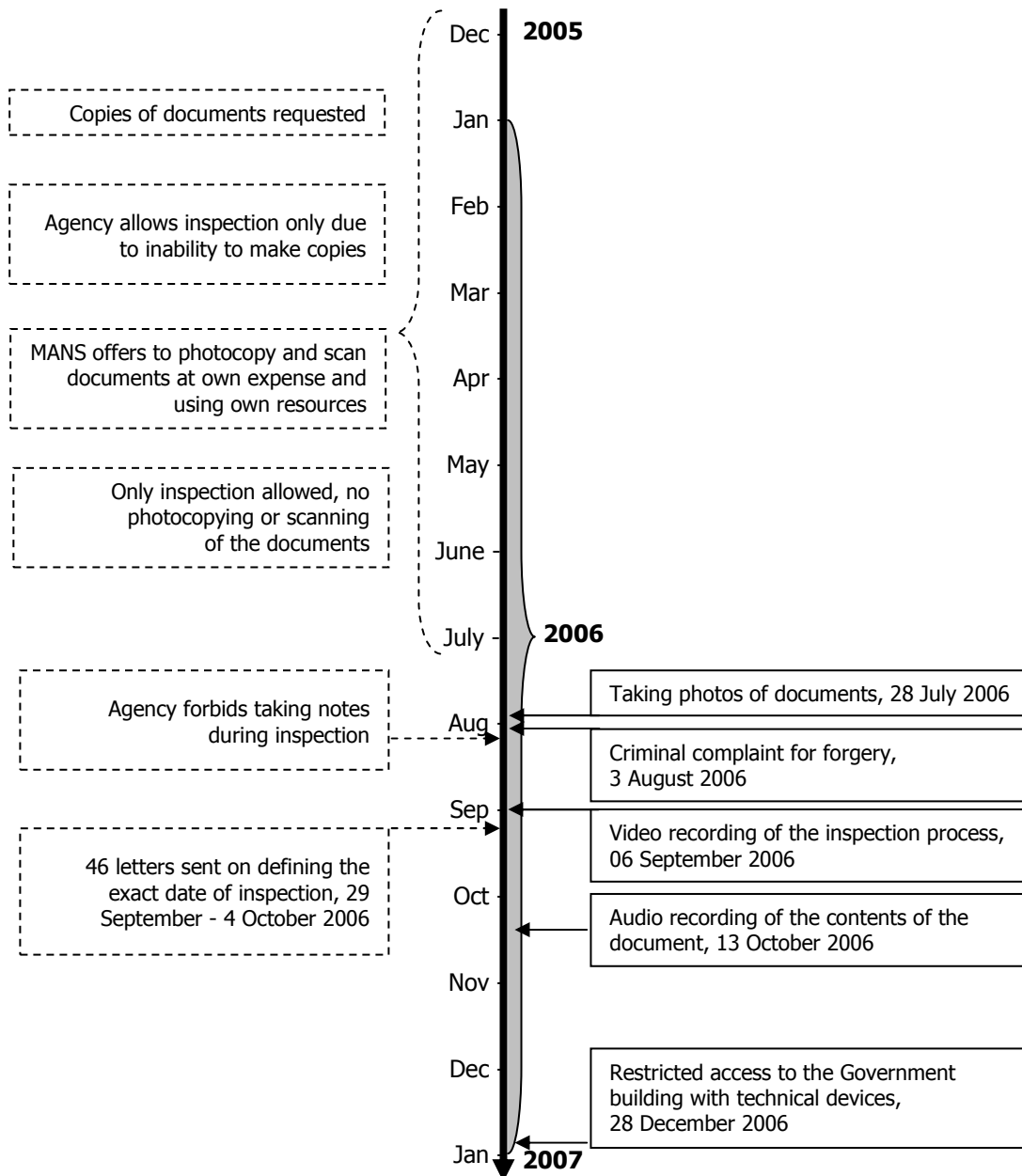


6. THE "FREE" ACCESS TO INFORMATION FARCE

Competent institutions put much more effort in obstructing law than in its proper implementation and by allowing only an insight into information they prevent any dissemination of the information referring to privatization.

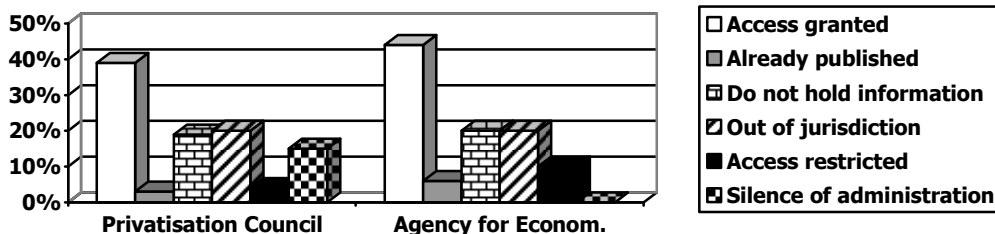
The decision of the Supreme Court confirms that such practice represents a violation of the right to free access to information, which, according to international documents, implies freedom of requesting and receiving but also disseminating information.

CHRONOLOGICAL SEQUENCE OF EXPERIENCES FROM INSPECTING DOCUMENTATION ON PROVATISATION



6.1. Law vs. practice

In most cases, access to information is formally granted¹, but in practice responsible institutions are obstructing their own resolutions and actually restricting access to such information.



Privatisation Council and Agency for Economy Restructuring and Foreign Investments allow access to privatisation information only by direct inspection of the documents within the premises of the Agency, which constitutes a significant impediment to free access to information.

Although the relevant resolutions stated the inspection into documents might take place during any working day, **in practice a special appointment needs to be made with no envisaged deadlines, and thus it actually depends on the Agency director.**

Namely, out of 31 requests for information which were granted by the Privatisation Council, not a single document was actually inspected, whereas in the case of the Agency inspection was conducted in 4 cases or 18% of the total number of documents which were granted inspection of.

Privatization-related documents usually contain several dozens of pages, their copying is not allowed, or even transcribing, and there is no room envisaged for exercising inspection. This **prevents a more detailed analysis, further distribution of information and any evidence of the existence and contents of documents being inspected**, which is particularly important in the cases concerning corruption or conflict of interest.

¹ Most of the requests were submitted to Privatisation Council and Agency for Economy Restructuring and Foreign Investments

During 2006 MANS filed 79 requests for information with the Privatisation Council, and in 39% of the cases access was allowed, in 3% of the cases the information was already published, in 19% of the cases the Council claimed not to hold the information, in 20% of the cases it claimed not to have the competence, 4% of the information were declared confidential, while 15% of the requests went without any response.

The total of 50 requests were filed with the Montenegrin Agency for Economic Restructuring and Foreign Investments, access was allowed in 44% of the cases, in 6% the information was already published, in 20% of the cases it claimed not to be the competent authority, in 20% of the cases it did not hold the information, 10% of the requested information was declared secret, while there was no silence of the administration cases.

