

## **5. BAN OF ACCESS TO INFORMATION**

## 5. BAN OF ACCESS TO INFORMATION

The law prescribes that access to information can be restricted only if its disclosure would significantly imperil national security; defense and international relations; public security; commercial and other economic private and public interests; economic, monetary and foreign exchange policy of the state; prevention, investigation and processing of criminal offences; privacy and other personal rights of individuals; and the procedure of processing and adoption of official enactments.

The law prescribes also that access to information is banned **only** if the publishing of information would cause damage overriding the public interest for the disclosure of that information.

**The fact that separate regulations governing the issues of state and business secret, and the protection of data on personalities have not yet been adopted, and that some laws adopted before the Law on Free Access to Information classify certain types of data as secrets also represents a significant problem.**

Many institutions have tried to restrict access to information of public interest quoting exceptions prescribed by the Law, and not explaining the manner in which disclosure of the requested information would imperil other interests.

**Court practice has confirmed that institutions have an obligation to perform the legally prescribed harm test, so that decisions by which access to information was banned based on exceptions prescribed by the law, in cases when institutions ignored the obligation to assess whether the public interest to know overrides the interests that could be imperiled by disclosure of information, were annulled.**

### **Law on Free Access to Information, Article 9**

Access to information is banned if its disclosure would significantly imperil:

- 1) **national security, defence and international relations**, through:
  - information of security-information and intelligence agencies for national security;
  - information of the military-intelligence services;
  - information on operations of the armed forces;
  - information on objects, installations and systems that are used exclusively in defence of the country;
  - information important for work of international courts, international investigation bodies and other international bodies and organizations;
- 2) **public security**, through:
  - information relating to public danger and state of emergency;
  - information relating to security of individual, people and material goods;

**3) commercial and other economic private and public interests**, through:

- information relating to financial, monetary or commercial affairs of the state with other states, international organizations or other legal and physical persons;
- information representing a business secret;
- information included in the special law on secrecy of data;

**4) economic, monetary and foreign-exchange policy of the state**, through:

- information on national economy, financial policy initiatives, operative plans and economic policy documents;
- information on capital market and financial market;

**5) prevention, investigation and processing of criminal offences**, through:

- charges submitted to bodies competent for revealing and prosecuting criminal offenders, which include data relating to preparation and execution of criminal offences and their perpetrators;
- information of witness protection;
- information on perpetrators of criminal offences who are minors;
- information relating to the investigation procedure;
- information relating to struggle for prevention of organized crime, operative plans and specialized groups for prevention of organized crime;
- information relating to prevention of money laundering and financing of terrorism;

**6) privacy and other personal rights of individuals**, except for the needs of court or administrative procedure:

- information on the private life of a party and a witness in a procedure, on victims and persons injured by a criminal offence, as well as data on the convicted persons;
- data included in personal and medical files of persons, results of psychiatric investigations, psychological tests and personal abilities tests;
- information relating to determining of parental right, adoption of a child and other.;
- information on employment, salary, pension, assistance for material securing or other social allowances for persons;
- information on the telephone number, permanent residence of a person or his/her family, if s/he required from the competent body to keep these data secret for reasons of a grounded belief that his/her or the security of his/her family is threatened;

**7) procedure of processing and passing of official enactments**, through:

- information including views relating to negotiations of public authority bodies which are under way;
- information which is being processed, or information that does not have the form of an official enactment, except for the law and other general enactments.

**Interests from paragraph 1 of this Article are significantly threatened if damage caused to them by disclosure of information would override the public interest for disclosure of that information. te informacije.**

**Case study 4: Business secret**

MANS asked from the Agency of Montenegro for Economic Restructuring and Foreign Investments (APPSU) Contracts on privatization of the most important companies: Aluminium Plant Podgorica, Ironworks, Telekom and Jugopetrol and of all the annexes to these contracts.

**APPSU refused the request of MANS with the explanation that „disclosure of this information – contracts would significantly imperil the commercial and other economic, private and public interests“.**

Republika Crna Gora  
AGENCIJA CRNE GORE ZA PRESTRUKTURIRANJE  
PRIVREDE I STRANA ULAGANJA  
Broj: 1/1  
Podgorica, 24. januar 2006. godine

NVO - MANS -  
BROJ: 06/126-129 odgovo?  
PODGORICA, 24.01.2006.

Na osnovu člana 9. i 18. Zakona o slobodnom pristupu informacijama («Sl.list RCG» br. 68/05) Agencija Crne Gore za prestrukturiranje privrede i strana ulaganja donosi

**RJEŠENJE**

*„Access to information – contracts on the sale of „Ironworks“ Niksic, „Aluminium Plant“ „Telekom“, „Jugopetrol“ and all the annexes is not allowed because disclosure of this information - contracts would imperil significantly commercial and other economic, private and public interests.“*

Mreža za afirmaciju nevladinog sektora «MANS» iz Podgorice, podnijela je Agenciji Crne Gore za prestrukturiranje privrede i strana ulaganja dana 18. januara 2006.godine zahtjev za dostavljanje informacije kojim se traži dostava kopija ugovora o prodaji «Željezare Nikšić», «KAP-a», «Telekom-a», «Jugopetrol-a» i svih aneksa.

*„The above mentioned request cannot be granted i.e. access to information – contracts with all the annexes is not allowed because their disclosure would significantly imperil the commercial and other economic, private and public interests, since this information – contracts and annexes represent also a business secret as they explicitly state.*

*Disclosure of this information – contracts and annexes would cause damage for contracting parties overriding the public interest for their disclosure. „*

Na osnovu izloženog odlučeno je kao u dispozitivu rješenja.

**Uputstvo o pravnom sredstvu:** Ovo rješenje je konačno i protiv njega se može pokrenuti upravni spor tužbom kod Upravnog suda RCG u roku od 30 dana od dana dostavljanja rješenja.

Dostavljeno:  
- Mreži za afirmaciju nevladinog sektora  
- U spine predmeta  
- a/a

DIREKTOR  
Branke Vučević



*Decision of APPSU from January 24 2007*

**By its complaint from February 23 2006 MANS disputed the decision of the Agency:**

*„Restriction of access to information, in every concrete case, must be preceded by a **harm test** of publishing of a particular information, i.e. determining whether the disclosure of the requested information will cause damage to a certain protected interest overriding the damage to public interest caused by non publishing of that information. Harm test of publishing of information is done by virtue of an office, which means that the cost of proving will be born by the public authority body conducting the procedure.*

*The decision of the Agency for Economic Restructuring and Foreign Investments does not include proofs that this institution conducted a harm test in the procedure of passing the decision....*

The Administrative Court annulled the decision of the Agency for it did not include an **explanation on why the contracts on privatization represent a business secret.**

The Court stated that **“the notion of a business secret has not been explained in this concrete case”, and that “the circumstance that the contracting parties agreed to “protect their contracts from public disclosure”, by itself is not a sufficient rason for refusal of the request of the accuser for access to information, since the parties cannot make contracts whose provisions would be contrary to the positive regulations.”**

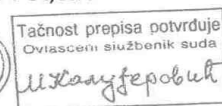
*“Through insight into the disputed decision it was determined that it does not include reasons on which the decision of the defendant is based, i.e. an explanation why the subject contracts on the sale of companies represent a business secret. Also, the notion of a “business secret” in this concrete case was not explained either. The circumstance that the contracting parties agreed to make their contract “protected from public disclosure”, by itself is not a sufficient reason for refusing the request of the accuser for access to information, since the parties cannot make contracts whose provisions would be contrary to positive regulations.”*

Sa izloženog, a na osnovu člana 37. stav 1. Zakona o upravnom sporu, odlučeno je kao u dispozitivu.

UPRAVNI SUD REPUBLIKE CRNE GORE  
Podgorica, dana 13.06.2006.godine

ZAPISNIČAR  
Rajka Milović,s.r.

PREDSJEDNIK VIJEĆA  
Gordana Pot,s.r.



Verdict of the Administrative Court from June 13 2006

## 5. Ban of access to information

According to the verdict of the Administrative Court the Agency passed **a new decision by which again, on the same grounds, access to information is banned.** The very enactment of the Agency explained in detail the reasons for which the documents were ~~declared secret, but again it did not conduct the harm test~~

*„The notion of a „business secret“ in this concrete case is represented by data and facts included in the above mentioned contracts and annexes relating to financial, monetary, commercial and other affairs whose disclosure, i.e. communication to third parties without consent of the foreign partner could have harmful consequences for the local contracting party – the Government of the Republic of Montenegro and the republican funds, for the foreign partner could in that case terminate the contracts and ask an enormous indemnification in the form of compensation for damages and lost profit.*

*As it is well known, foreign investors – partners in the above quoted contracts are renowned foreign companies that have the same or similar contractual arrangements in many countries so the disclosure of the content of the above mentioned contracts (financial, marketing, commercial and other data) to third parties could imperil their current arrangements in those countries in the sense of insistence of their contractual partners on the review of the existing arrangements, in the sense of their improvement (analogously to the contractual arrangement with the Aluminium Plant) which could cause great material expenditures for the foreign partners.*

*Therefore, for these reasons foreign partners insisted on the „business secret“ and domestic partners (the Government of RoM and the republican funds) along with their arguments accepted this as well as a contractual obligation, which means that the domestic partners on their side „have nothing to hide“ but strictly respect the contractual obligations and protect the interests of the foreign partner, and thus also their own interests.”*

Kao što je poznato u pravu ugovor je "zakon među ugovornim stranama", ukoliko nije u suprotnosti sa pozitivno pravnim propisima.

*„Thus, having in mind the above it is clear for which reasons access to information - contracts is not allowed– because the harm caused to contractual parties by their disclosure would override the public interest for their disclosure.”*

Uputstvo o pravnom sredstvu: Ovo rješenje je konačno i protiv njega se može pokrenuti upravni spor tužbom kod Upravnog suda RCG u roku od 30 dana od dana dostavljanja rješenja.

