

5. ACCESS TO INFORMATION (NOT) ALLOWED

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5.1. Information already published

In order to avoid publishing information stipulated by Law to be public, institutions **abuse the provision of the Law saying that the information already published does not have to be delivered to the applicant.**

The institutions **most often do not give any details about where and when the requested information was published,** although obliged by the Law to do so, thus **essentially preventing access to information.**

In some cases, institutions state that the **information was published on their websites,** but it **may not be found** there, or there are only some non-operational links.

Law on Free Access to Information, Article 14

Government agencies shall not be in obligation to enable any access to the information that has already been published or made available in the country or on the Internet.

In cases referred to in paragraph 1 of this Article, any government agency shall inform any applicant, in writing, of the carrier of the required information (e.g., Official Gazette or other official organ or publication or printed media, and alike), as well as of **where and when such information was made public.**

Example 6. Allocation of flats, business premises and credits

At the very beginning of the Law application, on 29th December 2005, MANS submitted the request to the Service of the Municipality of Podgorica to deliver a copy of the decisions by which, **during the last two mandates, flats, business premises and grants in the amount exceeding €5,000 were allocated to the employees of the Municipality of Podgorica and local councillors.**

In a procedure that took **two months, the municipal Service persistently ignored** the request for info, and subsequently the appeal and repeated appeal.

Only two months later, **upon the same request** submitted again with the same Service, the **Mayor replied that the data were on several occasions delivered to MANS, as well as published in the media and their delivery is thus "not necessary".**

Date of request submission	29.12.2005
Deadline for response	17.01.2006
Response to the request	Silence of the administration
Date of an appeal	18.01.2006.
Deadline for response upon appeal	02.02.2006.
Response upon appeal	Silence of the administration
Repeated appeal	21.02.2006

Deadline for response upon repeated appeal	28.02.2006
Response upon repeated appeal	Silence of the administration
Date of request submission	05.05.2006
Deadline for response	13.05.2006
Date of response	17.05.2006
Response	Info already published
Date of filing complaint	15. VI 2006
Type of complaint	Misapplication of the Law

UPRAVNOM SUDU
PODGORICA

TUŽILAC: Mreža za afirmaciju nevladinog sektora - MANS
Stari Aerodrom, zgrada Čelebić II/9, 81000 Podgorica
Telefon 656 050, 656 060, e-mail: mans@cg.yu

TUŽENI: Opština Podgorica

Tužilac blagovremeno, podnosi:

УПРАВНИ СУД
РЕПУБЛИКЕ ЦРНЕ ГОРЕ
Ч. Број 757/06
15-06-2006 200 год.
ПОДГОРИЦА

NVO - MANS -
BROJ, 06/729
PODGORICA, 15.06.2006.

** MANS' request for information was rejected on ground of Mayor's Decision No: 01-031/06-3927 which stated that Municipality already reach certain decision on this information and they were numerous times announced during within public announcements.*

TUŽBU

Radi poništaja akta Predsjednika Opštine zavedenog pod brojem 01-031/06-3927 od dana 15. maja 2006. godine koji je MANS-u dostavljen dana 17. maja 2006.godine kojim je odbijen zahtjev kojim sam od Službe Skupštine Opštine Podgorica tražila kopije odluka kojima su zaposlenima u Opštini Podgorica i članovima lokalnog parlamenta tokom posljednja dva mandata Skupštine dodijeljeni stanovi, poslovni prostori ili krediti u iznosu većem od 5.000 Eura.

Zbog:

1. Povrede postupka
2. Pogrešne primjene materijalnog prava

OBRAZLOŽENJE

Dana 05. maja 2006.godine podnijela sam zahtjev za informacijama akt broj 02-030/06-4 kojim sam tražila:

- Kopije odluka kojima su zaposlenima u Opštini Podgorica i članovima lokalnog parlamenta tokom posljednja dva mandata Skupštine dodijeljeni stanovi, poslovni prostori ili krediti u iznosu većem od 5.000 Eura.

Aktom Predsjednika Opštine broj 01-031/06-3927 odbijen je moj zahtjev uz obrazloženje da je po osnovu ovog zahtjeva već ranije postupano te da su traženi podaci više puta objavljivani u javnim nastupima.

Ovim aktom grubo je prekršen Zakon o slobodnom pristupu informacijama čija povreda se sastoji u sledećem.