6.2. Authorities unable to copy the documents and the offer of MANS

Agency for Economy Restructuring informed us that they **have no conditions for producing copies of documents** and which was the reason for granting only direct inspection of the documents.

Considering that it is the spirit of the law to provide access to information in the fastest and most efficient manner, and that public authorities should aim to publish as much information as possible on the internet and other media, **MANS proposed to the Agency to scan the documents at own expense and using own equipment**, and then, so prepared, deliver to the Agency for their publishing on the official website².

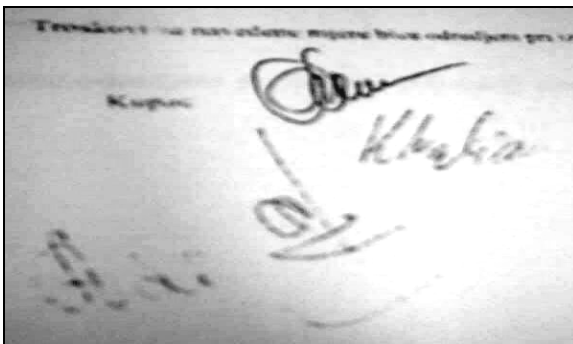
Moreover, for the past five years the Privatisation Council has been envisaging by its privatisation plans to set up a website, so we proposed to scan the key documents that should be publicly accessible and thus increase transparency of the Council's work.

Although the lack of technical equipment was the only official reason for prescribing only direct inspection of the documents, Agency rejected our offer to scan or copy the documents using our own equipment.

6.3. "Genuine" and "fake" document and taking photographs

While inspecting the document stipulating the obligations of the new KAP owner regarding investments into environment protection, **MANS noticed that document held by the Agency differed** from the one published by the **Ministry of Environment Protection and Physical Planning**, while the page bearing signatures was different from the rest³.

As it was not possible for us to get hold of copies, **we tried to inspect the contested document together with the journalist of Daily "Vijesti". This was not allowed**, and journalist was suggested to file a request for access to information himself.



Considering that the document the Agency allowed to be inspected **did not bear any reference number under which it has been filed** with the Agency, we made **photographs with mobile phone** to compare it with the one published by the Ministry and determine whether they differed or not, on the basis of which we filed a criminal complaint with the Supreme State Prosecutor⁴.

² <http://www.agencijacg.org>

³ More detailed information is given in the section IV – Investment into the Environment.

⁴ More detailed information and all the photographs of the document are given in the Section 5 – Investment into the Environment.

6.4. Video recording of the inspection of documents

Subsequently, by the resolution of the Agency we were granted access **by inspection of documents containing the names of the members of tender commissions** in charge of conducting tenders and negotiations with prospective buyers for state-owned companies.

Considering that the documents we were given for inspection had over 30 names, we tried to record it with a camera. The authorised officer of the Agency did not allow recording the documents and called the security.

What follows is the **transcript of a video recording** made by MANS at the premises of the Agency for Economic Restructuring and Foreign Investments on 6th September 2006⁵.

MANS: "Do you know what is a bit problematic for us? You see, we requested the Agency for Economic Restructuring to allow inspection of the documents and that inspection is free, and here's the document and we can..."

Security: "There's the Chief of Cabinet who is accountable and who responds to your requests. If it has not been agreed and if you do not agree it with anyone, recording the documents and any other action are forbidden. We don't want to argue about that!"



Government building security officer and MANS' representative

MANS: "May we ask you something? Can you help us by you memorising one paragraph, so it is one paragraph to each one of us, so that later on, when we are out of here, we can record that, because there is no other way for us to remember some thirty or so names of the people in charge for privatisation of the most important companies in Montenegro"

Security: "You should ask in writing for every, any data you need..."

MANS: "And we were given the permission, my colleague will show you. We were given the permission to see these documents."

Agency: "But you were not given the permission to record that."

MANS: "We are not recording the document. Here, I won't record the documents. Let our colleague read and I will record his voice instead of the document. Because we can see the documents, we were allowed that."

Security: "Only through them, the Chief of Cabinet and the Agency director...meaning for any action...you are allowed to work here...what they don't allow isn't allowed."

MANS: "We were allowed to inspect, but Mrs Gorda took the document away and now we can't inspect it although we were allowed to."

Security: "Well, write an objection, turn off the camera, so that we have no more arguments on this matter."

⁵ The recording may be downloaded from <http://www.mans.cg.yu/FAI/agencija.htm>

MANS: "And will you just tell if there is some law forbidding us to do this or something, how come we did something wrong by trying to record what we were allowed to see".

Security: "...OK, let's not argue any more"

MANS: "No, I'm just asking if there's a law that we should follow?"

Security: "There is..."

MANS: "Which one"

Security: "Recording and making photographs of any document is forbidden without prior announcement..."

MANS: "We're not taking photos of any documents."

Security: "Then what are you doing?"

MANS: "Well, we would like for this situation here..."

(tries to take the documents, but the officer of the Agency would not let do that)

MANS: "Here, the very first document, just to read that, let's see, the member of the tender commission for tourism is Mr Branimir Bojanić..."

Agency: "Those who let you in should see you off..."

MANS: "...this is my private camera. I am not from the media and this is not to be broadcasted"

Agency: "We already responded in writing concerning the recording"

MANS: "Where? Give us this document that Mrs Gorda has given you. Come on, you didn't say it was forbidden...inspection was allowed..."

Agency: "You asked to make photocopies of everything"

MANS: "That's right...why didn't you let us? With that you broke the law, that's why we're suing you. But do you know what the problem for us is... After we found out that you had a document which was different from the one at the Ministry for Environmental Protection

Agency: "Go to the Ministry for Environment with your camera"

MANS: "And which concerns the 20 million euro investment into the environmental protection, after that..

Agency: "You asked to make photocopies of everything"

MANS: "You didn't let us transcribe what we see here, so just tell me how is it that we should inspect the document... to read and memorise? Should we learn by heart the names of people in the tender commissions or what?"

Agency: "... just write whatever you want ...write down all your objections"

MANS: "We were allowed inspection in writing"

Agency: "Not with the camera. I did not allow..."

MANS: "you didn't say that anywhere..."

Agency: "Let's not waste any more time...you let them in, so who was on duty then should see them off."

MANS: "Yes but we are allowed inspection of documents and we want to see the documents. Not to record it, just to see it. OK, I will now turn off the camera. Will you let us see the documents?"

Agency: "No."

MANS: "Why not?"

Agency: "The day is over for today."

MANS: "So, you won't let us see the documents if we turn off the camera?"

