

## **2. PUBLIC AUTHORITY BODIES ACCORDING TO THE LAW ON FREE ACCESS TO INFORMATION**

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At the beginning of implementation of the Law on Free Access to Information, certain institutions tried to avoid the obligation of making public information they hold, claiming they are not public authority bodies and that the Law does not refer to them.

**Court practice confirmed that legal persons that according to the law or other enactments perform activities of public interest, are obliged to respect the Law on Free Access to Information.**

Law on Free Access to Information, Article 4, paragraph 1, item 4

A public authority body is: a state body (legislative, executive, court): local self-government body; local government body; a public institution; a public enterprise or other legal person entrusted with the performance of public authorities, established by the state or a local self-government body or being financed from public revenues, which holds the information.

### **Case study 2: Power Supply Company of Montenegro**

MANS asked from the Power Supply Company of Montenegro (EPCG) data on purchase prices of imported electrical power, on prices of imported power being paid by the citizens, by the Aluminium Plant Podgorica and by other economic entities. Since EPCG did not reply within the envisaged time limit, we lodged a complaint pertaining to silence of administration.

In response to the complaint, **EPCG claims it is not a public authority body, but a shareholder company that performs an economic activity with the aim of making profit, and that they are not entrusted with the performance of public authorities, nor do they make decisions on particular rights and obligations.**

The Court rejected our complaint, for being premature, since a second-instance body, in charge of complaints is the Energy Regulatory Agency. Still, the **Administrative Court** determined that the Statute of EPCG stipulated that the activity of the company is of public interest and judged that **EPCG is obliged to respect the Law on Free Access to Information.**

## 2. Public authority bodies according to the Law on Free Access to Information

UPRAVNI SUD REPUBLIKE CRNE GORE  
U.broj 680/2007

MANS-  
BROJ. 0713467-3470  
PODGORICA, 22.06.2007

Upravni sud Republike Crne Gore, u vijeću sastavljenom od sudija Biserke Bukvić, kao predsjednika vijeća, Fadila Kardovića i Vladimira Radulovića, kao članova vijeća, uz učešće službenika suda Marine Nedović, kao zapisničara, rješavajući po tužbi tužioca Mreža za afirmaciju nevladinog sektora MANS - Podgorice, protiv tuženog JP Elektroprivreda Crne Gore A.D. Nikšić, zbog nedonošenja rješenja po žalbi, u nejavnoj sjednici održanoj dana 15.06.2007. godine, donio je

### RJEŠENJE

Tužba se odbacuje.

### Obrazloženje

Tužbom podnijetom ovom sudu tužilac je u bitnom istakao, da je

*"In response to the complaint the defendant points out that by the official letter no 10-00-7728 from 23 04 2007, it informed the prosecutor and proposed to it to hold a meeting related to the requested information on the premises of EPCG AD Niksic on 27 04 2007. It is emphasized that the defendant is not a public authority body, but a shareholder company, with shares belonging to physical and legal persons, as well as the state, and that it performs an economic activity with the aim of making profit. It states that the defendant is not entrusted with the performance of public authorities nor does it make decisions on individual rights and obligations. It is proposed to the Court to reject the complaint or to refuse it as unfounded."*

tužilac da sud predloži tuženom da tražene informacije po zahtjevu dostavi tužiocu.

U odgovoru na tužbu tuženi ističe da je dopisom broj 10-00-7728 od 23.04.2007. godine, obavijestio i predložio tužiocu da se po pitanju tražene informacije održi sastanak u prostorijama EP CG AD Nikšić, dana 27.04.2007. godine. Ističe da tuženi nije organ vlasti, shodno članu 4. Zakona o slobodnom pristupu informacijama, već da je akcionarsko društvo, čije su akcije fizičkih i pravnih lica, kao i državne i da obavlja privrednu djelatnost radi ostvarivanja profita. Navodi i to da tuženom nije povjereno vršenje javnih ovlaštenja, niti da odlučuje o pojedinačnim pravima i obavezama. Predlaže da Sud tužbu odbaci ili da je odbije kao neosnovanu.

Nakon razmatranja spisa predmeta, ocjenom navoda tužbe i odgovora na tužbu, Sud je našao da u ovoj stvari nijesu ispunjeni uslovi iz člana 20. Zakona o slobodnom pristupu informacijama i člana 18. Zakona o upravnom

*Sentence of the Administrative Court from 15 June 2007*

## 2. Public authority bodies according to the Law on Free Access to Information

sporu ("Sl.list RCG", br. 60/03), za podnošenje tužbe zbog ćutanja administracije.

Odredbom člana 20. Zakona o slobodnom pristupu informacijama, propisano je, da se protiv akta prvostepenog organa vlasti o zahtjevu za pristup informaciji može izjaviti žalba organu vlasti koji vrši nadzor nad radom prvostepenog organa. Ukoliko takvog organa nema, protiv navedenog akta može se pokrenuti upravni spor, dok je članom 18. stav 1. i 2. Zakona o upravnom sporu propisano, ako prvostepeni organ protiv čijeg akta je dozvoljena žalba nije u roku od 60 dana, ili u zakonom određenom kraćem roku donio rješenje po zahtjevu, stranka ima pravo da podnese zahtjev drugostepenom organu. Protiv rješenja drugostepenog organa stranka može

*"The Court assessed the statements of the defendant, that it is not a public authority body and that it is not entrusted with performance of public authorities, which the Court did not accept, for reasons that Article 15 of the Statute of the defendant, determines that the activity of the company is of public interest, while Article 12 of the Law on Energy, among other, stipulates that Energy Regulatory Agency supervises the work and operation of energy subjects, while Article 2 paragraph 1 item 8 of the same law prescribes that energy subject is every legal person that performs activities regulated by this law, which refer to electric power."*

rokova propisanog članom 20. Zakona o slobodnom pristupu informacijama, članom 18. Zakona o upravnom sporu. Tužilac nakon ispunjenja uslova iz citiranih odredaba zakona, može pokrenuti upravni spor kod ovog suda.

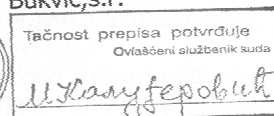
Sud je cijenio navode tuženog, da nije organ vlasti i da mu nije povjereno vršenje javnih ovlašćenja, koje Sud nije prihvatio, sa razloga što se članom 15. Statuta tuženog, određeno je da je djelatnost društva od javnog interesa, dok je članom 12. Zakona o energetici, ("Sl. list RCG" broj 39/06), između ostalog, propisano da Regulatorna agencija za energetiku vrši nadzor nad radom i poslovanjem energetske subjekata, dok je članom 2. stav 1. tačka 8. istog zakona propisano da je energetske subjekat svako pravno lice koje obavlja djelatnosti regulisane ovim zakonom, koje se odnose na električnu energiju.

Sa navedenih razloga, a na osnovu člana 22. stav 1. tačka 1. Zakona o upravnom sporu, odlučeno je kao u dispozitivu ovog rješenja.

UPRAVNI SUD REPUBLIKE CRNE GORE  
Podgorica, 15.06.2007. godine

Zapisničar,  
Marina Nedović,s.r.

PREDSJEDNIK VIJEĆA,  
Biserka Bukvić,s.r.



Sentence of the Administrative Court from 15 June 2007