DOSTAVLJENO:  
- Mreži za afirmaciju nevladinog

DIREKTOR  
Branislav Vujović

Decision of the Agency from June 21 2006

## 5. Ban of access to information

*MANS disputed this decision of the Agency by a **complaint to the Administrative Court** which states the following.*

*...The decision **does not state the legal grounds for proclaiming of a business secret but only gives the statement of the Agency Director** on what could happen in case of the contract disclosure without any proofs that this would cause damage to the investor and that it would override the public interest to know.*

*Namely, assessments of the Agency Director that the disclosure of the data could cause great material expenditures for the foreign partner and that the foreign partner "could terminate these contracts and ask enormous indemnification" are not facts but represent only a **subjective experience** of the possible consequences of the contracts disclosure.*

*Obviously the Agency did not conduct a **harm test**, for the decision does not include a single statement showing that the interest of citizens to know how their property was sold was taken into account, but the Agency only and exclusively dealt with the investors' interests ...*

**The Administrative Court annuls against the decision of the Agency, for the explanation of the decision does not state, nor do the documents of the case include proofs that the disclosure of the requested information would cause damage to the commercial, economic, private and public interests significantly overriding the public interest for disclosure of the requested documents. The Court ordered the Agency to pass a new decision grounded in the law, taking into account the objections from the verdict.**

Medjutim u obrazloženju osporenog rješenja se ne navodi, niti u spisima predmeta ima dokaza za to da su u smislu stava 3 odredaba člana 9 Zakona o slobodnom pristupu informacija, utvrđene činjenice, da bi po komercijalne, ekonomske, privatne i javne interese nastala šteta značajno veća od štete po javni interes za objavljivanje traženih dokumenata. Samim tim obrazloženje osporenog rješenja nije dato u skladu sa odredbama člana 18 stav 3 Zakona o slobodnom pristupu informacijama i člana 203 stav 2 Zakona o opštem upravnom postupku.

Iz spisa predmeta nesporno se utvrđuje da je raskinut ugovor o privatizaciji Željezare koji je bio zaključen sa firmom Midlend. Kod te činjenice nejasno je zbog čega tužiocu nije dozvoljen pristup ovom dokumentu, jer u konkretnom slučaju ni jedna ugovorna strana ne bi mogla da trpi bilo kakvu štetu. S toga po nalaženju Suda nema razloga da se tužiocu ne dozvoli pristup tom dokumentu.

Neprihvatljivi su navodi tuženog da su predmetni ugovori "poslovna tajna",

*„In a repeated procedure, the accused body will take into account the objections from this verdict (Article 57 of the Law on Administrative Procedure) and pass a new decision based on the law.“*

S obzirom da je tužilac odustao od dijela tužbe kojim je tražio dostavljanje kopije kupoprodajnog ugovora o privatizaciji Kombinata aluminijuma - Podgorica, zajedno sa aneksima tog ugovora, to je Sud u smislu člana 20. ZUS-a odlučio kao u stavu II izreke presude.

Sa izloženog, a na osnovu člana 37. stav 1. i člana 33. stav 2. Zakona o upravnom sporu, odlučeno je kao u dispozitivu.

UPRAVNI SUD REPUBLIKE CRNE GORE  
Podgorica, 10.03.2007. godine

Zapisničar,  
Marina Nedović,s.r.

PREDSJEDNIK VIJEĆA,  
Gordana Pot,s.r.



Tačnost prepisa potvrđuje  
Ovlašteni službenik suda.  
11.03.2007.

*Verdict of the Administrative Court from 10 March 2007*

**After the verdict, the Agency submitted a decision by which it rejects the request of MANS with the explanation that it does not hold the copies of the requested contracts.**

Republika Crna Gora  
AGENCIJA CRNE GORE ZA PRESTRUKTURIRANJE  
PRIVREDE I STRANA ULAGANJA  
HIP 1/2  
Podgorica, 4. maj 2007 godine.

Na osnovu člana 55, stav 4. Zakona o opštem upravnom postupku ("Službeni list RCG" br. 60/03),  
direktor Agencije CG za restrukturiranje privrede i strana ulaganja donosi:

#### ZAKLJUČAK

Odbacuje se zahtjev Mreže za afirmaciju nevladnog sektora – MANS iz Podgorice kojim je  
tražena kopija Ugovora o prodaji «Telekom»-a Podgorica i «Jugopetrol»-a AD Kotor, zbog  
nenadležnosti.

#### Obrazloženje

*„The sale contract for „Telekom” AD Podgorica is found with the sellers of shares i.e. the Government of the Republic of Montenegro and the Employment Agency of Montenegro.  
The sale contract for „Jugopetrol” AD Kotor is found with the sellers of shares i.e. the Republic of Montenegro, the Pension Fund of the Republic, the Employment Agency of Montenegro and the Development Fund of Montenegro.”*

za postupanje je saopćeno  
informacija valja.

Na osnovu izloženog odlučeno je kao u dispozitivu zaključka.

Uputstvo o pravnom sredstvu: Ovaj zaključak je konačan u upravnom postupku i protiv istog se  
može pokrenuti upravni spor kod Upravnog suda Republike Crne Gore.

#### Dostaviti:

- Mreža za afirmaciju nevladnog sektora – MANS
- Spisni predmeta
- s.a.

*Decision of the Agency after the verdict of the Administrative Court from March 4 2007*

**On June 6 2007 a complaint was lodged against this decision of the Agency too, and the verdict has not been passed yet, so that 20 months after the submission of the request for information the case is still under way.**



**Case study 5: State secret**

The National Security Agency refused to make public the data on the **number of persons who were tapped and surveilled in 2005** by the Agency, stating that it would significantly endanger national security.

Republika Crna Gora  
AGENCIJA ZA NACIONALNU BEZBJEDNOST  
Broj: 050101-1678/2  
Podgorica, 28.03., 2006. godine

NVO - M A N S -  
BROJ 06/441-146 odg-007  
PODGORICA, 28.03., 2006.

Agencija za nacionalnu bezbjednost, u postupku po zahtjevu Mreže za afirmaciju nevladinog sektora – MANS, iz Podgorice, radi pristupa informacijama, na osnovu člana 18 stav 1 Zakona o slobodnom pristupu informacijama (»Sl.list RCG«, br. 68/05), **d o n o s i**

**R J E Š E N J E**

**O d b i j a** se zahtjev Mreže za afirmaciju nevladinog sektora – MANS, iz Podgorice, Stari Aerodrom, zgrada Čelebić II/9, kojim traže kopiju akta koji sadrži informacije o tome nad kolikim brojem osoba je Agencija za nacionalnu bezbjednost u 2005. godini sprovođila mjere praćenja i prisluškivanja.

**O b r a z l o ž e n j e**

Mreža za afirmaciju nevladinog sektora – MANS, iz Podgorice, podnijela je Agenciji za nacionalnu bezbjednost 17.03.2006. godine zahtjev za dostavljanje kopije akta koji sadrži informacije nad kolikim brojem osoba je Agencija za nacionalnu bezbjednost u 2005. godini sprovođila mjere praćenja i prisluškivanja.

Zahjev se odbija u skladu sa članom 9 stav 1 tačka 1 Zakona o slobodnom pristupu informacijama koji propisuje da se pristup informacijama ograničava ako bi se njihovim objelodanjivanjem značajno ugrozila nacionalna bezbjednost. Posebne izvještaje o pojedinim poslovima iz svog djelokruga rada Agencija, u skladu sa članom 43 stav 3 Zakona o Agenciji za nacionalnu bezbjednost ( »Sl. list RCG«, br.28/05), podnosi na njihov zahtjev nadležnom radnom tijelu Skupštine, koje vrši parlamentarnu kontrolu rada Agencije.

Na osnovu izloženog odlučeno je kao u dispozitivu rješenja.

**PRAVNA POUKA:** Ovo rješenje je konačno i protiv njega se može pokrenuti upravni spor tužbom kod Upravnog suda Republike Crne Gore.

Dostavljeno:  
- MANS-u  
- u spise predmeta  
- a/a



*Decision of the Agency for National Security from 28 March 2006*

***Allegations from the MANS' complaint against the NSA filed on April 27 2006***

*"... The Decision of the National Security Agency is unlawful since publicising the number of persons being tapped and surveilled may not endanger the performance of Agency duties, nor jeopardize the security of the persons and the state, since the request was not for the disclosure of any names, the reasons why the NSA did this, nor the data on the employees who exercised the duties within the scope of competences of the Agency.*

*NSA is obliged to publicize the requested information; the public is entitled to be informed about the number of tapped and surveilled persons as it is one of indicators of the Agency operation and an indicator of its efficiency and scope of activities.*

*Considering that, for the exercise of its activities, the Agency spends budgetary resources, the interest of the public to know in what manner the taxpayers' money is being spent and whether the scope of the activities corresponds to the total amount of funds spent is unquestionable.*

*Even if the requested document would contain information that might endanger national security, the Agency would still be obliged, pursuant to Article 13, paragraphs 2, 3 and 4, to enable access to information after deleting the part of information that is restricted.*

*... In the decision of the Agency there is no evidence that this institution conducted any test of harm in the procedure of passing the decision..."*

*"... By the request for information we did not ask for the publication of the names of individuals employed with the Agency, which would affect both the operation of the Agency employees and their personal security, and thus the security of the state. We only asked for the number of employees financed from the budget, and every citizen has the right to know how taxpayers' money is spent, including the NSA, which is a state institution and whose employees are on the budget payroll.*

*Also, the request did not refer to the number of the associates of the Agency, just permanent staff, i.e. persons for whom wage contributions and taxes are paid. Considering that, pursuant to the new Law, the Agency was separated from the Ministry of the Interior, it is obliged to pay taxes and contributions for its employees, and thus the persons in public bodies in charge of accounting and control of taxes and contributions payments as well as the bank through which the payment of salaries is performed have the information on the exact number of employees with the are to be kept as a state secret, and this information is already possessed by officers outside the Agency, there is not a single reason why this information may not be public.*

*Furthermore, pursuant to the Law on the NSA, some of the Agency posts are occupied through public announcements of vacancies as envisaged by the Law on Public Servants and State Employees, and thus the Agency was obliged at least to make that information public..."*

Upon the complaint filed by MANS, the Administrative Court organised an **oral hearing** four months after the complaint had been filed.

**MINUTES FROM THE MAIN HEARING** (Translation)

**Plaintiff:** Network for the Affirmation of the Non-governmental Sector – MANS

**Defendant:** National Security Agency

**This hearing is public.**

Litigants have no objections to the composition of the panel of judges.

The reporter presents the facts from the file.