Agency: "No...no"

MANS: "And then my colleague will memorise 5-6 names, come out and tell me to the camera these 5-6 names then go back in, then see again 'cause there is no other way we can learn by heart all that. So, we can not continue with the inspection, is that so? OK, since we are allowed from 3 to 5 to sit here then we will then...we'll wait"

Agency (talking to the security): "Will you see them off because you allowed them to enter with a camera? Can you see them off now since it is your mistake, not mine?"

MANS: "It is not any mistake of the gentlemen. They made absolutely no mistake."

Agency: "Yes, they did, because anyone entering this building should announce for what reason and with what. So it is not my mistake but theirs."

MANS: "They made absolutely no mistake."

Agency: "I'm not going to sue them, I'm just telling they're going to see you off just as they let you in."

MANS: "OK, according to your resolution you allowed us inspection from 3 to 5..."

Security: "I'm kindly asking you to go out to the reception desk and do come here to spend the time here with them, and you must leave the camera down there"

MANS: "We were allowed inspection of these documents, but the lady doesn't want to let us do that any more."

Security: "...whether she will or won't...just don't cause any problems here"

Agency: "You may come tomorrow but without a camera..."

Security: "Leave your camera at the reception desk, and you can go to talk to them"

MANS: "But the lady says differently..."

Agency: "No, no, come tomorrow... I don't want to and who wants..."

Security: "...if you have an objection to that... write."



Agency employee in charge for access to information

DIREKTORKI MANSА U VLADI USKRAĆENO
PREGLEDANJE DOKUMENTACIJE

Nijesu dozvolili da snimi papire

Podgorica- Agencija za pr- ašečno unijela i koristila u z-

Daily "Vijesti" - MANS DIRECTOR
DENIED INSPECTION OF
DOCUMENTS AT THE GOVERNMENT

THEY DID NOT ALLOW TO
RECORD THE PAPERS

konom o slobodnom pristupu
informacijama, odobrila neposredan uvid u dokumentaciju Agencije i Savjeta za privatizaciju.

- Predstavnici MANS-a, odnosno gospodica Čalović, nedozvoljenim unošenjem i korišćenjem kamere za snimanje dokumentacije, prostorija i zaposlenih u Agenciji nar-

ma u procesu privatizacije, Agencija je "opstruirala".

- MANS je juče pokušao da izvrši uvid u dokumentaciju o svim članovima tenderskih komisija Savjeta za privatizaciju koji su zaduženi za prodaju crnogorskih preduzeća. Pošto nam nije dozvoljeno da prepišemo, kopiramo ili skeniramo informacije, ali nam je

Nakon podnošenja krivične prijave zbog falsifikovanja dokumentacije o obavezama ulaganja vlasnika KAP-a u zaštitu životne sredine, MANS-u je na sve zahtjeve za dobijanje kopija dozvoljen isključivo uvid u dokumente, ali bez mogućnosti kopiranja ili prepisivanja, kazala je za "Vijesti" Vanja Čalović

šili su proceduru neposrednog i uvida u dokumentaciju koju je Agencija dopisom odobrila - tvrdje u Agenciji.

Navodi se da je Čalović, i pored molbe ovlaštenog predstavnika Agencije da se uvid obavi u skladu sa utvrđenom procedurom, nastavila da ometa i uznemirava zaposlene u Agenciji, a nenajavljeno je s kamerom ušla u predkabinete direktora Agencije.

- Jedini način za obuzdavanje ovakvog ponašanja bio je usmeni zahtjev obezbjeđenja zgrade Vlade da isključi i odloži kameru, koju je neovl-

odobren uvid, kao i unošenje kamere od strane obezbjeđenja na ulazu u zgradu Vlade, snimali smo čin uvida u dokumentaciju koji je prekinut burnom reakcijom službenice Agencije - kazala je Čalović "Vijestima".

Ona je istakla da je nakon podnošenja krivične prijave zbog falsifikovanja dokumentacije o obavezama ulaganja vlasnika KAP-a u zaštitu životne sredine, MANS-u je na sve zahtjeve za dobijanje kopija dozvoljen "isključivo uvid, bez mogućnosti kopiranja ili prepisivanja". D.S.T.

Daily "Vijesti", 7 September 2006

AGENCIJA ZA PRESTRUKTURIRANJE PRIVREDE I STRANA ULAGAČA O MANS-U

Optužili Vaњу da tajno snima

Čalović: Nije nam omogućen uvid

- MANS je optužila Agenciju za prestruktuiranje privrede i strane ulagača da joj suštinski nije omogućila uvid u dokumentaciju o članovima tenderskih komisija Savjeta za privatizaciju, koji su zaduženi za prodaju crnogorskih preduzeća.

"Pošto nam nije dozvoljeno da prepišemo, kopiramo ili skeniramo informacije, ali nam je odobren uvid, kao i unošenje kamere od strane obezbjeđenja na ulazu u zgradu Vlade, snimali smo čin uvida u javnu dokumentaciju koji je prekinut burnom reakcijom službenice Agencije", navela je Čalovićeva u saopštenju dostavljenoj agenciji MINA.

Prema njenim riječima, nakon konsultacija sa direktorom APTPSU Branком Vučevićem služba obezbjeđenja zgrade Vlade je "na krajnje profesionalan način zatražila da obustavimo snimanje".

"Nakon podnošenja krivične prijave zbog falsifikovanja dokumentacije o obavezama ulaganja vlasnika Komisijata aluminijata Podgorica u zaštitu životne sredine, MANS-u je po osnovu svih zahtjeva za dobijanje kopija dokumentata u posredu Agencije i Savjeta dozvoljen isključivo uvid, bez mogućnosti kopiranja ili prepisivanja", objasnila je Čalovićeva.

Nadajući se da je u pitanju namjera Agencije da smanji troškove kopiranja, pokušali smo da MANS svojom opremom, ukoliko je oni ne posjeduju, skeniramo dokumentaciju, koja bi nakon toga mogla biti postavljena na internet, da bi svi građani mogli da imaju pristup podacima o privatizaciji", rekla je ona.

Čalovićeva je navela da je APTPSU "ne samo to odobila, već je omogućila da na bilo koji način zabilježimo više stotina stranica dokumentacije koja je riješenjem Agencije proglašena javnom".

Agencija - kaže se u saopštenju. Nakon toga, predstavnici MANS-a su našli kameru, koju je neovlašteno unijela i pustila prostorije Agencije.

A.D.

AGENCIJA ZA PRESTRUKTURIRANJE PRIVREDE I STRANA ULAGAČA O MANS-U

Optužili Vaњу da tajno snima

Daily "DAN" - THE AGENCY FOR ECONOMIC
RESTRUCTURING AND FOREIGN INVESTMENTS ABOUT
MANS

ACCUSED VANJA OF SECRET RECORDINGS
CALOVIC: WE WERE NOT ALLOWED INSPECTION

Daily "Dan", 7 September 2006

Later that day the Agency for Economic Restructuring issued a press release accusing us of "violating the procedure of direct inspection of documents", and disturbing and harassing officers and unauthorised recording, while "the only manner to constraint such a behaviour was the oral request of the security in the Government building".