1. Sporni akt broj 01-031/06-3927 od dana 15. maja 2006. godine **nije dostavljen u formi rješenja**, kako je to propisano članom 200 Zakona o opštem upravnom postupku. Navedeni akt ne sadrži uvod; dispozitiv (izreku); obrazloženje, niti uputstvo o pravnom sredstvu. Ovo predstavlja **povredu člana 18, stav 1 Zakona o slobodnom pristupu informacijama koji nalaze da odgovor na zahtjev bude isključivo u formi rješenja.**

2. Smatram da obrazloženje u kome se navodi da je po osnovu zahtjeva MANS-a broj 02-030/06-4 od 05. maja 2006.godine već ranije postupano, te da su po ovom zahtjevu MANS-u već dostavljene tražene informacije ne odgovara činjeničnom stanju.

Naime, MANS se zahtjevom iste sadržine broj 030/05-461 dana 29.decembra 2006.godine obratio Službi Skupštine, međutim odgovor po osnovu zahtjeva nije dostavljen u predviđenom roku što predstavlja kršenje člana 16 stav 1 Zakona o slobodnom pristupu informacijama kojim se kaže da je organ vlasti dužan, po zahtjevu za pristup informaciji, donijeti rješenje i dostaviti ga podnosiocu zahtjeva odmah, a najkasnije u roku od osam dana od dana podnošenja zahtjeva.

Shodno tome tvrdim da MANS-u nije dostavljen nijedan akt koji bi predstavljao odgovor na zahtjev kako je navedeno u obrazloženju akta broj 01-031/06-3927. Sud ovu činjenicu može utvrditi uvidom u evidenciju svih dokumenta Opštine Podgorica koji su dostavljeni MANS-u po bilo kom osnovu.

U obrazloženju Akta Predsjednika Opštine broj 01-031/06-3927 se navodi da su tražene informacije više puta objavljivane u javnim nastupima, međutim u istom nije precizirano glasilo ili publikacija koja sadrži traženu informaciju čime je prekršen član 14 stav 2 Zakona o slobodnom pristupu informacijama.

Prema članu 14 stav 2 Zakona o slobodnom pristupu informacijama organ vlasti u čijem se posjedu informacija nalazi, u slučaju da je informacija već javno objavljena, dužan je obavijestiti podnosioca zahtjeva o nosaču tražene informacije (službeni list ili drugo službeno glasilo, publikacija, štampani mediji i sl.) i gdje je i kada tražena informacija objavljena.

Smatram da je Aktom Predsjednika Opštine broj 01-031/06-3927 od dana 15. maja 2006. godine povrijeđeno moje ustavno i zakonsko pravo na slobodan pristup informacijama te stoga akt pobijam u cjelosti i

PREDLAŽEM

Da sud **poništi Akt** Predsjednika Opštine broj 01-031/06-3927 od dana 15. maja 2006. godine i **naloži** donošenje Rješenja u skladu sa Zakonom o slobodnom pristupu informacijama kojim će se dozvoliti pristup traženim informacijama.

Da sud kazni odgovorno lice **maksimalnom novčanom kaznom** shodno članu 27 stav 3 Zakona o slobodnom pristupu informacijama.

Tužilac

Vanja Čalović, izvršni direktor



U Podgorici

Dana 15. jun 2006. godine

** MANS stated that Mayor response is not corresponding with actual facts and that was not given any document that could represent the legal response to its request for information.
* Explanation of the Mayor did not include information in which media the requested information were previously published.
* MANS suggested that decision of the Mayor should be terminated and responsible person sanctioned with maximum fine.*

Example 7. Election of an NGO representative in the Council of Radio and Television of Montenegro

Pursuant to the Law on Public Broadcasters, non-governmental organisations are entitled to propose members of the Council of the public broadcaster, Radio and Television of Montenegro (RTCG).

MANS requested from the Ministry of Justice to be enabled **inspection of all establishment acts of all non-governmental organisations nominating Stevo Muk as a member of the RTCG Council in the field of protection of children, the young and family, education, health care and social protection.**

The Ministry of Justice refused the request with the explanation that **requested information was already published.**

MANS filed a complaint with the Administrative Court against the Ministry of Justice, and **during the proceedings the Ministry itself extended the resolution and passed a new one by which it allowed access to information.**

Allegations from the complaint filed on April 27 2006

"...I rebut in full the resolution of the Ministry of Justice as being contrary to the Law on Free Access to Information, since the requested information was not published either in the Official Gazette of Montenegro or on the Internet.

In the Official Gazette of Montenegro and on the Ministry's website there are only the decisions on the entry into the Register of Non-governmental Organisations, but not the establishment acts. The decisions on the entry into the Register of Non-governmental Organisations contain the data on the seat, date of entry into the register and reference number, and the person authorised to represent the organization. The establishment acts, however, contain the data on founders of non-governmental organisation missing from the Decisions on entry into the register and otherwise not published by the Ministry of Justice.