The plaintiff's representative confirms the complaint adding:

By no means could have the requested data indicate the potential and the capabilities of material resources of the NSA since the Agency was not requested to provide information regarding how many people could have been tapped and surveilled potentially which would indicate their capabilities, but how many were actually surveilled in 2005. The material resources of the Agency are defined in the Budget Law which is publicized in the Official Gazette of the Republic of Montenegro and thus our request did not either relate to that aspect and in that sense we believe that this section of the response to the complaint is irrelevant.

In its response the Agency states which institutions monitor the legality of its operation whereas in our request we never questioned the legality of its operation neither did the complaint refer to that aspect, and we have not either been assessing the democratic capacities of the National Security Agency, as is stated in the rationale, or in any other manner question whether it is lawful to perform surveillance and tapping of individuals but we asked solely for the information on the number of people surveilled last year and thus we deem that this section of the response to the complaint is also irrelevant.

The third segment of the response to the complaint is also irrelevant since there the Agency refers to Article 18 of the Law which is again not within the scope of our interest here since we do not contest the Agency's resolution regarding the inspection into secret files kept by the Agency, which is the area regulated by Article 18 of the Law on National Security, but we solely request the number of surveilled and tapped persons last year.

The last thing we find significant for the complaint is the section where the Agency states that our request was dealt with according to their free assessment which is directly conflicting Article 9 of the Law as referring to Article 3 of the Law, and the Agency has again not submitted evidence in response to the complaint regarding whether it has conducted the test of harm whether the disclosure of the requested information might endanger national security. Thus, in its response to the complaint the Agency clearly showed that it was not led by any law but states that there is no law to regulate the issues relating to protection of secret data which implies that according to own judgment, contrary to Law on Free Access to Information, it unlawfully refused our request.

It submits to the court the resolution of the Commissioner for information of public interest of Serbia dated 22.12.2005 where it is clearly explained why the information agency of Serbia has to publish data on the number of persons tapped during the year 2005, since publishing of such data is of public interest. Also the court was submitted the resolution of the Supreme Court of Serbia relating to this matter.

Responding to the complaint, the defendant's attorney confirms the written response, adding:

Deciding upon the request submitted by MANS, the Agency passed the disputed resolution pursuant to Article 9, paragraph 1, item 1 of the Law on Free Access to Information, referring to Article 16, items 1 and 2 of the Law on Free Access to Information enlisting the information with restricted access where the information possessed by the intelligence and security agencies in charge of national security is heading the list. Since Article 16 of the Law on NSA obliges the Agency to keep records and collections of data gathered pursuing the activities of the Agency, the register of data, records of the use of secret means and methods of data gathering and the documents contained therein are a state (not an official or business) secret and are classified as strictly confidential, considering that such data fall into the category of secretly gathered data, that the application of means and methods for secret data gathering is established when the required data may not be obtained otherwise and that the application of these measures needs to be approved for each individual case. Even in the case of parliamentary oversight over the operation of the Agency performed by the Parliament of Montenegro through its relevant bodies, Article 44 of the Law on NSA envisages written obligation of keeping the state, official and military secret acquired in the course of their oversight for members of the relevant body.

Clarifying the allegations stated by the plaintiff, he added:

Considering that these are the data still having operational value and as such may be abused I deem it justified to classify as confidential the request for data since through interference of the Agency in performing its tasks it directly or indirectly may lead to endangering national security which is the main task of the National Security Agency.

Considering that the Budget Law was published in the Official Gazette the data on allocated funds for the National Security Agency is publicly available, even broken down into separate items.

As for the test of harm, the Law on Free Access to Information does not recognise such a test, but this term might have been encountered only at events discussing the application of this Law, and it implies the duty of the body when acting pursuant to the Law in passing the resolution to assess whether publishing the information is in public interest, whether that requested information is subject to restrictions referred to in Article 9 of the given Law and whether it is the information referred to in Article 10 of this Law.

Considering that the requested information is state secret we thus believe they are subject to restrictions referred to in Article 9 of the Law, and not the type of information referred to in Article 10 of the Law, and thus the Agency refused the request of the plaintiff believing that publishing of the requested information would cause considerably greater harm than is the interest of the public for publicising the information.

In that sense the defendant's attorney submits the confirmation of the National Security Agency ref.no. 250-02-6322/06 as of 6 October 2006.

The Court hereby passes the following

### **DECISION**

The confirmation provided by the National Security Agency is inspected.

The plaintiff's representative: Never requested inspection of the records of data maintained by the Agency, just the number of persons which may possibly not have any operational value, as is stated by the defendant's attorney and as such may not be abused to whatsoever purpose. Above all we contest that publicising the number could interfere with the performance of any duties of the Agency, as argued by the defendant's attorney. Also, when it comes to the requested data they are only to show the efficiency in spending of budgetary resources, and the amount of funds allocated is available in the Budget Law, but not the manner in which the funds are spent.

We contest the allegations that the term "test of harm" has not been regulated since Article 9 paragraph 2 refers expressly to this.

The plaintiff points out that they never requested the inspection of records, nor the data from the register or any other operational data of the Agency, neither the number of persons surveilled this year, but just a figure, the number of those surveilled and tapped last year which by no means may endanger national security.

The defendant's attorney points out that the register of data contains records, including secretly gathered data containing the requested information.

The plaintiff's representative points out that pursuant to the Law on Free Access to Information, Article 13, paragraphs 2, 3 and 4 the Agency was obliged to enable access to requested information after deletion of the data which are a state secret, meaning that even if this information is contained within the register of their data they could have deleted everything else and just leave the numbers in the list which would show the number of people which were surveilled and tapped, and such list numbers could by no means be the state secret, neither has the Agency proven that such list numbers are state secret.

The defendant's attorney underscores that the plaintiff takes the liberty to contest the right of the official authority to classify certain type of document as a state secret whereas in own presentation draws assessments and conclusions regarding what might and what might not be the state secret. Considering the highly specific nature of operation of the Agency, it is unable to provide more detailed explanation of the procedures it conducts to be able to explain why certain data has operational value in order not to jeopardise the ongoing actions.

The litigants have nothing to add.

#### **FINAL PROPOSALS OF THE LITIGANTS**

The plaintiff's representative propose the court to abolish the disputed act and order access to requested information, and as for the request to impose the maximum fine to the defendant the representative of the plaintiff declared they are renouncing this request.

The defendant's attorney proposes the court to dismiss the complaint as ungrounded.

The hearing ended in 10:55 AM

The court shall pass the judgement within the statutory deadline.

The minutes have been dictated aloud.

The litigants have no objections and sign the minutes.

*Minutes from the main hearing from 17 October 2007*

The Administrative Court does not pronounce judgements at the oral hearing sessions, but passes them within the statutory deadline of 8 days. The judgement **abolishes the resolution of the National Security Agency and orders to pass a new, lawful resolution.**

UPRAVNI SUD REPUBLIKE CRNE GORE  
U. broj 558/2006

NVO - M A N S -  
BROJ: 06/441-446  
PODGORICA, 27.10.2006.

U IME NARODA

Upravni sud Republike Crne Gore, u vijeću sastavljenom od sudija Vladimira Radulovića, kao predsjednika vijeća, Vojina Lazovića i Biserke Bukvić, kao članova vijeća, uz učešće službenika Suda Rajke Milović, kao zapisničara, rješavajući upravni spor po tužbi tužioca Mreže za afirmaciju nevladinog sektora - MANS iz Podgorice, koju zastupa zakonski zastupnik Vanja Čalović, protiv rješenja tuženog Agencije za nacionalnu bezbjednost RCG - Podgorica, broj 250/02-1678/2 od 28.03.2006. godine, zastupanog po punomoćniku Katarini Vujović, nakon održane usmene javne rasprave, uz prisustvu stranaka, dana 19.10.2006. godine, donio je

P R E S U D U

"...abolishes the resolution of the National Security Agency..."<sup>1/2</sup>

O b r a z l o ž e n j e

Osporenim rješenjem odbijen je zahtjev tužioca, kojim je tražio kopiju akta koji sadrži informacije o tome nad kojim brojem osoba je tuženi u 2005. godini, sprovodio mjere praćenja i prisluškivanja.

Tužilac u tužbi i riječi na usmenoj raspravi osporava zakonitost rješenja tuženog. Smatra da je osporeno rješenje nezakonito, jer se objavljivanjem informacije o broju osoba koje su praćene i prisluškivane ne može dovesti u opasnost izvršenje poslova Agencije, niti ugroziti bezbjednost lica i Države, kao ni otkriti potencijal funkcionisanja Agencije, pošto zahtjevom nijesu tražena imena lica koja su praćena i prisluškivana, kao ni koliko je lica Agencija u mogućnosti da prati i prisluškuje, razlozi iz kojih je to ANB radila, niti podaci o službenicima koji su vršili te poslove. Tražene informacije predstavljaju jedan od sumarnih pokazatelja rada Agencije i indikator efikasnosti i obima njenog rada, pa javnost ima pravo da zna koliki je broj

prisluskvanih i praćenih lica. Takodje, nespornan je interes javnosti da zna na koji se način troši novac poreskih obveznika i da li obim aktivnosti Agencije korespondira sa ukupnim iznosom utrošenih sredstava. Tuženi je bio dužan da omogući pristup traženim informacijama čak i kada bi u dokumentu u kojem se nalaze bili podaci koji mogu ugroziti nacionalnu bezbjednost, nakon brisanje dijela dokumenta kojim je pristup ograničen. Dalje navodi da nema dokaza da je tuženi proveo test štetnosti u postupku donošenja rješenja, tj. utvrdio da li će objavljivanjem tražene informacije po određeni zaštićeni interes nastati šteta značajno veća od štete po javni interes zbog neobjavljivanja te informacije. Konačno predlaže, da Sud poništi osporeni akt i naloži tuženom da omogući pristup traženim informacijama.