6.5. Inspection allowed, but not the exact time

After this "incident", Agency and Council continued to grant access to information only by direct inspection, stating that inspection can be done on working days from 3 PM to 5 PM, but with previous announcement.

For several weeks we tried to "announce" and schedule inspection, but Agency kept refusing to schedule the actual date. Since access to information was formally granted by Agency resolutions, we could not file the complaint as it was not possible to obtain written evidence that access is actually restricted.

Therefore, in period from 29 September to 4 October, we started filing daily requests for setting an appointment per every resolution granting inspection. **After 46 requests submitted to Agency, we got an appointment for the inspection of the documents containing the names of members of the tender commissions.**



Mreža za Afirmaciju Nevladinog Sektora – MANS
Bohinska bb, Podgorica, Crna Gora
Tel: 081 652 265; 652 482; Fax: 652 750
mans@cg.yu; www.mans.cg.yu

Vlada Republike Crne Gore

Agencija Crne Gore za prestrukturiranje privrede i strana ulaganja

Република Црна Гора
АГЕНЦИЈА ЦРНЕ ГОРЕ ЗА ПРЕСТРУКТУРИРАЊЕ
ПРИВРЕДЕ И СТРАНА УЛАГАЊА
WP Број 65
Подгорница, 4. 10 2006 год.

Podgorica, 04, October 2006.

Poštovani,

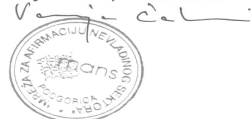
Po našem zahtjevu za informacijama, dana 31, 07 2006.godine dobili smo od Agencije Crne Gore za prestrukturiranje privrede i strana ulaganja rješenje broj 46/1 po kojem se odobrava uvid u traženu dokumentaciju, svakog radnog dana u vremenu od 13 do 15 časova, uz predhodnu najavu.

Ovim putem, tražim da nam, u što skorijem vremenu i najmanje 3 radna dana prije termina u kome će se uvid izvršiti, dostavite pismeno obavještenje kada predstavnici MANS-a mogu da izvrše uvid u dokumentaciju.

Podsjećam vas da je postupak po zahtjevu za slobodan pristup informacijama hitan, te da svako odlaganje predstavlja kršenje moga Ustavom i Zakonom zagarantovanog prava na slobodan pristup informacijama.

S poštovanjem,

Vanja Čalović, izvršni direktor



NVO - MANS -
BROJ: 1135/10
PODGORICA, 04.10.2006

Example of the request for scheduling appointment for inspection of documents sent to Agency

6.6. Audio recording of the contents of the document

The MANS representatives asked the Agency to record the contents of the document on the Dictaphone, but it was not allowed. The transcript of the audio recording which, despite that, was made by MANS at the premises of the Agency for Economic Restructuring and Foreign investments:

Agency: "Nothing can be done"

MANS: "How come nothing can be done?"

Agency: "There is no need to argue here if we are to deal with this in a civilised manner. The point is that last time you were very unfair and that is why this was postponed until now while we came to ourselves after all that, that, that happening the other day. Really... If we can do this politely. We all work here for our salaries, if this can be done properly. You have nice company, women here, just read, we won't even talk."

MANS: "If you could keep quiet so that I could record this".

Agency: "No recording. Put that down."

MANS: "This is my private property, so there's no need..."

Agency: "It's ok. I won't do a thing..."

MANS: "The information you allowed for inspection is public and I can read it"

MANS: "COMMISSION FOR TOURISM: Radomir Pajović, Živorad Smolović, Milutin Simović, Petar Ivanović ISSP dismissed from duty at personal request and other members of the commission: Milorad Jovović, Duško Ivanović, Dušan Jovičević and Čedo...COMMISSION FOR PROPERTY: Veselin Vuković ISSP, Jusuf Kalamperović, Deputy Prime Minister, Slavica Milačić, Minister for International Economic Relations, Igor Lukšić before the Council of Ministers of the State Union, Dragan Rakočević, Milorad Ivović Faculty of Law, Šaleta Đurović, Vladimir Kavarić SARA, Milorad Terzić before the Trade Union. COMMISSION FOR ACCELERATED TENDER AND PRIVATISATION OF COMPANIES: Muzafer Hadžajlić – President of the Commercial Court in Bijelo Polje, members: Chair Ranko Mujović, Dragan Rakočević, Biljana Vujošević - Centre for Entrepreneurship, Miodrag Radulović, Oleg Filipović, Deputy Minister of Finances, Dušan Simonović and Predrag Ivanović, Dean of the Faculty of Economy.

Agency: "What are you saying?"

MANS: "Talking to my colleague, may I?"

Agency: "Gorda, will you take that phone, they're recording"

MANS: "Give me that phone. The phone is my private property. I'm not touching your phone, you have no right to touch my phone."

Agency: "Why are you so pissed off?"

MANS: "I would ask you to treat me with respect, not to use the words... I did not tell you that you... what you told me...»

Agency: "Are you in my office or yours?"

MANS: "I would ask you, since you are the hosts here, not to use such a vocabulary. This is a public institution and if you wish please introduce yourself, since I don't even know who you are, we are here with Gorda and I don't know who you are. This is my property, I pay taxes, we pay taxes, and there is no need to call this yours. These documents are mine and ours, as well as of all the people. If you have any problems with us, if you don't like us, call the security, call your boss, no problem, we'll communicate the same way again. The least problem."