The Ministry of Justice undoubtedly possesses the establishment acts of non-governmental organisations, since these documents need to be submitted upon registration. Establishment acts are deemed as information pursuant to Article 4, paragraph 1, item 2 of the Law on Free Access to Information and they are filed with the Ministry of Justice pursuant to Article 4, paragraph 1, item 4..."

Having inspected the data possessed by the Ministry of Justice, we have established that **out of 454 NGOs which proposed Mr Stevo Muk for the member of the RTCG Council, as many as 39 were registered by the same people, just a few days before the nomination.**

No	Name of the organisation	Establishment date	Names of Founders
1	Civil Publicity Board – Podgorica	25.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelija Šćepanović, Marko Radonjić, Aleksandar Đurović
2	Civil Publicity Board	25.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelija Šćepanović, Marko Radonjić, Aleksandar Đurović
3	Local Board for Promotion of Podgorica Community	25.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelija Šćepanović, Marko Radonjić, Aleksandar Đurović
4	Local Board for Promotion of Cetinje Community	25.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelija Šćepanović, Marko Radonjić, Aleksandar Đurović
5	Association for Social Care of Montenegro	25.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelija Šćepanović, Marko Radonjić, Aleksandar Đurović
6	Association for Social Care of Podgorica	25.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelija Šćepanović, Marko Radonjić, Aleksandar Đurović
7	Forum for Social Policy of Montenegro	18.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelija Šćepanović, Marko Radonjić, Aleksandar Đurović
8	Forum for Social Policy of Podgorica	18.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelija Šćepanović, Marko Radonjić, Aleksandar Đurović
9	Forum for Social Policy	18.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelija Šćepanović, Marko Radonjić, Aleksandar Đurović
10	Forum for Social Policy of Cetinje	18.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelija Šćepanović, Marko Radonjić, Aleksandar Đurović
11	Centre for Public and Civil Policy of Podgorica	18.01.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelija Šćepanović, Marko Radonjić, Aleksandar Đurović
12	Centre for Public and Civil Policy	16.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelka Šćepanović, Marko Radonjić, Aleksandar Đurović
13	Centre for Public and Civil Policy - Cetinje	18.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelka Šćepanović, Marko Radonjić, Aleksandar Đurović
14	Association for Promotion of the Community of Podgorica	25.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelka Šćepanović, Marko Radonjić, Aleksandar Đurović
15	Association for Social Care	25.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelka Šćepanović, Marko Radonjić, Aleksandar Đurović
16	Association for Promotion of Community of Montenegro	25.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelka Šćepanović, Marko Radonjić, Aleksandar Đurović
17	Association for Promotion of Community	25.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelka Šćepanović, Marko Radonjić, Aleksandar Đurović
18	Civil Publicity Board of Montenegro	25.11.2005	Aleksandra Šćepanović Đurović, Andrijana Radonjić, Anđelka Šćepanović, Marko Radonjić, Aleksandar Đurović
19	Professional Journalists' Association for the development of journalism regarding persons with special needs	24.12.2005	Vjera Pavićević, Srđa Marijanović, Aleksandar Tabaš, Saveta Mijušković, Dejan Jovanović
20	Professional Journalists' Association for the development of journalism on elderly	24.12.2005	Vjera Pavićević, Srđa Marijanović, Aleksandar Tabaš, Saveta Mijušković, Dejan Jovanović