Tuženi organ u odgovoru na tužbu i na usmenoj raspravi preko svog punomoćnika, ističe u bitnom da je osporeno rješenje zakonito, jer je zasnovano na odredbama člano 9. stav 1. tačka 1. Zakona o slobodnom pristupu informacijama u vezi sa članom 16. stav 1. i 2. Zakon o agenciji za nacionalnu bezbjednost. Evidencije primjene metoda i sredstava tajnog prikupljanja podataka predstavljaju "državnu tajnu" i zavedene su u djelovodniku najvišeg nivoa tajnosti "strogo povjerljivo", o čemu kao dokaz prilaže potvrdu br. 250-02-6322/06 od 16.10.2006. godine. Ukazuje da i u slučaju parlamentarne kontrole rada Agencije koju vrši Skupština RCG, preko nadležnog radnog tijela, njegovi članovi potpisuju pismenu izjavu o obavezi čuvanja državne tajne do koje dodju prilikom kontrole. Traženi podaci spadaju u grupu tajno prikupljenih podataka i još uvijek imaju operativnu vrijednost, pa se s toga mogu zloupotrijebiti. Smatra da se kapacitet Agencije, da se na kvalitetan i profesionalan način suprotstavi potencijalnim bezbjednosnim rizicima, izazovima i prijetnjama može tretirati kao podatak čijim bi objelodanjivanjem nastala značajno veća šteta od javnog interesa za objavljivanje te informacije. Predložio je da Sud odbije tužbu.

Nakon razmatranja tužbe, odgovora na istu, pobijanog rješenja i ostalih spisa tuženi organ je odgovorio. Sud je našao da je tužba osnovana.

*"...the rationale of the resolution does not state, neither there are proofs in the files ....that the fact has been established that the disclosure of the requested information would cause harm to national security greater than the public interest for publishing the information, in which case it would be considered that these interests are greatly threatened."*

ako bi se objavljivanjem informacija bezbjedonosne informativnih i obavjestajnih agencija za nacionalnu bezbjednost značajno ugrozila nacionalna bezbjednost. U obrazloženju rješenja se ne navodi, niti u spisima predmeta ima dokaza za to da je u smislu stava 2. navedene odredbe, utvrdjena činjenica, da li bi po interese nacionalne bezbjednosti, objelodanjivanjem tražene informacije nastala šteta značajno veća od javnog interesa za objavljivanjem te informacije, u kojem slučaju se smatra da su ti interesi značajno ugroženi.

Odredbom člana 203. stav 2. Zakona o opštem upravnom postupku propisano je da obrazloženje, između ostalog, sadrži utvrdjeno činjenično stanje, razloge zbog kojih nije uvažen koji od zahtjeva stranke, materijalne propise i razloge koji, s obzirom na utvrdjeno činjenično stanje, upućuju na rješenje kakvo je dato u dispozitivu.



*"In the contested resolution, the defendant only referred to the regulation, without stating other elements as any rationale is supposed to contain, which would indicate proper application of the substantive law – in the given case Article 9, paragraph 1 of the Law on Free Access to Information. Due to this violation of the procedure the disputed resolution is unlawful."*

mogu zamijeniti obrazloženje rješenja, pa nijesu od značaja za drugaciju odluku Suda u ovoj stvari, jer Sud u upravnom sporu ocjenjuje zakonitost akta koji se tužbom osporava.

Sud je cijenio predlog tužioca da meritorno odluči u ovoj stvari, ali je našao da za to nema uslova, jer raspoloživo činjenično stanje ne pruža pouzdan osnov za

*"In the repeated procedure the defendant shall, acting in accordance with the objections of the Court, remove the irregularities ... and pass a new resolution."*

Sa iznijetih razloga, a na osnovu člana 37. stav 1. u vezi člana 55. stav 2. Zakona o upravnom sporu, odlučeno je kao u dispozitivu ove presude.

UPRAVNI SUD REPUBLIKE CRNE GORE  
Podgorica, 19.10. 2006. godine

Zapisničar,  
Rajka Milović, s.r.

PREDSJEDNIK VIJEĆA,  
Vladimir Radulović, s.r.



Tačnost prepisa potvrđuje  
Ovlašteni službenik suda:  
*M. Kanyepobuh*

*Verdict of the Administrative Court from 19 October 2006*

The Administrative Court abolishes the resolution of the Agency as unlawful, since this institution did not conduct any test of harm and orders passing a new, lawful resolution.

"The rationale of the resolution does not state, neither there are proofs in the files that it has been established that the disclosure of the requested information would cause **harm to national security greater than the public interest** for publishing the information, in which case it would be considered that these interests are greatly threatened."

After verdict, the Agency is reaching new decision allowing access to requested information.

**REPUBLIKA CRNA GORA**  
**AGENCIJA ZA NACIONALNU BEZBJEDNOST**

NVO - M A N S -  
BROJ: 06/1441-446  
PODGORICA, 29. III 2006

Broj: 290-02-2036/06  
Podgorica, 29. III 2006

Agencija za nacionalnu bezbjednost – ANB, u postupku po zahtjevu Mreže za afirmaciju nevladinog sektora – MANS, iz Podgorice, radi pristupanja informacijama, na osnovu člana 18 stav 1 Zakonika o pristupu informacijama («Sl.list RCG«, br. 68/05), **donosi**

**RJEŠENJE**

**Dozvoljava** se Mreži za afirmaciju nevladinog sektora – MANS, iz Podgorice, Bohinjska bb, pristup informaciji u kojoj su sadržani podaci o broju lica nad kojima su primjenjene metode praćenja i nadzora nad sredstvima komunikacije.

Pristup traženoj informaciji ostvariće se prepisivanjem informacije od strane ANB i dostavljanjem iste uz rješenje, putem dostavne službe ANB, na adresu podnosioca zahtjeva.

O pristupu ostalim zahtjevom traženim informacijama, odlučeno je posebnim rješenjima.

**Obrazloženje**

Mreža za afirmaciju nevladinog sektora – MANS, iz Podgorice, podnijela je Agenciji za nacionalnu bezbjednost 27. marta 2006.godine, zahtjev za dostavljanje kopije akta koji sadrži informacije nad kolikim brojem osoba je ANB u 2005. godini sprovodila mjere praćenja i prisluškivanja.

Postupajući po podnijetom zahtjevu, utvrđeno je da ANB posjeduje zahtjevom tražene podatke, kao i da se informaciji može odobriti pristup.

Kako tražena informacija nije sadržana u jednom, već u većem broju akata, postupajući organ je odlučio da, u cilju ekonomičnosti postupka, tražene podatke objedini i pristup traženoj informaciji ostvari prepisivanjem informacije od strane ANB i dostavljanjem

## 5. Ban of access to information

prepiša podnosiocu zahtjeva, uz rješenje, neposredno, shodno članu 13 stav 1 tačka 3 Zakona o slobodnom pristupu informacijama.

Sa navedenih razloga, odlučeno je kao u dispozitivu rješenja.

**PRAVNA POUKA:** Ovo rješenje je konačno i protiv njega se može pokrenuti upravni spor tužbom kod Upravnog suda RCG, u roku od 30 dana od dana prijema rješenja.

**Prilog:**

- tražena informacija

**Dostavljeno:**

- MANS-u  
- u spise predmeta  
- a/a



ŠEF KABINETA  
Miroslav Bjelica



REPUBLIKA CRNA GORA  
AGENCIJA ZA NACIONALNU BEZBJEDNOST

Broj 250-07-2035/06  
Podgorica, 24. 11. 2006

### INFORMACIJA

o broju lica nad kojima su primjenjene metode  
praćenja i nadzora nad sredstvima komunikacije

Agencija za nacionalnu bezbjednost je, tokom 2005. godine, primjenila metodu praćenja u odnosu na 5 (pet) lica.

U istom periodu vršila je nadzor nad sredstvima komunikacije u odnosu na 45 (četdesetpet) lica.



ŠEF KABINETA  
Miroslav Bjelica

*Decision of the National Security Agency from 24th November 2006*

MANS asked from the Agency for National Security a copy of the Rulebook on the Use and Keeping of Materials, which the Agency refused to submit with the explanation that the requested information is **confidential and that according to the Law on Agency for National Security it represents a secret.**



REPUBLIKA CRNA GORA  
AGENCIJA ZA NACIONALNU BEZBJEDNOST

Broj 250-060-ANB-6-2/06  
Podgorica, 14. 10. 2006

NVO - MANS -  
BROJ 06/1666  
PODGORICA, 24.10.2006

Agencija za nacionalnu bezbjednost, u postupku po zahtjevu Mreže za afirmaciju nevladinog sektora - MANS, iz Podgorice, radi pristupa informacijama, na osnovu člana 18. stav 1. Zakona o pristupu informacijama (»Sl. List RCG«, br. 68/05), **donosi**

#### RJEŠENJE

**O d b i j a** se zahtjev Mreže za afirmaciju nevladinog sektora – MANS, iz Podgorice, Stari Aerodrom, zgrada Čelebić II/9, kojim se traži dostava kopije pravilnika o korišćenju i čuvanju materijala u Agenciji za nacionalnu bezbjednost.

#### Obrazloženje

Mreža za afirmaciju nevladinog sektora – MANS, iz Podgorice, je 17. oktobra 2006. godine podnijela zahtjev za dostavu kopije pravilnika o korišćenju i čuvanju materijala u Agenciji za nacionalnu bezbjednost.

Prilikom postupanja u ovoj pravnoj stvari, Agencija je utvrdila da posjeduje akt kojim se,

*„Attending to the request of MANS, the Agency found out that the mentioned enactment does not contain data which indicate the quotes from Article 10 of the Law on Free Access to Information. Although disclosure of data held by the public authority bodies is of public interest, in this concrete case the Agency determined that the requested information, included in the requested enactment, is of confidential character since it regulates acting and access to data and documents including data which according to Article 16 paragraphs 1 and 2 of the Law on Agency for National Security represent a state, official and business secret. The aforesaid is confirmed by the fact that the enactment regulating this matter is published in a confidential issue of the Official Gazette of RoM access to which is restricted.“*

1. tačka 1. Zakona o slobodnom pristupu informacijama i da bi njenim objelodanjivanjem nastala šteta značajno veća od javnog interesa za objavljivanjem te informacije.