MANS: "TENDER COMMISSION FOR THE PRIVATISATION OF THE TOBACCO COMPANY: Željko Vuković, Deputy Minister of Labour and Social Welfare; Slavoljub Stijepović is hereby being dismissed. Other members: Chair Dragan Lajović from the Development Fund, Radoje Žugić from the Pension and Disability Fund, Vojin Vlahović, Adviser at the Government of the Republic of Montenegro, Slavoljub Stijepović already dismissed, Milica Raičević - Agency For Economic Restructuring and Foreign Investments, Vladimir Kavarić – Ministry of Finance. TENDER COMMISSION FOR THE PRIVATISATION OF KAP, ELECTRIC POWER INDUSTRY AND BAUXITE MINES: Predrag Bošković, appointed on 30.06.2006;30.07.2004 appointed Ljubomir Đurović, Deputy Mayor of Danilovgrad, dismissed Dušan Simonović on 30.07.2004 and the Chair Branimir Gvozdenović, Miroslav Ivanišević, Darko Uskoković, Slobodan Krivokapić, Asim Telačević, Vladimir Vukmirović, the Chamber of Commerce, Dušan Simonović, Veselin Vuković, before ISSP and Branko Vujović, the Agency Director. COMMISSION FOR AUCTION: chair Ramo Bralić. Commission established on 26.07.1999. Members: Vladimir Vukmirović – Chamber of Commerce, Predrag Drecun – then Minister of labour and Social Welfare, Petar Ivanović before the Centre for Entrepreneurship, Darko Uskoković, Budimir Šjivančanin – Trade Union, Gabrijel...representative of the Barents Group. Dismissed on 10.11.1999 Predrag Drecun and Gabrijel.... 17.01.2005 appointed Momo Gazivoda, president of the Association of Privatisation Funds; dismissed Igor Kralj 17.01.2005. The new Chair: Branislav Vukčević, Deputy Director of the Employment Agency, Krsto Racković 29.11.2004 and chair Ramo Bralić dismissed. Second decision on appointing the Commission, Chair Ramo Bralić, members: Budimir Šjivančanin – Trade Union, Dragoljub Janković from the Agency for restructuring, Branislav Vukčević, Employment Agency, Branislav Janković, Development Fund, Miodrag Radulović, Pension Fund and Igor Kralj – Association of Privatisation Funds.

Agency: "Give me that!"

MANS: "I don't want to, absolutely not. Here's my phone, none of your business. So, TENDER COMMISSION FOR SALE OF SHARES ON PUBLIC TENDERS 26.07.1999 appointed Veselin Vukotić, Faculty of Economic, Branko Vujović, Agency Director, Vujica Lazović, Faculty of Economic, Danilo Popović. Trade Union, Vojin Lazarević, Ranko Krivokapić and Robert... COMMISSION FOR THE BANKING SECTOR, 26.11.2004. chair: Veselin Vukotić – Faculty of Economy, members: Branko Vujović, Igor Lukšić, Goran Knežević, Dejan Bajić, Milorad Ivočić, Dejan Drakić. All companies other than tourism accelerated tenders, other than KAP, Electric Power Industry, Bauxites and Coal mine. Chair: Branko Vujović, members Vujica Lazović, Branimir Bojanić, Miodrag Pajović, Vojin Vlahović, Dejan Bajić and Bojša Šotra. The Commission was established on 23.10.2003. Additionally Vlatko Radanović, Development Fund was appointed and Vujica Lazović dismissed on 18.01.2005."

Agency: "This Dictaphone you..."

ФИЛМ

Представници МАНС-а приказали су на округлом столу видео запис из Владине Агенције за реструктурирање привреде и страна улагања у чијим им је просторијама било забрањено снимање докумената за које су претходно, судски, добили дозволу за увид. У документима су била имена чланова тендерских комисија Савјета за приватизацију који су задужени за продају црногорских предузећа, али службеница АППС-у није представницима МАНС-а дозволила да списе сниме камером.

Ћаловић је истакла да је током сљедеће посјете представницима МАНС-а одузет диктафон, а том приликом било је предлога да им се скине одјећа како би се обезбјеђење увјерило да немају „бубице“.

Поручили смо им да ћемо, ако то учине, голи прошетати Владом и показати као се у Црној Гори примјењује закон о слободном приступу информацијама, казала је Ћаловић. Правница у МАНС-у Милена Делетић је објаснила да им је АППСУ, на основу одлуке суда претходно дозволила увид у документацију, али не аудио и видео снимање, преписивање, скенирање и копирање тих докумената. Представник АППСУ Горда Бакић била је учесник данашњег округлог стола, али га је напустила током приказивања филма.

Daily "Pobjeda", 23 October 2006

Ћаловић: У Влади хтјели да нас скину „Н

Представници МАНС-а јуче су присутнима приказали видео запис из Агенције за реструктурирање привреде и страна улагања, гдје су дошли након што им је по одлуци суда дозвољен приступ информацијама уговорима о приватизацији. Док су присутни представници државних институција различито реаговали на снимак, који недвосмислено доказује да им није дозвољено скенирање, преписивање и снимање докумената, Владина службеница која је главни актер „филма“, напустила је јуче просторију, да би се вратила када је завршена презентација примјене Закона у пракси.

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ала је

Daily "DAN" - CALOVIC:

THEY WANTED TO STRIP US NAKED AT THE GOVERNMENT

After the Agency staff became aware that the contents of the documents was being recorded, they called the security who were requested to take the Dictaphone away from the MANS representatives and proposed to take off their clothes to check for any listening devices, the so-called 'bugs'. The MANS representatives refused to give the Dictaphone and the security escorted them to the exit from the Government building.

The video and audio recording are posted on the MANS website⁶ and were presented to the representatives of public authorities, international organisations and the non-governmental sector at a round table focusing on the Law application, as an illustration of non-transparent work of the institutions in charge of privatisation and an example of restricting access to information.

The Agency officer, one of the main actors of the 'film', left the event during the presentation of the recording.

Daily "Dan", 23 October 2006

6.7. Restricted entry to the Government building with technical devices

НАЈАВЉЕН ПРОЦЕС ПРОТИВ ДИРЕКТОРА АГЕНЦИЈЕ ЗА ПРЕСТРУКТУРИРАЊЕ ПРИВРЕДЕ

МАНС Тужи Вујовића

● Прво су нам пријетили хапшењем због „неовлашћеног“ снимања докумената која су сами прогласили јавним, онда су тражили да нам обезбједе скине одјећу, саопштила је извршни директор МАНС-а Вања Ђаловић

Представници МАНС-а најавили су учесницима у судском процесу Управном суду против Агенције

„Daily „DAN“ - A PROCEDURE AGAINST THE DIRECTOR OF THE AGENCY FOR RESTRUCTURING ANNOUNCED:

**MANS SUES VUJOVIĆ
AGENCY: IMPROPER BEHAVIOUR**

од стране директора Агенције Бранка Вујовића“

● Прво су нам пријетили хапшењем због „неовлашћеног“ снимања докумената која су сами прогласили јавним, онда су тражили да нам обезбједе скине одјећу, саопштила је извршни директор МАНС-а Вања Ђаловић

Непримјерено понашање

Агенција за реструктурирање привреде и страна улагања изашла је у суботу захтеву Мреже за афирмацију невладиног сектора МАНС, и одобрила да 27. децембра 2006. године представници те невладине организације остваре увид у документацију Агенције, саопштила је ова институција.

Током претходног „обављања у Агенцији (5. септембра 2006), приликом прегледа документације Савета за приватизацију, представници МАНС-а неовлашћено су користили техничке уређаје за снимање документације, просторија и запослених у Агенцији, чиме су ометали рад и оних који нијесу задужени за процедуре у вези са остваривањем права на приступ информацијама. Првизности ради, тада су затражени подаци о приватизацији Жолџаре АД Никшић, чиме је Агенција испроштовала члан 13 Закона о слободном приступу информацијама („Службени лист РЛГ, БР. 68/2005).