21	Free professional association of free journalists	24.12.2005	Vjera Pavićević, Srđa Marijanović, Aleksandar Tabaš, Saveta Mijušković, Dejan Jovanović
22	Professional Journalists' Association for 'protection and enhancement of linguistic culture	24.12.2005	Vjera Pavićević, Srđa Marijanović, Aleksandar Tabaš, Saveta Mijušković, Dejan Jovanović, Sanja Marijanović
23	Professional association of journalists – theatre critics	24.12.2005	Vjera Pavićević, Srđa Marijanović, Aleksandar Tabaš, Saveta Mijušković, Nataša Nilević
24	NGO SPORT PRESS- Professional journalists' association for promotion of chess and sport	24.12.2005	Vjera Pavićević, Srđa Marijanović, Aleksandar Tabaš, Saveta Mijušković, Dejan Jovanović, Radovan Brajović
25	Professional journalists' association "A Word Fit for a Child"	24.12.2005	Vjera Pavićević, Lidija Vukomanović Tabaš, Sanja Marijanović, Radovan Brajović, Nataša Nilević,
26	Centre for Studies and Policies	20.01.2006	Marija Kaluđerović, Olga Jovanović, Milutin Jovanović, Goran Đurović, Mirjana Vujović
27	Institute for monitoring and evaluation	24.10.2005	Marija Kaluđerović, Olga Jovanović, Milutin Jovanović, Goran Đurović, Mirjana Vujović
28	Group for Social Changes	24.10.2005	Marija Kaluđerović, Olga Jovanović, Milutin Jovanović, Goran Đurović, Mirjana Vujović
29	School for Social Changes	24.10.2005	Marija Kaluđerović, Olga Jovanović, Milutin Jovanović, Goran Đurović, Mirjana Vujović
30	Centre for Civil Society Research	24.10.2005	Marija Kaluđerović, Olga Jovanović, Milutin Jovanović, Marijana Vujović, Aleksandar Spremo, Aleksandar Đurović
31	Centre for Development of philanthropy	24.10.2005	Marija Kaluđerović, Olga Jovanović, Milutin Jovanović, Marijana Vujović, Aleksandar Spremo, Stevo Muk
32	Centre for Social Development and Cooperation	24.10.2005	Marija Kaluđerović, Olga Jovanović, Milutin Jovanović, Goran Đurović, Mirjana Vujović
33	Association for Development of Kotor	24.10.2005	Marija Kaluđerović, Olga Jovanović, Milutin Jovanović, Goran Đurović, Mirjana Vujović, Aleksandar Spremo
34	"Third Age" Plav	25.10.2005	Sanija Husinović, Džeko Talević, Svetlana Turković, Srđan Lovrić, Mirza Mekuli
35	"Egalite" Plav	25.10.2005	Ibrahim Husinović, Ismet Husinović, Izet Husinović, Sadija Kandić, Faruk Đešević
36	KUD Ibrik Plav	25.10.2005	Ismet Husinović, Izet Husinović, Sadija Kandić, Faruk Đešević, Svetlana Turković, Srđan Lovrić
37	"Lady Diana" Plav	25.10.2005	Izet Husinović, Sadija Kandić, Faruk Đešević, Svetlana Turković, Ismet Husinović
38	She – Plav	25.10.2005	Azra Huseinović, Sabija Kandić, Melina Kandić, Edina Purišić, Svetlana Turković
39	Institute for Comparative Research	20.01.2006	Petar Đukanović, Daliborka Uljarević, Zdravko Cimbalević, Sreten Zeković, Jovanka Uljarević

Republika Crna Gora
VLADA REPUBLIKE CRNE GORE
MINISTARSTVO PRAVDE
Broj: 01-1621/06
Podgorica, 21.03.2006.godine

Ministarstvo pravde na osnovu člana 196 Zakona o opštem upravnom postupku i člana 15 i 18 Zakona o slobodnom pristupu informacijama ("Sl. list RCG", broj 68/05), donosi

RJEŠENJE

ODBIJA se zahtjev Mreže za afirmaciju nevladinog sektora – MANS, iz Podgorice, kojim traži da joj se omogući uvid u 447 predmeta – akata o osnivanju organizacija, upisanih u Registar nevladinih organizacija, kao neosnovan.

Obrazloženje

Mreža za afirmaciju nevladinog sektora – MANS, iz Podgorice, podnijela je, ovom Ministarstvu, zahtjev da joj se omogući pristup informaciji, uvid u osnivačka akta 447 predmeta nevladinih organizacija, upisanih u Registar nevladinih organizacija.

Zakonom o slobodnom pristupu informacijama, član 14, propisano je da organ vlasti nije dužan da omogući pristup informaciji koja je javno objavljena i dostupna u zemlji ili na internetu.

Zakonom o nevladinim organizacijama («Sl. list RC», broj 27/99 i 30/02), član 15, propisano je da se rješenje o upisu i rješenje o brisanju nevladinih organizacija, iz registra objavljuje u «Službenom listu Republike Crne Gore.»

S obzirom da rješenja o upisu u Registar nevladinih organizacija sadrže činjenice koje se upisuju u registar tj. činjenice iz osnivačkih akata nevladinih organizacija koje proizvode pravne posljedice, a koje su javno objavljene u «Službenom listu Republike Crne Gore» i dostupne na internetu, to je riješeno kao u dispozitivu.

Protiv ovog rješenja može se pokrenuti upravni spor u roku od 30 dana od dana prijema istog pred upravnim sudom Republike Crne Gore.