*Decision of the Agency for National Security from 24 October 2006*

**MANS lodged a complaint to the Administrative Court** stating among other the following:

**...Rulebook on the Use and Keeping of Materials includes a procedure and criteria based on which materials in the Agency are kept and used so that in this case the publishing of such information could not significantly imperil national security.**

*Apart from that, the request for free access to information did not require data and documents which according to Article 16 paragraph 1 of the Law on Agency for National Security represent a state, official and business secret but exclusively the enactment regulating the manner in which that material is used and kept...*

**...The decision of the Agency does not include proofs that the institution conducted a noxiousness test in the procedure of making the decision apart from the fact that the Rulebook was passed by the Government of the Republic of Montenegro and published in the Official Gazette – confidential publication no 1/06 from 28 April 2006, which in no case represents a proof that the requested Rulebook is a secret.**

**Apart from that it should be pointed out that the manner of access to information held by the public authority bodies and the possibility to restrict access to information are regulated by the Law on Free Access to Information and that every restriction of the right to access based on an enactment of smaller legal force than the law does not comply with the law.**

After lodging of the complaint, the **Agency for National Security itself annulled the previous decision and made a new one by which access to the required information is allowed.**



Po dostavljanju tužbe na odgovor, ANB je ponovo razmotrila zahtjev, utvrdila da zahtjevom traženoj informaciji nije, na zakonskom nivou, ograničen pristup i odlučila kao u dispozitivu ovog rešenja, s obzirom članu 256 Zakona o opštem upravnom postupku

*„After lodging of a complaint to the response, the Agency again considered the request, determined that access to the requested information is not restricted according to the law and decided as in the explanation of this decision, in compliance with Article 256 of the Law on General Administrative Procedure (Official Gazette of Montenegro, no. 60/03 from 28 10 2003)“*

Prilog:  
– Prepis tražene informacije.

Dostavljeno:  
– Upravnom sudu RCG  
– MANS-u  
– u spise predmeta  
– a/s



*Decision of the Agency for National Security from 7 December 2006*

### Case study 6: Protection of confidential data by delation

MANS asked from the Agency for National Security a copy of the enactment including data on the total number of employees and the number of employees per sector.

**The Agency refused the request with the explanation that making public of such information could significantly imperil national security.**

#### RJEŠENJE

**O d b i j a** se zahtjev Mreže za afirmaciju nevladinog sektora – MANS, iz Podgorice, Stari Aerodrom, zgrada Čelebić II/9, kojim traži da joj se dostave podaci o ukupnom broju zaposlenih i broju zaposlenih po sektorima u Agenciji.

#### O b r a z l o ž e n j e

Mreža za afirmaciju nevladinog sektora – MANS, iz Podgorice, podnijela je Agenciji za nacionalnu bezbjednost 15.03.2006. godine zahtjev za dostavljanje informacije, odnosno dostavu podataka o ukupnom broju zaposlenih i broju zaposlenih po sektorima u Agenciji.

Odredbom člana 9 stav 1 tačka 1 Zakona o slobodnom pristupu informacijama

*„The required data refer to enactments of the Agency for National Security of the Republic of Montenegro whose disclosure could significantly imperil national security.”*

Na osnovu izloženog određeno je kao u dispozitivu rješenja.

**PRAVNA POUKA:** Ovo rješenje je konačno i protiv njega se može pokrenuti upravni spor tužbom kod Upravnog suda Republike Crne Gore.

#### Dostavljeno:

- MANS-u
- u spise predmeta
- a/a



*Decision of the Agency for National Security from 23 March 2006*

### **Excerpts from the complaint as of 25 April 2006**

*...In our request we **did not ask names to be disclosed** of individuals employed in the Agency, which could influence both the work of the Agency employees, and their personal safety, and thus also the security of the state. We inquired **only in the number of employees** being financed from the budget, and every citizen has the right to know how money of taxpayers is being spent, even if this is done by the Agency for National Security, which is a state instituion and **whose employees receive salaries from the Budget.***

*Also, in the request **we did not ask for the number of collaborators of the Agency, but only the number of steadily employed persons**, i.e. persons for whom taxes and contributions are paid. Since the Agency is separated from the Ministry of Internal Affairs by the new Law, it is obliged to pay taxes and contributions for its employees, so that officials in the state bodies in charge of calculating and control of payment of taxes and contributions, as well as the bank through which the salaries are paid have the information on the exact number of employees of the Agency.*

***Since no legal enactment prescribes that data on taxes and contributions are to be kept as a state secret, and the information is already held by officials outside the Agency, there is no reason why citizens should not become acquainted with that information.***

*Furthermore, in compliance with the Law on Agency for National Security, a part of the employees of the Agency are engaged based on an **open competition** and the Law on Civil Servants and State Employees, so that Agency was obliged to make public **at least that information**, in compliance with Article 13, paragraphs 2, 3 and 4.*

***In accordance with the Law, restriction of access to information, in every concrete case, must be preceded by a noxiousness test...***

**The verdict annulled the Agency decision, for it did not include the determined state of facts, legal regulations and the reasons why the information is proclaimed secret.**

Osporenim rješenjem povrijeđena je i odredba člana 203. stav 2. ZUP-a, jer isto ne sadrži utvrđeno činjenično stanje, pravne propise i razloge koji s obzirom na utvrđeno činjenično stanje upućuju na rješenje kakvo je dato u dispozitivu. Valjano

*„The disputed decision violated also provision from Article 203 of the Law on Administrative Procedure, for it does not include the state of the facts, legal regulations and the reasons which point to the decision as it is given in the explanation with regard to the determined state of facts. A valid explanation, by nature of things represents a necessary prerequisite for assessment of legality of the disputed resolution in a legal dispute. To say the truth, the defendant gave in a response to the complaint more detailed reasons for making the disputed decision, however, the response to the complaint and the reasons given at the hearing, cannot compensate for the lack of explanation of the disputed decision, for the Court assesses in an administrative dispute the legality of the enactment being disputed by the complaint.“*

prekršajnoj odgovornosti sudacaju nadležni organi za prekršaje.

Na osnovu naprijed izloženog osporeno rješenje je valjalo poništiti.

U ponovnom postupku tuženi organ će, postupajući po datim primjedbama Suda, otkloniti počinjene nepravilnosti i shodno članu 57. Zakona o upravnom sporu, ("Sl. list RCG" br. 60/03), donijeti novo zakonito rješenje.

Sa iznijetih razloga, a na osnovu člana 37. stav 1. u vezi člana 33. stav 2. Zakona o upravnom sporu, odlučeno je kao u dispozitivu ove presude.

UPRAVNI SUD REPUBLIKE CRNE GORE,  
Podgorica, 11.10.2006. godine.

Zapisničar,  
Marina Nedović,s.r.

PREDSJEDNIK VIJEĆA,  
Gordana Pot,s.r.



Tačnost prepisa potvrđuje  
Ovlašteni službenik suda  
U. Kanyepobuk

*Verdict of the Administrative Court from 11 October 2006*

**By a verdict of the Administrative Court, the Agency made a new decision by which it allowed access to the required information.**



REPUBLIKA CRNA GORA  
AGENCIJA ZA NACIONALNU BEZBJEDNOST

Broj DSO-02-6878-1/06  
Podgorica 15.11.2006

NVO - M A N S -  
BRČKA 08/434-435  
PODGORICA 15.11.2006

Agencija za nacionalnu bezbjednost - ANB, u postupku po zahtjevu Mreže za afirmaciju nevladinog sektora - MANS, iz Podgorice, radi pristupa informacijama, na osnovu člana 18. stav 1. Zakona o pristupu informacijama («Sl. List RCG», br. 68/05), **donosi**

### RJEŠENJE

**D o z v o l j a v a** se Mreži za afirmaciju nevladinog sektora – MANS, iz Podgorice, Bohinjska bb, pristup dijelu informacije – Pravidnika o organizaciji i sistematizaciji radnih mjesta u Službi državne bezbjednosti, u dijelu koji se odnosi na ukupan broj

*„Network for Affirmation of Non-government Sector – MANS from Podgorica Bohinjska bb, is allowed access to part of the information – Rulebook on the Organization and Job Systematization in the State Security Service, in the part relating to the total number of systematized positions, after delation of the remaining part of the information to which access is restricted.”*

O drugoj tački zahtjeva, kojom je tražena kopija akta u kome su sadržani podaci o ukupnom bruto i neto iznosu zarada zaposlenih za mjesec decembar 2005. godine odlučeno je posebnim rješenjem.

### Obrazloženje

Mreža za afirmaciju nevladinog sektora – MANS iz Podgorice podnijela je Agenciji za nacionalnu bezbjednost 15.03.2006. godine, zahtjev za dostavljanje informacije – kopije akta u kome su sadržani podaci o ukupnom broju zaposlenih i broju zaposlenih po sektorima u Agenciji.

*Decision of the Agency for National Security from 15 November 2006*





Rješavajući po zahtjevu MANS-a, Agencija je utvrdila da Pravilnik o organizaciji i sistematizaciji radnih mjesta u SDB sadrži podatke o ukupnom broju radnih mjesta u Agenciji.

*„Until completion of the transformation process of the overall legal regulation, the Agency shall act according to rules of the State Security Service, as its legal successor.“*

Također je utvrđeno da navedeni akt nosi oznaku vrste tajnosti »državna tajna« i zaveden je u djelovodniku najvišeg stepena tajnosti - »strogo povjerljivo«. Režim postupanja sa takvim aktima je vrlo restriktivan i uvid u njih je ograničen na najmanji broj zaposlenih i to onih koji u obavljanju radnih zadataka postupaju po tim aktima. Svi zaposleni su članom 36. Zakona o Agenciji za nacionalnu bezbjednost obavezni da čuvaju tajnost.

*„Although the requested enactment is secret by its character, it was assessed that by allowing insight into part of the enactment pertaining to the number of work positions in the Agency, a part of the request submitted by MANS can be met, for disclosure of this part of the information should not cause damage which would outweigh the public interest for disclosure of that information.“*

Ostalom dijelu informacije - akta, koji se odnosi na organizacione jedinice i njihov djelokrug, kao i sistematizaciju radnih mjesta u okviru organizacionih jedinica i sl., valjalo je ograničiti pristup, iako je objavljivanje podataka u posjedu organa vlasti u javnom interesu, obzirom da traženi akt ne sadrži podatke iz čl. 10. Zakona o slobodnom pristupu informacijama, kao i da tražene informacije podliježu ograničenjima iz člana 9. stav 1. tačka 1. Zakona o slobodnom pristupu informacijama, te da bi shodno članu 9 st. 2 navedenog Zakona objelodanjanjem informacije nastala šteta koja bi mogla biti veća od štete koja bi nastala zbog objavljivanja te informacije.