Том приликом, као што је јавност претходно обавијештена, представници МАНС-а нијесу прихватили молбу службеника Агенције да не користе техничке уређаје, па је Агенција приликом новог заказивања тражила од службеника обезбјеђења да је за вријеме новог увида, закажаног за 27. децембар, потребно одложити све техничке уређаје које би представници МАНС-а евентуално користили у обављању поменутих процедура.

Имајући у виду да су прије уласка у службене просторије Агенције они одошли да поштује ло инструкцијама службеника обезбјеђења, свим тим и да одложе техничке уређаје, очигледно је да представницима МАНС-а није циљ увид у документацију Агенције, већ стварање медијски занимљивог догађаја и изазивање конфликтних ситуација којим би, захваљујући медијској позорности, добили на популарности, како се у саопштењу,

мања докумената која су сами прогласили јавним, онда су тражили да нам обезбједе скине одјећу да би утврдили да ли имамо „буџице“, а најновија процедура коју је увидела Агенција, а која се примјењује искључиво према представницима МАНС-а, подрумијења да нам се приликом вршења увида, привремено одузме приватна имовина и средства за рад која су у власништву МАНС-а, као приватног лица. У спорном акту је наведено да се од представника МАНС-а одузму сви технички апарати у укључујући приватне и службене мобилне телефоне, саопштила је извршни директор МАНС-а Вања Ђаловић.

Ђаловић је оцијенјена да упорно Закону о слободном приступу информацијама, Агенција на све начине покушава да онемогући приступ документацији о приватизацији клиничког центару, који је у власништву МАНС-а.

Daily „Dan“, 29 December 2006

After that, the Agency granted the inspection of the Iron Plant Sale Agreement to the Midlands company, a document terminating the Privatisation Agreement and stipulating the obligations of the Government and Midlands which arose from the termination, report of Midlands compliance with the obligations stemming from the Agreement, as well as the Sale Agreement for the Iron Plant to MN Speciality Steels.

At the appointed time, pursuant to the Agency's resolution, we tried to inspect the documentation, but the security at the Government building informed us they had to take away our telephones, since they were ordered to do so by a letter signed by the Agency director. The letter requested to sequestrate from MANS representatives all technical devices, including their private and official mobile phones.

We asked the security services to produce a copy of this obviously unlawful document, to be able to instigate a procedure.

As well known, the possessions of citizens may be temporarily or permanently taken away only by authorised persons and only pursuant to the Law, and this contested letter would be evidence of violation of our right to free access to information, but also the right to possessions.

After the consultations with the Agency Director Vujović, the security informed us they were not allowed to give us a copy of the contested letter requesting the sequestration of possessions as a condition for the inspection of documents.

We asked the security staff to give us their names in order to be able to call them as witnesses to confirm before the court the existence and the contents of the contested document.

We were given the names of the security staff after consultations lasting over an hour, and only after we have invoked the Police Law obliging all the employees of the Police Administration, including the security services, to introduce themselves and show their ID at the expressed request of citizens.

In the meantime, waiting for the final response of the Government security, none of the visitors entering the Government building was taken away their possessions, and 24 citizens confirmed they carried with them their mobile phones without any problems.

The same day, pursuant to the Law on Free Access to Information, MANS requested from the Agency a **copy of the contested document** to be able to instigate a court procedure. Access to information was allowed, but **only by inspection at the premises of the Agency.**

Republika Crna Gora
AGENCIJA CRNE GORE ZA PRESTRUKTURIRANJE
PRIVREDE I STRANA ULAGANJA
Uj 84/1
Podgorica, 9. januar 2007. godine

NVO - MANS -
BROJ: CG/127/30
PODGORICA, 09. 01. 2007

Na osnovu člana 15 i 18. stav 1. Zakona o slobodnom pristupu informacijama («Službeni list RCG» br. 68/05), Agencija Crne Gore za prestrukturiranje privrede i strana ulaganja donosi

RJEŠENJE

Dozvoljava se Mreži za afirmaciju nevladinog sektora – Mans iz Podgorice, ulica Bohinjska bb, pristup informacijama iz zahtjeva upućenog Agenciji CG za prestrukturiranje privrede i strana ulaganja od 29. decembra 2006. godine.

Pristup informacijama iz zahtjeva ostvariće se **neposrednim uvidom** u prostorijama Agencije CG za prestrukturiranje privrede i strana ulaganja, kancelarija broj 209, Zgrada Vlade RCG, radnim danima od 15 do 17 časova, uz prethodnu najavu.

“...by direct inspection...”

Mreža za afirmaciju nevladinog sektora – Mans iz Podgorice dostavila je 29. decembra 2006. godine zahtjev Agenciji CG za prestrukturiranje privrede i strana ulaganja, koji se odnosi na kopiju akta broj 01-1498 od 27. decembra 2005. godine.

Imajući u vidu da u Zakonu o slobodnom pristupu informacijama ne postoji obaveza organa vlasti da mora prihvatiti način pristupa informaciji iz zahtjeva podnosioca, već organ vlasti – Agencija sama cijeni koji je to način u datoj situaciji najpogodniji, Agencija CG za prestrukturiranje privrede i strana ulaganja se opredjelila za metod odnosno način neposrednog uvida, shodno članu 13. stav 1. Zakona o slobodnom pristupu informacijama («Službeni list RCG», br. 68/2005).

Odredbom člana 8. Zakona o slobodnom pristupu informacijama propisano je da je organ vlasti dužan omogućiti podnosiocu zahtjeva pristup informaciji ili njenom dijelu, osim u slučajevima predviđenim ovim zakonom.

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 Republike Crne Gore u roku od 30 dana od dana dostavljanja rješenja.

Dostaviti:
- Mreža za afirmaciju nevladinog sektora - Mans
- spisi predmeta,



Response of the Agency (9 January 2007) on request to provide copy of the document by which MANS' representatives were Restricted entry to the Government building with technical devices

In a new letter, MANS repeated the request to the Agency to deliver a copy of the document, offering recording, scanning or photocopying of the document using own human and technical resources, and also informed of the Supreme Court's judgement⁷.

An excerpt from the letter to the Agency for Economic Restructuring and Foreign Investments:

On 9th January 2007 I was delivered a Resolution Ref. 84/1 by which the Network for the Affirmation of the Non-Governmental Sector – MANS from Podgorica is allowed access to information pursuant to the request dated 29th December 2006 by which I requested:

- *Copies of the document ref. 01/1498 of 27th December 2006.*

The resolution states the access is to be exercised by direct inspection at the Agency for Economic Restructuring and Foreign Investments, room 209, the Government building.

I hereby ask for the delivery of the requested document.