MINISTAR,
Željko Šturanović

** Ministry of Justice rejected MANS' request for information on acts on foundation of 447 organisations since these documents contain facts that are part of the Registry of NGOs that is published in Official Gazzeta of Montenegro and also available on the Internet.*

UPRAVNI SUD REPUBLIKE CRNE GORE
U.br. 557/2006

NVO - M A N S -
BROJ. 06/460 odgovor
PODGORICA, 22-06-2006

Upravni sud Republike Crne Gore, u vijeću sastavljenom od sudije Biserke Bukvić, kao predsjednika vijeća, Fadila Kardovića i Vladimira Radulovića, kao članova vijeća, uz učešće službenika suda Marine Nedović, kao zapisničara, rješavajući upravni spor po tužbi tužioca Mreža za afirmaciju nevladinog sektora MANS iz Podgorice, protiv rješenja tuženog Ministarstva pravde Podgorica broj 01-1621/06 od 21.03.2006. godine, u nejavnoj sjednici održanoj dana 15.06.2006.godine, donio je

R J E Š E N J E

Postupak se obustavlja.

O b r a z l o ž e n j e

Tužbom od 27.04.2006. godine, tužilac je kod ovog suda pokrenuo upravni spor protiv rješenja tuženog Ministarstva pravde Podgorica broj 01-1621/06 od 21.03.2006. godine.

Tuženi organ je u odgovoru na tužbu od 09.06.2006. godine obavijestio ovaj Sud da je donio novo rješenje broj 01-1621/06-1 od 07.06.2006. godine, kojim se dozvoljava tužiocu po zahtjevu od 17.03.2006. godine pristup informacijama neposrednim uvidom u osnivačka akta 447 nevladinih organizacija upisanih u Registar nevladinih organizacija, koji vodi Ministarstvo pravde. Sud je u smislu člana 26. stav 2. ZUS-a, dopisom od 09.-06.2006. godine pozvao tužioca da se u roku od 8 dana od dana prijema istog izjasni da li su naknadno donesenim aktom zadovoljni ili ostaju pri tužbi i u kom obimu, odnosno da li tužbu proširuju i na novi akt

U ostavljenom roku tužilac je obavijestio Sud da je zadovoljan rješenjem Ministarstva pravde broj 01-1621/06-1, pa je Sud na osnovu člana 26. stav 3. ZUS-a obustavio postupak.

Sa izloženih razloga odlučeno je kao u dispozitivu.

UPRAVNI SUD REPUBLIKE CRNE GORE
Podgorica, 15.06.2006. godine

Zapisničar,
Marina Nedović, s.r.

PREDSJEDNIK VIJEĆA,
Biserka Bukvić, s.r.



Tačnost prepisa potvrđuje
Ovlašteni službenik suda
M. Kanyepobuk

** Responding to MANS complaint in Administrative Court, Ministry of Justice reached new decision and granting MANS with requested information on NGOs.*

5.2. Direct inspection of public records within the premises of the government agency

Pursuant to the Law on Free Access to Information, a request should contain the information on the desired method in which the information is to be made available, aiming to **enable access to the information in the manner suitable for the applicant**. In cases when the desired method is not stated in the request, the institutions ask for the correction of the request with the explanation that it is imprecise since they do not know in which manner the access is desired.

Considering that the **Law** only enlists the ways in which it is possible to access information, **without establishing the mechanisms to ensure the institutions to approve access in the manner requested, direct inspection** within the premises of the government agency **presents a considerable impediment to free access to information**.

Since the documentation which was allowed for direct inspection quite often consists of several dozens of pages, and it is not allowed to photocopy it, and in some cases not even to transcribe it¹, while most of the institutions do not have a separate room where direct inspection may be exercised, this **prevents detailed analysis and confirmation of the existence and contents of documents that were inspected**, which is particularly important in cases relating to corruption or conflict of interests.

A separate problem are the cases when the institutions supposedly **allow direct inspection by a resolution, but in practice the records are not made available for inspection**, and thus, for an appeal or a complaint, **no evidence may be provided to prove that access to records was not actually allowed**.

By allowing inspection only, **access to information is allowed for appearances' sake, but not for real. This is one of the most common manners in which the law is obstructed, and, thus, one of the key barriers to free access to information**.

MANS filed several complaints to the Administrative Court on this ground, but none has been decided upon yet.

The Law on Free Access to Information, Article 12, paragraph 1 and Article 13, para 1

A request for access to the information shall contain the following:

- 1) basic data concerning any required information;
- 2) the method in which such information is desirable to be available;
- 3) data on applicant (first and family name, permanent or temporary residence place, firm and registered office) and / or its agent, representative or attorney.

Access to any information filed with a government agency may be exercised through:

- 1) direct inspection of public records or the original or a copy of such information, within the premises of the government agency;
- 2) transcribing such information by the person that submitted the request for such information, within the premises of the government agency;

¹ The experiences with the Agency for Economic Restructuring and Foreign investments will be presented in a separate publication relating to access to information on privatisation.