*„Namely, the Agency for National Security is a state body whose competence is the protection of national security, due to which by threatening and imperilling the operation of the Agency in an indirect or a direct way the national security could be imperilled as well.*

*In the concrete case, the arrangement and the structure of employees within the organization units of the Agency for National Security, represents information with a safety character of particular importance, whose abuse could make impossible adequate positioning and resistance to the potential safety risks and threats.“*

Zbog naprijed navedenog omogućava se pristup informaciji nakon brisanja dijela informacije kojoj je pristup ograničan, shodno članu 13. stav 2., 3. i 4. Zakona o slobodnom pristupu informacijama.

Kako broj sistematizovanih radnih mjesta nije istovjetan sa stvarnim brojem zaposlenih u ANB, a Agencija je u posjedu akta koji sadrži zahtjevom traženi podatak, to je u cilju pružanja preciznije informacije, dozvoljen pristup i informaciji sadržanoj u aktu ANB.

*Decision of the Agency for National Security from 15 November 2006*

ВЛАДА РЕПУБЛИКЕ ЦРНЕ ГОРЕ  
МИНИСТАРСТВО УНУТРАШЊИХ ПОСЛОВА  
Служба државне безбедности  
Кабинет помоћника министра

Број: 250/02-13155

Подгорица, 27. 12. 2001. го.

РЕПУБЛИКА ЦРНА ГОРА  
МИНИСТАРСТВО УНУТРАШЊИХ ПОСЛОВА  
СЛУЖБА ДРЖАВНЕ БЕЗБЈЕДНОСТИ



ДРЖАВНА ТАЈНА

Ev. br. 5

STATE SECRET

ПРАВИЛНИК

О ОРГАНИЗАЦИЈИ И СИСТЕМАТИЗАЦИЈИ РАДНИХ МЈЕСТА  
У СЛУЖБИ ДРЖАВНЕ БЕЗБЈЕДНОСТИ

Podgorica, septembar 2001. godine

*Rulebook on organization and job systematization in the State Security Service*

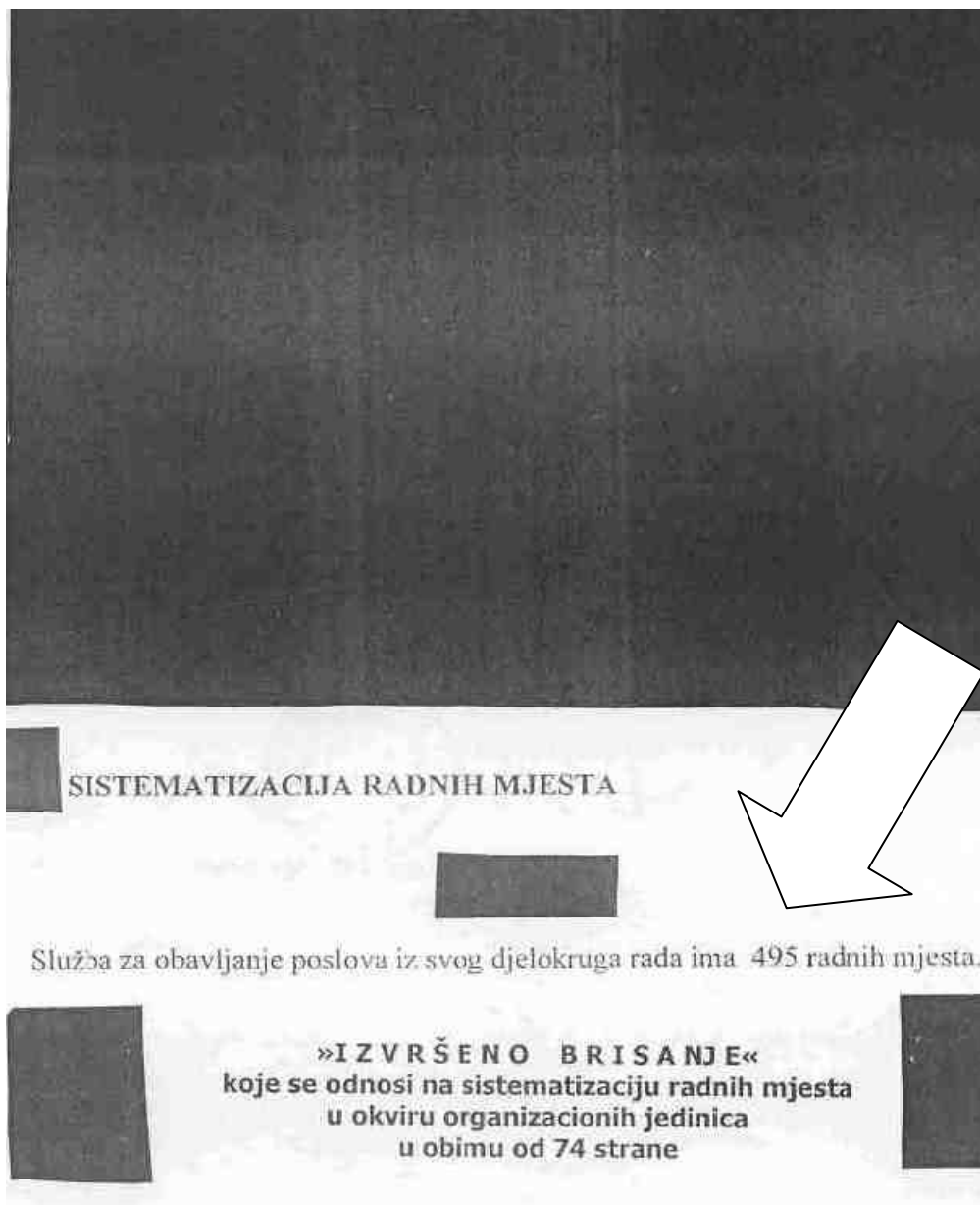
Na osnovu člana 6 stav 2 Zakona o unutrašnjim poslovima ("Službeni list Republike Crne Gore", br. 24/94.), ministar unutrašnjih poslova, uz saglasnost nadležnog tijela Vlade Republike Crne Gore, donosi

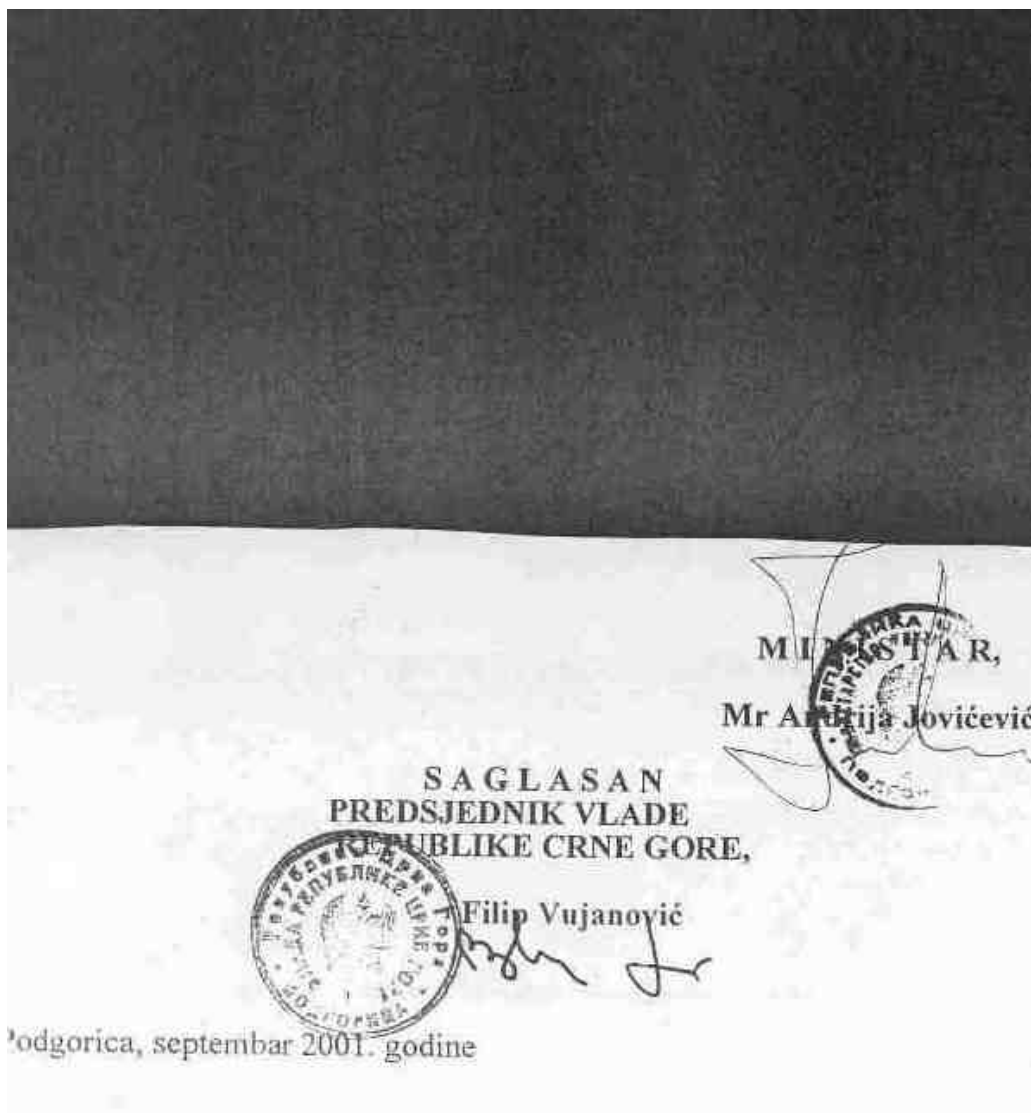
**P R A V I L N I K  
O ORGANIZACIJI I SISTEMATIZACIJI RADNIH MJESTA  
U SLUŽBI DRŽAVNE BEZBJEDNOSTI**

**ORGANIZACIONE JEDINICE I NJIHOV DJELOKRUG**

**»IZVRŠENO BRISANJE«**

koje se odnosi na organizacione jedinice i njihov djelokrug,  
u obimu od 7 strana