It is a one page document, and thus there are no impediments for delivering to MANS a copy thereof since the delivery of the requested document would not incur cost for the Agency for Economic Restructuring and Foreign Investments nor any considerable time to interfere with the daily work of the Agency staff.

If, nevertheless, you are not able to fax a copy of the requested one page document, the MANS representatives are willing, if you allow us, to come to the Agency and at own expense, using own human and technical resources record, scan or photocopy the said documents, which after conversion to the electronic format would be available to you for further distribution to interested citizens.

We would like to inform you of the opinion of the Supreme Court of the RoM, ref. 83/2006 stating the following:

- *"The provision of Article 13 of the Law on Free Access to Information stipulates the manner for exercising the right to access information where one of the envisaged possibilities is to have direct inspection of public records, the original or the copy of the information, at the premises of the given authority. This, however, **does not imply the arbitrariness of the authority to stipulate the manner of access at own discretion**"*
- ***"The authority has the primary obligation to consider the possibility for the exercise of this right in the manner stated in the request..."***

Pursuant to the above, I kindly ask you to deliver the copy of the requested document by fax number 081 652 750 or to notify us of the exact time when MANS representatives may come to record, photocopy or scan the document at own expense, as said above.

Agency did not provide copy of the requested document. The case is still pending.

6.8. Administrative Court's judgements

In the meantime the Administrative Court rejected all complaints for the abolishment of resolutions which do not grant access to information in the manner stated in the request with the explanation that the Law does not stipulate the obligation of the authority "to abide by the wishes of applicants regarding the manner of exercising access to certain information".

UPRAVNI SUD REPUBLIKE CRNE GORE
U.br. 940/2006

BROJ: 06/930-284
PODGORICA, 25.09.2006.

U IME NARODA

Upravni sud Republike Crne Gore, u vijeću sastavljenom od sudija Gordane Pot, kao predsjednika vijeća, Dragana Djuretića i Ljubinke Popović – Kustudić, kao članova vijeća, uz učešće službenika Suda Snežane Popov, kao zapisničara, rješavajući upravni spor po tužbi tužioca Mreže za afirmaciju nevladinog sektora - MANS, iz Podgorice, protiv rješenja tužene Agencije Crne Gore za prestrukturiranje privrede i strana ulaganja - Podgorica, br. UP 39/1 od 04.07.2006. godine, u nejavnoj sjednici održanoj dana 19.09.2006. godine, donio je

P R E S U D U

Tužba se odbija.

O b r a z l o ž e n j e

Osporenim rješenjem tuženog, dozvoljen je tužiocu pristup traženim informacijama i određeno da će se pristup informacijama ostvariti neposrednim uvidom u prostorijama tuženog.

Tužilac u tužbi navodi da je tuženi organ prilikom donošenja rješenja pogrešno primijenio materijalno pravo. Ovo zbog toga što je odredbama

** "The complaint is rejected."*

** "The defendant, in the response to the complaint, in essence, states that the information requested by the plaintiff consists of several hundreds of pages, and since the defendant does not have the technical equipment for photocopying and reproduction, it would be obliged to take the documents to some photocopier's shop, which would interfere with the daily work, and would incur additional costs for the plaintiff. Therefore the defendant chose for the access to information to be exercised at the premises of the defendant. In any case, pursuant to the Law on Free Access to Information, there is no obligation of the authority to accept the manner for accessing the information as said in the request, but the authority considers which manner would be most appropriate in the given circumstances. The defendant proposes the complaint to be rejected."*

Sud je razmotrio tužbu, odgovor na istu, pobijano rješenje i ostale spise predmeta, pa je našao da tužba nije osnovana.

Odredbama člana 13. stav 1. Zakona o slobodnom pristupu informacijama propisani su načini na koje se može ostvariti pristup informacijama, a jedna od mogućnosti je (tačka 1.) neposrednim uvidom u javnu evidenciju, original ili kopiju informacije u prostorijama organa vlasti, dok je odredbama člana 18. stav 2. istog zakona, propisano, pored ostalog, da se rješenjem kojim se dozvoljava pristup informaciji određuje i način pristupa.

S obzirom na to neosnovani su navodi tužbe da je tuženi povrijedio Zakon o slobodnom pristupu informacijama, time što je pobijanim rješenjem odredio da će se pristup informacijama ostvariti u prostorijama

** "The provisions of Article 12 of the said Law, which the plaintiff invokes in its complaint, stipulate the contents of the request for access to information, but not the obligation of the authority to abide by the wishes of applicants in each case concerning the manner of exercising access to some information."*

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

UPRAVNI SUD REPUBLIKE CRNE GORE
Podgorica, 19.09.2006 godine

Zapisničar,
Snežana Popov, s.r.



Administrative Court judgement reached on 19 September 2006 upon MANS' complaint that Agency is violating the Law by not allowing access to information in form asked for in the request for information

6.9. Supreme Court's judgements and the change of case law

MANS filed a motion with the Supreme Court for the extraordinary examination of the Administrative Court's judgement stating:

Pursuant to Article 12 paragraph 1 bullet point 2 of the Law on Free Access to Information the request for access to information should contain the desired manner for exercising access to information. The provision stipulating the applicant should state in the request the manner for exercising access to information aims to enable access to information convenient for the applicant.

Direct inspection of the requested information restricts considerably the right to free access to information which may be concluded from the chronology of events.

In addition, I underscore that the Resolution of the Agency for Economic Restructuring and Foreign Investments ref. 39/1 did not grant access to the information concerning

- *A copy of the tender documents for the selection of consultants for monitoring the sale and purchase agreement with KAP.*

Since there are no legal impediments for accessing the requested information this constitutes a violation of the right to free access to information.

On 7th July 2006 I submitted to the Agency for Economic Restructuring and Foreign Investments a document ref. no. 40 by which I asked for the exact time for the inspection of requested information.

On 20th July 2006 I was delivered the document ref. 39/2 scheduling the inspection.

I submitted on 21st July 2006 a document ref. 39/1 to the Agency for Economic Restructuring and Foreign Investments requesting more precise time for inspection of the requested information.

On 25th July 2006 I was delivered the document ref 39/2 scheduling the inspection.

Be it noted that by its resolutions the Agency only allows for the inspection of the requested document without any transcribing, copying, scanning or photocopying.

*Responding to the complaint, the defendant says that the request refers to several-hundred page documents and that it does not have the technical equipment for photocopying and reproduction, it would be obliged to take the documents to some photocopier's shop, which would interfere with the daily work, and would incur additional costs. **Article 19, paragraph 2 stipulates that the costs of the procedure imply only actual costs incurred. The actual photocopying costs could not exceed 0.01 euro/page, and since the requested document is under 500 pages it by no means could cause considerable expenses.***

Since direct inspection of information held by the Agency could not have been exercised in the proper manner (as confirmed subsequently by the rationale of the response to the complaint) on 31st July 2006 I submitted a document ref 50 notifying the Agency that the conversion of the document into an electronic form would significantly save time, the requested information could be published on the Agency website increasing transparency and avoiding costs for the Agency since all the activities to that effect would be undertaken using human and technical resources of MANS.