- 3) transcribing, photocopying or translating such information by any government agency, whereupon such information shall be delivered in the form of a transcript or a photocopy or a translation to the applicant, directly or by mail or e-mail.

The following table gives information on the **institutions which only allowed direct inspection, although copies were requested explicitly.**

Name of the institution to which the request was submitted	No of granted request for information	No of inspections	% no of inspections compared to no of info to which access was allowed
Agency for Economic Restructuring and Foreign Investments ²	12	12	100%
Privatisation Council	19	19	100%
Ministry for Environmental Protection and Physical Planning	40	37	92%
Ministry of Culture and Media	14	8	57%
Ministry of the Interior	19	6	32%
Other institutions	269	18	7%

Example 8. Illegal construction of the Splendid Hotel

Despite having requested copies, **in 92% of cases where access to information was allowed, the Ministry for Environmental Protection and Physical Planning allowed only inspection of records**, without the possibility of make copies.

A characteristic example here is the National Building Construction Inspection in the case of the construction of the Splendid Hotel, where we were allowed **only inspection of 38 documents**.

List of documents allowed for inspection		
Minutes, 16.12.2004	Minutes, 16.06.2005	Minutes, 16.12.2005
Minutes, 29.12.2004	Minutes, 09.08.2005	Minutes, 20.12.2005
Minutes, 10.01.2005	Minutes, 14.09.2005	Minutes, 27.12.2005
Decision to ban 10.01.2005	Minutes, 15.09.2005	Minutes, 28.12.2005
Appeal to the decision to ban 14.01.2005	Minutes, 29.09.2005	Minutes, 12.01.2006
Minutes 01.03.2005	Minutes 05.10.2005	Minutes, 16.02.2006
Decision on demolition 03.03.2005	Minutes from the enforcement 14.10.2005	Minutes, 14.04.2006

² The experiences in the inspection of records filed with the Agency for Economic Restructuring and Foreign investments and the Privatisation Council will be presented in a separate publication relating to access to information on privatisation process.

Decision to seal 16.03.2005	Minutes 28.10.2005	Minutes, 18.04.2006
Minutes 23.03.2005	Criminal charges 01.11.2005	Minutes, 20.04.2006
Appeal to the decision on demolition 05.04.2005	Minutes 18.11.2005	Minutes, 04.05.2006
Minutes 05.05.2005	Decision upon appeal 23.09.2005	Minutes, 03.07.2006
Minutes, 02.06.2005	Minutes, 12.12.2005	Minutes, 20.04.2006
Minutes, 06.06.2005	Minutes, 12.12.2005	
Date of the decision		
Contents of the decision / Date for decision enforcement		
16.12.2004	Stated that the developer commenced works	
29.12.2004	Stated that the developer builds without the permit and ordered to submit permit	
10.1.2005	Ban on works and order to obtain building permit	
1.3.2005	Stated that, notwithstanding the decision on banning works being delivered building continued	
3.3.2005	Demolition ordered	Demolition 16.12.2005 20.12.2005 27.12.2005
16.3.2005	Forced closure and sealing of the construction site	Construction site sealed 2.6.2005
5.5.2005	Stated that the developer continues with works	
16.6.2005	Stated that after the decision to seal the site, the developer continues work and was ordered to submit approved design to check whether construction is done in accordance with it.	
29.8.2005	The Ministry issued a building permit for the reconstruction within the existing footprint.	
8.9.2005	Ordered to submit approved design to check whether construction is done in accordance with it.	
14.9.2005	Inspection of the design not done on the site, the inspector claims he was unable to ascertain to what extent the new building matches the reconstruction criteria.	
15.9.2005	Stated that the developer continues with works	
29.9.2005	The site sealed , and the developer warned that any further continuation of works and physical damages to the official seal draws criminal liability of the investor and the developer	14.10.2005. A section of the building constructed after sealing and reinforcement demolished
5.10.2005	The developer continues with works, the seal has not been removed but during site inspection workers found there, the inspector was not allowed to enter the building site	
28.10.2005	Stated that the developer continues with works, criminal charges for violation of the official seal brought before the State Prosecutor in Kotor, 1.11.2005, no 0702-060-05-1/Kp	
18.11.2005.	Stated that the developer continues with works	
10.12.2005.	Banning further works	
12.12.2005.	Stated that the developer continues with works despite the ban	

28.12.2005.	The investor <i>ordered to remove illegally constructed section of the building</i>
12.1.2006.	Stated that <i>no works being done</i>
10.2.2006.	Stated that <i>no works being done</i>
14.4.2006.	Stated that the developer <i>continues with works on the whole building</i>
18.4.2006.	<i>Forced closure and sealing of the construction site</i> , the developer warned that any continuation of works is deemed as violation of the official seal - criminal liability
20.4.2006.	Stated that the developer <i>continues</i> with the works
4.5.2006.	Stated that the developer <i>continues</i> with the works
17.5.2006.	The Ministry issued a building permit

5.3. Costs of access to information

Pursuant to the Law, the institutions are obliged to calculate costs of the procedure for access to information **on the grounds of a separate regulation, which has neither been adopted a year after the law was enacted**, nor is it possible to establish whose responsibility it is.