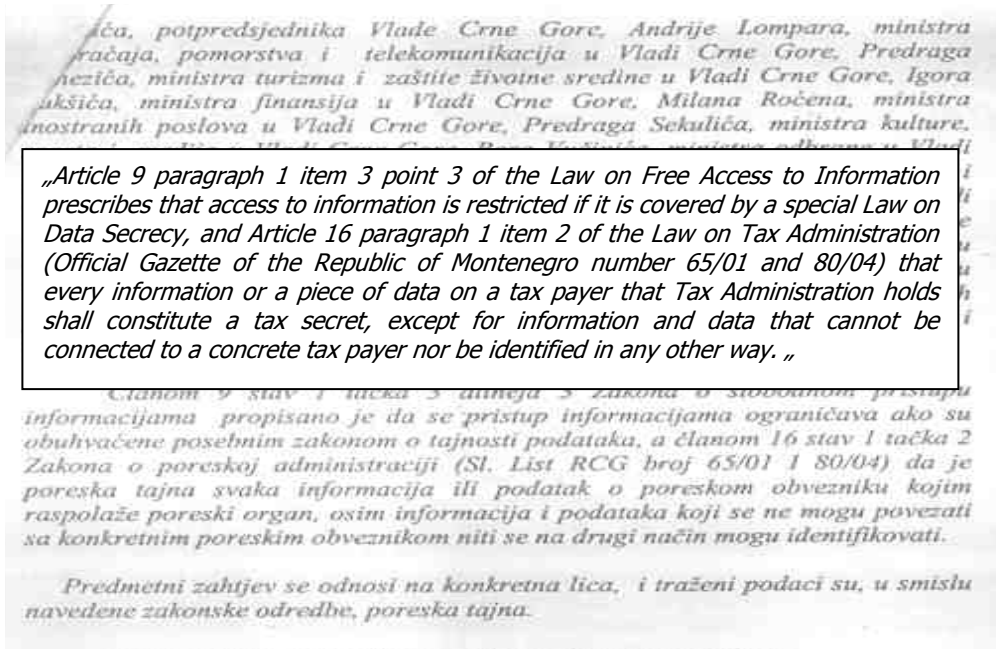


*Rulebook on organization and job systematization in the State Security Service*

### Case study 7: Tax secret

**MANS asked from the Tax Administration copies of tax reports of the Government members.**

**The Tax Administration refused the request** with the explanation that access to information is restricted if it is covered by a special law on data secrecy, and that in this concrete case the concerned data are **proclaimed a tax secret by the Law on Tax Administration.**



Decision of Tax Administration from 15 December 2006

MANS lodged a **complaint to the Ministry of Finance**, as a second instance body, but this institution **refused it stating that the first instance body was not obliged to conduct the harm test, for such an obligation is not prescribed by the law.**

tajnosti podataka. Takva odredba je i član 16. Zakona o poreskoj administraciji, na koju se poreski organ pravilno pozvao i koja ga obavezuje, a stavom 1. tačke 2. toga člana je propisano da je poreska tajna svaka informacija ili podatak o poreskom obvezniku kojim raspolaže poreski organ, osim informacija i podataka koji se ne

*„The first instance body stated rightly in the explanation of the decision that the subject request refers to concrete persons and that the requested data constitute a tax secret in terms of the above quoted legal regulation.”*

predmetni zahtjev odnosi na konkretna lica i da su traženi podaci u smislu navedene zakonske doredbe poreska tajna.

*„Complaint of the accuser that the first instance body was obliged to conduct a harm test in accordance with Article 9 paragraph 7 of the Law on Free Access to Information is groundless, since such an obligation is not prescribed by the quoted provision of the law.*

*This means that this Ministry determined that the first instance body made a correct decision quoting provision from Article 16 paragraph 1 item 2 of the Law on Tax Administration and that material right has not been violated, and that the quotes in the complaint are groundless.”*

Zbog toga, ovo ministarstvo je utvrdilo, da je predmetni organ pravilno postupio pozivajući se na odredbu člana 16. stav 1. tačka 2. Zakona o poreskoj administraciji i da nema povrede materijalnog prava, a da su žalbeni navodi neosnovani.

Sa izloženog odlučeno je kao u dispozitivu - član 235. stav 1. Zakona o opštem upravnom postupku.

**UPUTSTVO O PRAVNOM SREDSTVU:** Proti ovog rješenja nije dopuštena žalba, ali se može pokrenuti upravni spor tužbom koja se dostavlja Upravnom sudu Republike Crne Gore u roku od 30 dana od dana prijema rješenja.

MINISTAR,  
*Igor Lukšić*



*MANS submitted on 9 February 2007 a **complaint to the Administrative Court** which states among other:*

*According to the exposition of the Law on Free Access to Information, Article 8 provides for the obligation of the public authority bodies to ensure access to information they hold, except in cases foreseen by this law.*

*This provision is important because it excludes the possibility to prescribe restriction of access to information by other laws and general enactments, i.e. if such restrictions have been prescribed or if they are prescribed in the future, after coming into force of this law it will not be possible to apply them."*

*Therefore, one of the provisions that is directly contrary to the Law on Free Access to Information and was adopted prior to that law is obviously also Article 16 paragraph 1 and item 2 of the Law on Tax Administration, which prescribes restriction of access to information.*

*The decision of the Tax Administration number 03/1-25824/2-06 from 14 December 2006 **does not include proofs that the harm test was conducted**, in compliance with Article 9 paragraph 7 of the Law on Free Access to Information, since it is not mentioned in the decision.*

*Although expenses of the harm test are to be born by the public authority body, Tax Administration passed a decision by which the requested information is declared secret, not considering the collision between the provisions of the Law on Free Access to Information as Lex Specialis and the Law on Tax Administration as inferior in relation to the Law on Free Access to Information.*

***Since the request asked for copies of tax reports of high state officials, i.e. of the Prime Minister, Vice Prime Ministers, as well as of all the Ministers in the Government of the Republic of Montenegro who reported their property and income to the Commission for Determining of Conflict of Interest, we point out that the data on revenues and property on which the tax is to be paid is public, and that they are published on the Web page of the Commission.***

*Therefore the data on the tax paid by the public officials on the revenues and property they have already reported, should not on any grounds be secret. Precisely the contrary, citizens have the right to know whether public officials pay taxes and what these taxes amount to, and the disclosure of such information can harm the public official **only** in case when s/he has not paid the tax.*

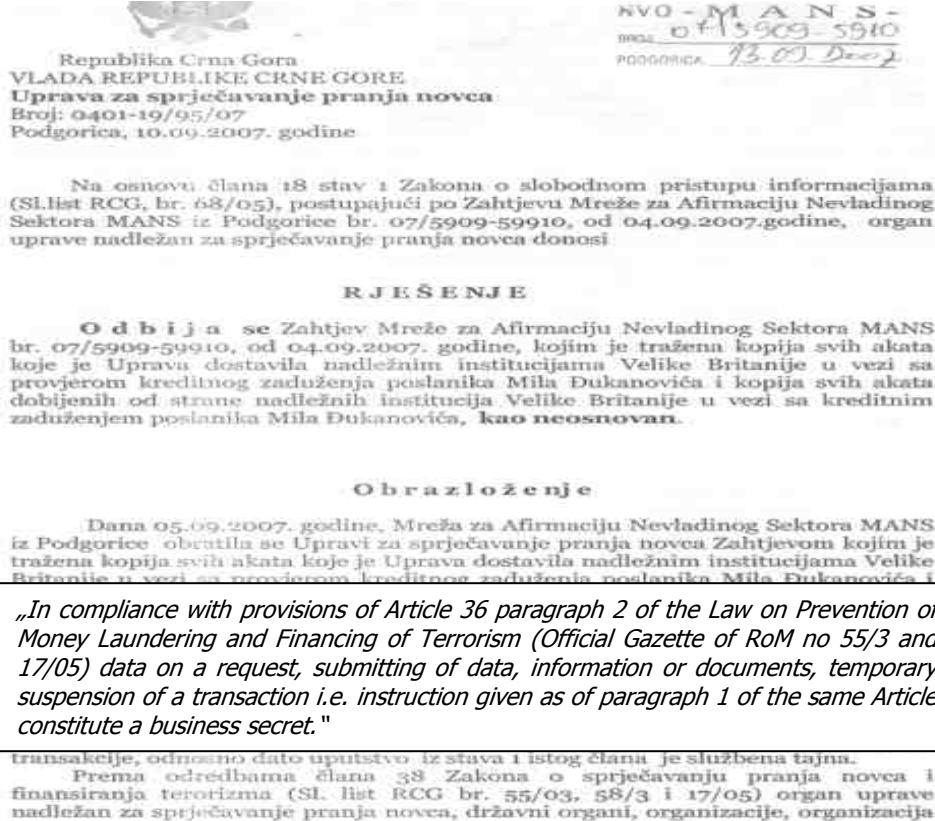
**The Administrative Court has not yet passed a verdict.**



### Case study 8: Data on financial transactions

MANS asked from the Administration for Prevention of Money Laundering copies of enactments submitted to competent institutions of Great Britain relating to the checking of the credit borrowing of the MP Milo Djukanovic amounting to 1,5 million Euro, as well as all the responses obtained by the competent institutions of Great Britain.

Administration for Prevention of Money Laundering refused the request as groundless with the explanation that the **Law on Prevention of Money Laundering and Financing of Terrorism, classifies the requested information as a business secret, and that access is forbidden based on the procedures of Egmont Group which prescribe that data exchanged by the financial intelligence services cannot be forwarded to third persons.**



Decision of the Administration for Money Laundering from September 10 2007

sa javnim ovlaštenjima, advokati, advokatske kancelarije, društva za reviziju, samostalni revizori i pravna i fizička lica koja obavljaju računovodstvene i druge slične usluge i njihovi zaposleni, podatke, informacije i dokumentaciju koju su

*„In compliance with the strict procedures and principles of Egmont Group data exchanged by the financial intelligence services cannot be forwarded to third persons. These data cannot be used as proofs at the court without a prior consent of the sender. Data can serve only for intelligence and analytics purposes.”*

tiču usaglašavanja sa standardima Egmont Grupe. Kršenje povjerljivosti je jedan od najozbiljnijih slučajeva neusaglašenosti sa principima Egmont Grupe o razmjeni informacija, bilo da se radi o aktivnom kršenju povjerljivosti (neusaglašenost nadgledanja predhodnog pristanka na uslove ili uslove zabranjene upotrebe operativnih podataka) ili o pasivnom kršenju povjerljivosti (nedovoljna zaštita povjerljivih operativnih podataka). Zloupotreba Egmontovih dokumenata ( širenje povjerljivih dokumenata) može biti ozbiljno pitanje koje može prouzrokovati štetu Egmont grupi i njenim članovima.

