upon the complaint against the Council, 13 June 2006
Montenegrin Agency for Economic Restructuring and Foreign Investments
Request to the Agency for Economic Restructuring, 18 January 2006
Response of the Agency, 24 January 2006
Complaint against the Agency, 23 February 2006
Administrative Court's judgement upon the complaint against the Agency, 13 June 2006
The Agency's resolution subsequent to the Administrative Court decision, 22 June 2006
Complaint against the Agency to quash the new resolution, 31 July 2006
LEVEL OF ENVIRONMENTAL POLLUTION
Privatisation Council
Request for information to the Privatisation Council, 1 February 2006
Response of the Council, 6 February 2006
Complaint against the Council, 06 March 2006
Administrative Court judgement abolishing the document, 13 June 2006
New resolution rejecting access to information on the same grounds, 22 June 2006
New complaint against the Council, 4 August 2006
New Administrative Court judgement abolishing the Council's document, 19 September 2006
New Council's resolution allowing access to information by inspection only, 26 October 2006
Ministry for Environmental Protection and Physical Planning
Request for information to the Ministry, 20 February 2006
Response of the Ministry, 2 March 2006
Complaint against the Ministry, 15 May 2006
Administrative Court's judgement, 10 October 2006
Resolution of the Ministry subsequent to the judgement, 1 November 2006
Centre for Eco-Toxicological Testing (CETI)
Request for information from CETI, 11 April 2006
CETI's response, 19 April 2006
Appeal to the Ministry, 9 May 2006
Response of the Ministry rejecting the appeal, 13 June 2006
Complaint to the Administrative Court, 20 June 2006
Administrative Court judgement abolishing decision of the Ministry, 7 November 2006.
Basic State Prosecutor
Criminal complaint due to the violation of the right to environmental information, 3 July 2006

Ministry for Environmental Protection and Physical Planning
Posting the information on the website, 3 July 2006
Administrative Court judgement abolishing the resolution, 7 November 2006

INVESTMENT INTO THE ENVIRONMENT
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Ministry for Environmental Protection and Physical Planning
Request for information to the Ministry, 15 June 2006
Response of the Ministry, 8 July 2006.
Montenegrin Agency for Economic Restructuring and Foreign Investments
Request for information to the Agency, 20 June 2006
Response of the Agency, 4 July 2006.
Three letters sent on defining the exact date of inspection, 7 and 21 July 2006
Date when inspecting the documents held by the Agency, 28 July 2006
Basic State Prosecutor
Criminal complaint, 3 August 2006

INSPECTION OF DOCUMENTS

Montenegrin Agency for Economic Restructuring and Foreign Investments
Agency allows inspection only due to inability to make copies
MANS offers to photocopy and scan documents at own expense and using own resources
Only inspection allowed, no photocopying of the documents, December 2005 - July 2006
Taking photographs of documents, 28 July 2006
Criminal complaint for forgery, 3 August 2006
Forbidden to take notes during inspection and video recording, 06 September 2006
Refusal of the Agency to set the date for inspection, 07 September – 01 October 2006
46 letters sent on defining the exact date of inspection, 29 September - 4 October 2006
Audio recording of the contents of the document, 13 October 2006
Restricted access to the Government building with technical devices, 28 December 2006
Case Law
An example of the Administrative Court judgement
An example of the Supreme Court judgement
Supreme Court judgement, 22 December 2006

Chronological sequence of the cases discussed is provided at the beginning of each chapter.

The database of all the requests for information, the replies received from public authorities and court judgements is available at www.pravodaznam.info