Since separate regulation was not adopted, the institutions **have no legal grounds for calculation of costs of the procedure**, but despite that, in practice it often happens that costs are calculated in **unrealistically high amounts, thus constituting a significant impediment to free access to information**.

Although MANS filed several complaints on this ground, **no judgement has been pronounced yet**.

The Law on Free Access to Information, Article 19

Any applicant shall bear the costs of the procedure for exercising the right of access to the information, in harmony with **the separate regulation**.

The costs of such procedure shall be in connection only to **actual costs** incurred by a government agency with respect to transcribing, photocopying, translating and delivering any required information.

In case when **a disabled person** is actual applicant, any government agency shall bear the related procedure costs.

Example 9. Calculation of costs – an excuse for hiding information

In early January MANS sent first requests for access to information to the Municipality of Podgorica, which were rejected until a guide was adopted, and the new requests of the same contents submitted in May were **"granted" access to information upon the payment of the costs of the procedure**.

Considering that the regulation has not been adopted, **calculation of the costs of the procedure is unlawful**, the fact about which MANS has **informed the Secretariat** for Planning and Landscaping, which, notwithstanding that, **rejected the request by their Decision**, since the costs of the procedure have not been paid.

Upon the appeal, the **Ministry** for Environmental Protection and Physical Planning **quashed the Decision of the Secretariat, but a new resolution was not adopted, nor the requested information delivered.**

Description	Date
Request for information submitted	26.12.2005
Appeal for silence of the administration filed	18.01.2006
Response to appeal – access will be allowed upon the adoption of the guide	20.01.2006
Repeated appeal	21.02.2006
Correction to the request required	6.03.2006
Correction of the request submitted	8.03.2006
Response to corrected request – access allowed upon payment of the costs of the procedure	10.04.2006
Secretariat's Decision – the request is rejected because the costs of the procedure were not paid	10.05.2006
Appeal on the Secretariat's decision to the Ministry for Environmental Protection and Physical Planning	24.05.2006
Resolution of the Ministry to terminate the Decision	12.07.2006

Republika Crna Gora
VLADA REPUBLIKE CRNE GORE
**Ministarstvo zaštite životne sredine
i uređenja prostora**
Broj 070501-250/06
Podgorica ,28.06.2006.godine

** Decision of
the Ministry for
Environment
Protection and
Spatial Planning
and Develop.
by which
decision of the
Secretariat for
Spatial Planning
of Podgorica is
terminated.*

Ministarstvo zaštite životne sredine i uređenja prostora, rješavajući po žalbi Mreže za afirmaciju nevladinog sektora-MANS, izjavljenoj na zaključak Sekretarijata za planiranje i uređenje prostora Opštine Podgorica br.08-351/06 - 886 od 04.05.2006.godine, na osnovu člana 221 Zakona o opštem upravnom postupku, člana 14 Uredbe o organizaciji i načinu rada državne uprave i člana 20 Zakona o slobodnom pristupu informacijama donijelo je

RJEŠENJE

Poništava se zaključak Sekretarijata za planiranje i uređenje prostora Opštine Podgorica broj 08-351/06 -886 od 04.05.2006.godine.

Obrazloženje

Ožalbenim zaključkom odbačen je zahtjev MANS-a, podnijet radi pristupa informacijama-Odluci o pristupanju izmjena i dopuna DUP-a «Momišići A» sa obrazloženjima iste, kao i kopije gradjevinske i upotrebne dozvole za objekat «Carine» u ul.Slobode broj 43. u Podgorici.

Na navedeni zaključak MANS –a je izjavila žalbu ovom ministarstvu zbog pogrešne primjene materijalnog prava. Ukazuje, u bitnome, da im je prvostepeni organ rješenjem broj 08-351/06-886 od 24.03.2006.godine, dozvolio pristup traženoj informaciji, s tim što ih je obavezao da u roku od tri dana uplate troškove postupka.Troškovi postupka, navodi nadalje,nijesu uplaćeni budući da «poseban popis kojim bi se utvrdio cjenovnik za obračun stvarnih troškova još uvijek nije donešen»

Predlaže da se ožalbeni zaključak poništi.