Nepoštovanje principa Egmont Grupe dovodi do isključenja finansijsko obavještajne jedinice iz Egmont Grupe.

Na osnovu izloženog odlučeno je kao u dispozitivu rješenja.

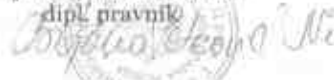
**PRAVNA POUKA:** Protiv ovog rješenja može se izjaviti žalba u roku od 15 dana od dana njegovog prijema Ministarstvu finansija, preko ovog organa.

Dostavljeno:

\*Podnosiocu zahtjeva

\*a/a

Ovlašteno lice  
Biljana Petrović-Nedović  
dipl. pravnik



*Decision of the Administration for Money Laundering from September 10 2007*

MANS lodged a **complaint to the Ministry of Finances** stating among other the following

*...Legal provision that **disclosure of information held by public authority bodies is of public interest** has manifold importance. By determining public interest in this area the primary importance is undoubtedly given to the interest to disclose information in relation to the opposite interest to exempt it from disclosure for any reason whatsoever, including the possible damage to the bearers of that interest.*

*Article 8 of the Law on Free Access to Information prescribes that a public authority body is obliged to make it possible to the requester to access information or a part of it, except in cases foreseen by this law.*

*This provision is also important because it **excludes to possibility to prescribe limited access to information by other laws and general enactments**, i.e. if such restrictions have been prescribed or if they are prescribed in the future, by coming into force of this law there will be no possibility to implement them...*

**...The decision does not include proofs that in the procedure of passing of the subject decision the body conducted a harm test as prescribed by the law.**

*Furthermore, according to Article 10 of the Law on Free Access to Information a public authority body is obliged to make possible access to information, or a part of it from Article 9 paragraph 1 of this law, if it includes **data that obviously indicate: failure to comply with material provisions, unauthorized use of public resources, abuse of authority, unconscientious performance of an official duty, existance of grounds for doubt that a criminal act has been committed or existance of reasons for refuting of a court decision**, notwithstanding the amount of damage for the interests from Article 9 paragraph 1 of this Article.*

*This Article establishes the so called paramount (**absolute**) **public interest**, i.e. cases have been foreseen in which access to information must be allowed notwithstanding the amount of damage that can be caused due to this to the foreseen legitimate interests.*

**Implementation of this Article is extremely important because in this concrete case the person in question is a public official whose income expressed in the report on property to the Commission for Determining of Conflict of Interest is far below the transaction of 1, 5 million**, and he is according to the Law on Conflict of Interest certainly obliged to report this credit borrowing; therefore making possible access to the information in no case violates his right to privacy and in that case the Administration for Money Laundering would be asked whether it can confirm or deny doubts of corruption.

*Apart from that, Article 13 paragraph 2 of the Law on Free Access to Information prescribes that if access to a part of information is limited, the body is obliged to make possible access to information after delation of that part of information to which access is restricted...*

**The Ministry of Finances refused the complaint as groundless, stating that the first instance body applied the law properly.**



Na osnovu člana 22 Zakona o slobodnom pristupu informacijama („Službeni list RCG“, br. 68/05) i 221 Zakona o opštem upravnom postupku („Službeni list RCG“, br. 06/03), Ministarstvo finansija donosi

*„The complaint of the Network for Affirmation of Non-government Sector – MANS, from Podgorica, Dalmatinska 188, lodged against the Decision of the Administration for Money Laundering no. 0401-19/95/07 from 10 09 2007 is refused as groundless.“*

0401-19/95/07 od 10. 09. 2007. godine, kao neosnovano.

#### Obrazloženje

Rješenjem Uprave za sprječavanje pranja novca, broj 0401-19/95/07 od 10. 09. 2007. godine, odbijen je zahtjev Mreže za afirmaciju nevladinog sektora MANS iz Podgorice, broj 07/5909-5910 od 04. 09. 2007. godine, kojim su tražene kopije svih akata koje je Uprava dostavila nadležnim institucijama Velike Britanije u vezi sa provjerom kreditnog zaduženja poslanika Mila Đukanovića i kopije svih akata dobijenih od strane nadležnih institucija Velike Britanije u vezi sa kreditnim zaduženjem poslanika Mila Đukanovića.

U ostavljenom roku Mreža za afirmaciju nevladinog sektora je uložila žalbu zbog nepravilne primjene materijalnog prava. Prema navodima žalbe, odredbe čl. 3, 8, 9, 10 i 13 Zakona o slobodnom pristupu informacijama, obavezuju prvostepeni organ da omogući pristup traženim informacijama, odnosno da je u konkretnom slučaju nesumnjiv javni interes da se dozvoli pristup informacijama, kao i da se navedenim odredbama isključuje mogućnost propisivanja drugim zakonima ograničenja pristupa

*„Namely, through insight into the documents of the case it was determined that the first instance body correctly applied provision of Article 9 paragraph 1 item 3 point 3 of the Law on Free Access to Information, since the requested information is without doubt covered by the special laws on secrecy of data. Namely, provision from Article 36 paragraph 2 and provision from Article 38 of the Law on Prevention of Money Laundering and Financing of Terrorism (Off. Gazette RoM, no. 55/03, 58/03) prescribe that the data on the request, submission of data, information or documents constitute a business secret.“*

transakcije, odnosno dato uputstvo iz stava 1 istog člana, a da organ uprave nadležan za sprječavanje pranja novca, državni organ, organizacije sa javnim

Ministry Decision from October 12 2007

### Case study 9: Data on persons

MANS asked from the Ministry of Maritime Affairs and Transport copies of enactments including data on qualification, years of experience and the data on the passed state exam for the Ministry Secretary, Vice-Minister, Advisors to the Minister and Independent Advisors in the Ministry.

**The Ministry refused the request** with the explanation **that disclosure of the requested information would imperil the privacy or other personal rights of individuals.**

Na osnovu odredbi člana 18 stav 3. a u vezi sa članom 9 stav 1. Zakona o slobodnom pristupu

*„Based on the provisions from Article 18 paragraph 3, and in relation to Article 9 paragraph 1 of the Law on Free Access to Information the subject request is being refused since it refers to information access to which is restricted according to the mentioned law. Namely, the submitting of the requested information and their disclosure would imperil privacy and other personal rights of individuals, as prescribed by Article 9 paragraph 1 item 6 point 4 of the Law on Free Access to Information.”*

Pravna pouka: Protiv ovog rješenja može se pokrenuti upravni spor, kod Upravnog suda Republike Crne Gore, u roku od 30 dana od dana prijema rješenja.



MINISTAR

Kalamperović

Rimski trg bb, PC »Vektra« 81000 Podgorica  
TEL: (+381) 81 234 179 ; FAX: (+381) 81 234-331  
Web: [www.minsaob.vlada.cg.yu](http://www.minsaob.vlada.cg.yu)

*Decision of the Ministry of of Maritime Affairs and Transport from March 29 2006*

### **The Decision was disputed by the complaint lodged on April 28 2006**

*...Information relating to the data on qualification of the state employees and public servants cannot constitute information access to which is restricted because when they are being employed an open competition is announced (Article 19 of the Law on State Employees and Public Servants), so in accordance with that all the documents are public.*

*Also, data required in the quoted request represent biographies of state employees and public servants, and the current practice of the Government of the Republic of Montenegro is such that similar data are published on the web sites of ministries.*

**The Administrative Court passed a verdict** by which the decision of the Ministry is annulled with the explanation that the quotes given in the disputed decision are groundless and unclear and that the explanation **does not explain why privacy and personal rights of individuals** would be imperilled since they have already been published in the Rulebook on Job Systematization and Organization of Work Positions which cannot be a business secret and which is available to all the officials of the Ministry.

## 5. Ban of access to information

Sud je razmotrio tužbu, odgovor na tužbu i osporeno rješenje, pa je našao da je tužba osnovana.

Sud nalazi da je osporenim rješenjem povrijeđena odredba člana 203. stav 2. Zakona o opštem upravnom postupku. Tom odredbom propisano je da obrazloženje rješenja, između ostalog treba da sadrži utvrđeno činjenično stanje i razloge koji su bili odlučni pri ocjeni dokaza, pravne propise i razloge koji s obzirom na utvrđeno činjenično stanje upućuju na rješenje kakvo je dato u dispozitivu. U konkretnom slučaju osporeno rješenje ne sadrži sve podatke iz kojih bi se moglo zaključiti da je materijalno pravo pravilno primijenjeno što rješenje čini nejasnim.

Neosnovani su i nejasni navodi tuženog istaknuti u osporenom rješenju i

*„The defendant did not explain why privacy and personal rights of the individuals – state employees would be imperilled if data on qualifications of the Ministry Secretary, Vice-Minister, Advisor to the Minister and Independent Advisors, data on the years of service and on the passed state exam were disclosed. These data have already become public, by the fact that conditions for employment are determined by the Rulebook on Organization and Job Systematization, which cannot be a business or any other secret and which is available to all the officials employed in the Ministry, if the conditions for employment are published in the media, if those conditions are to be met by the candidates who have become employed, if the Commission for the State Exams is acquainted with the data on the candidates, when the state exam is taken, as well as the Administration for Qualified Personnel which conducts the process of public announcing. By submitting the requested data, according to the opinion of the Court, privacy and other personal rights of individuals cannot be imperilled.”*

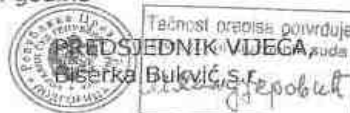
pojedinaca.

U ponovnom postupku tuženi će otkloniti nedostatke na koje je ukazano ovom presudom i donijeti novo, zakonito rješenje (član 57. ZUS-a).

Iz naprijed navedenih razloga, Sud je na osnovu člana 37. stav 1. Zakona o upravnom sporu, odlučio kao u dispozitivu ove presude.

UPRAVNI SUD REPUBLIKE CRNE GORE  
Podgorica, 10.10.2006. godine

Zapisničar,  
Maja Ulićević, s.r.



*Verdict of the Administrative Court from 10 October 2006*

**The Ministry of Maritime Affairs and Transport passed on 17 October 2006 a decision on verdict by which it allows access to requested information.**