Ministarstvo zaštite životne sredine i uređenja prostora, razmotrilo je ožalbeni zaključak, žalbu i spise predmeta, pa je odlučilo kao u dispozitivu rješenja, a ovo sa sledećih razloga:

Rješavajući po zahtjevu MANS-a, prvostepeni organ je rješenjem broj 08-351/06 -886 od 24.03.2006.godine, dozvolio pristup informacijama- Odluci o pristupanju

izmjena i dopuna DUP-a «Momišići A» sa obrazloženjima iste, kao i kopije građevinske i upotrebne dozvole za objekat «Carine» u ul.Slobode broj 43. u Podgorici.

Nakon toga, prvostepeni organ je primjenom člana 128.ZUP-a donio, u istoj pravnoj stvari, ožalbeni zaključak, budući da MANS-a u ostavljenom roku, nije izvršila uplatu troškova postupka u vezi sa ostvarivanjem prava na pristup informaciji u iznosu od 25,50 eura.

Odredbom člana 128 ZUP-a propisano je da je stranka dužna da za svoje navode predloži dokaze i da ih po mogućnosti podnese, a ako stranka tako ne postupi, službeno lice koje vodi postupak pozvaće je da to učini. Ako stranka nije u naknadno određenom roku predložila odnosno podnijela dokaze, organ će zaključkom odbaciti zahtjev kao da nije uredno podnijet.

Ovo ministarstvo, s tim u vezi, nalazi da se u predmetnoj stvari nijesu stekli uslovi za primjenu citirane odredbe člana 128 ZUP-a. Naime, prvostepeni organ je po zahtjevu žalioa donio meritornu odluku odnosno rješenje broj 08-351/06-886 od 24.03.2006.godine kojim je imenovanom dozvoljen pristup traženoj informaciji, a koje rješenje je na snazi. Ovdje je, s druge strane, u pitanju primjena odredbe člana 202 ZUP-a, a što prvostepeni organ nije imao u vidu prilikom donošenja ožalbenog zaključka.

Polazeći od izložene, činjenične i pravne situacije predmetne stvari, ovo ministarstvo je, primjenom člana 238.ZUP-a , riješilo kao u dispozitivu.

Ovo rješenje je konačno u upravnom postupku i protiv njega žalba nije dopuštena, već se može izjaviti tužba Upravnom sudu Republike Crne Gore u roku od 30 dana od dana prijema ovog rješenja.

 **MINISTAR**
Boro Vučinić
B. Vučinić

** Ministry stated that decision reached by institution in the first degree was lawful and by which access to information is allowed.*

Unlawful calculation of unrealistically high costs for copying documents, as a substantial impediment to free access to information, is best illustrated by the decision of the **Building Construction Inspection of the Municipality of Podgorica** by which access to information is allowed upon the payment of **3,378.00 euro**.

REPUBLIKA CRNA GORA
OPŠTINA PODGORICA
Sekretarijat za planiranje i
uređenje prostora
Gradjevinska inspekcija
Broj: 08 – 363 / 06 – 1970
Podgorica: 13. 06. 2006.godine

BR. 08-363/06-1970
13.06.2006.

** Costs for
accessing
information are
3,378.00 euro*

Mreža za Afirmaciju Nevladinog sektora-MANS zgrada "Čelebić" II/9- Stari aerodrom Podgorica

Zatražili ste od građevinske inspekcije: kopiju Rješenja o rušenju garaža, kopiju Rješenja br. UP II-08-363/06-1 do br. UP II-08-363/06-14 izdatih 10. 01. 2006. god.

Kopiju svih Rješenja o rušenju u periodu od 01. 01. 2005. 10. 01. 2006. god., kopiju Rješenja i druge dokumentacije u vezi rušenja objekata u vlasništvu Miodraga Đurovića, u ul. Špira Mugoše u Staroj Varoši-kopija svih zapisnika sačinjenih u vezi sa rušenjem objekta Miodraga Đurovića, u ul. Špira Mugoše u Staroj varoši.

Radi pristupa gore navedenih informacija potrebno je da izvršite uplatu za troškove postupka u roku od tri /3/ dana od dana dostavljanja istog.

Troškovi postupka određuju se u iznosu od tri hiljade trista sedamdeset osam eura /3. 378,00 E/, koje ste dužni uplatiti u korist Budžeta Opštine Podgorica, na žiro račun br. 550-3026121-47, prije isteka roka, iz prethodnog stava i o tome dostaviti odgovarajući dokaz ovom Odjeljenju.

Rukovodilac građevinske inspekcije
Vlatko Vučinić, dipl.prav.