The agency did not accept the offer to scan documents and attempts on the part of MANS to exercise inspection of the requested documents ensued.

MANS tried to record certain data using a camera, but the attempt was forestalled and the inspection of the requested documents interrupted.

Then the correspondence with the Agency for Economic Restructuring ensued to re-schedule the inspection as evident from the enclosed documents (ref 65 dated 29th September 2006, ref 65 dated 3rd October 2006, ref 65 dated 4th October 2006, ref 66 dated 5th October 2006).

Following the above, free access to information was granted by direct inspection of the requested documents only without any transcribing, photocopying, scanning, taking photographs or recording which constitutes a considerable restriction to free access to information.

On 20th June 2006 MANS requested from the Agency the delivery of copies, and thus the resolution granting access by direct inspection of information is unlawful, as is the decision of the Administrative Court by which the said resolution was declared lawful.

The Supreme Court, as the highest instance in the state, rejected the motion for extraordinary examination of the court decision and deemed the Administrative Court's decision to be lawful.

NVO - M A N S -

BR. 06/930-934

PODGORICA, 08.12.2006.

VRHOVNI SUD REPUBLIKE CRNE GORE

Uvp.br.64/2006

U IME NARODA

Vrhovni sud Republike Crne Gore, u vijeću sastavljenom od sudija Vučinić Stanke, kao predsjednika vijeća, Bogičević dr Čedomira i Ivanović Sretena, kao članova vijeća, uz učešće službenika suda Orović Mirjane, kao zapisničara, odlučujući o izjavljenom zahtjevu za vanredno preispitivanje sudske odluke - presude Upravnog suda RCG U.br.940/2006 od 19.09.2006. godine, kojeg je podnio tužilac Mreža za afirmaciju nevladinog sektora - MANS iz Podgorice, u sjednici vijeća održanoj dana 23.11.2006. godine, donio je

P R E S U D U

Zahtjev za vanredno preispitivanje sudske odluke odbija se.

** "The motion for an extra-ordinary examination of a court's decision is rejected."*

Presudom Upravnog suda RCG U.br.940/2006 od 19.09.2006. godine, odbijena je tužba tužioca Mreže za afirmaciju nevladinog sektora - MANS-a iz Podgorice, podnijeta protiv rješenja tužene Agencije Crne Gore za prestrukturiranje privrede i strana ulaganja - Podgorica, br.UP 39/1 od 04.07.2006. godine.

Protiv označene presude tužilac je podnio zahtjev za vanredno preispitivanje sudske odluke, zbog pogrešne primjene materijalnog prava. Predlaže se da se pobijano rješenje poništi, koji predlog se u smislu čl.46. st.2. Zakona o upravnom sporu može razmatrati samo kao predlog za ukidanje ili preinačenje osporene presude.

U sjednici vijeća ispitana je pobijana presuda u granicama podnietog zahtjeva a pri tome i po službenoj dužnosti u smislu čl.45. Zakona o upravnom sporu, pa je ovaj sud našao da je zahtjev za vanredno preispitivanje sudske odluke neosnovan.

U predmetnoj stvari sporno pitanje je, da li je tužena Agencija za prestrukturiranje privrede i strana ulaganja povrijedila Zakon o slobodnom pristupu informacijama kada je umjesto tražene kopije određenih informacija donijela rješenje kojim je utvrdila pravo tužiocu, da ostvari uvid u tražene informacije neposredno u prostorijama tuženog organa.

Odredbom člana 12. stav 1. tačka 2. Zakona o slobodnom pristupu informacijama određeno je da zahtjev za pristup informaciji treba da sadrži način na koji se želi ostvariti pristup informaciji.

Sa druge strane, odredbom čl.13. st.1. istog zakona određen je pristup informaciji u posjedu organa vlasti, pri čemu je jedna od mogućnosti

** "The contents of the request for information as stipulated by Art 12 of the Law does not necessarily mean the obligation of the public authority to abide by the wish of the applicant in each case concerning the manner for exercising the right to access certain information, but it is up to the authority to envisage the same in its resolution, pursuant to Art 18, para 2 of the same Law in each concrete case, in accordance with circumstances concerning the nature of the request in question.*

Having in mind the concrete circumstances, established in the administrative procedure of the requested authority, that the requested information is a several-hundred page document, that it would be needed to take such a voluminous document elsewhere for photocopying, that it would interfere with the daily operation of the defendant, it is reasonable to conclude that by passing the said resolution no law was violated to the detriment of the plaintiff. The decisive fact here is that the applicant was granted access to the requested information by direct inspection at the premises of the defendant, in terms with the circumstances of the case, by properly invoking Art 18 para 2 and Art 13 para 1 of the Law on Free Access to Information."

pravo je pravilno primijenjeno i odluka Upravnog suda kojom je odbijena tužba utemeljena je na zakonu, čime se zahtjev za vanredno preispitivanje pokazuje kao neosnovan.

Sa izloženog a na osnovu čl.46. st.1. Zakona o upravnom sporu, odlučeno je kao u izreci.

VRHOVNI SUD REPUBLIKE CRNE GORE

Podgorica, 23.11.2006. godine

Zapisničar,
Mirjana Orović,s.r.



Тачност печата потврђује
Predsjednik vijeća, чл.18. st.1. Zakona o upravnom sporu
Stanka Vučinić, s.r.

Judgment of the Supreme Court from 23 November 2006 rejecting the motion for an extra-ordinary examination of a Administrative court's decision

It is stated in the judgement that the **manner for exercising the right to access certain information is decided upon by the authority, in its resolution, according to the circumstances of the case.**

After referring to the principles and standards contained in the international law on human rights and freedoms, the Supreme Court changed its case law.

An excerpt from the request for extraordinary examination of the court decision:

*Pursuant to **Article 4 paragraph 1 bullet point 1 of the Law on Free Access to Information the right of access to information** encompasses the right to ask for, receive, use and impart the information filed with government agencies.*

The right of free access to information includes the right of the applicant to use and impart information whose access was granted, which is impossible in case of granting direct inspection only since the information received solely by inspection may not be used, for instance, as evidence in filing a criminal complaint and instigating a criminal procedure, nor may it be shared with other interested persons, i.e. imparted, restricting significantly the right of free access to information.

Moreover, pursuant to Article 1, paragraph 3 of the Law on Free Access to Information, access to the information is guaranteed upon the principles and the standards contained in international documents dealing with the issues of human rights and freedoms.

Universal Declaration of Human Rights, Article 19: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

International Covenant on Civil and Political Rights, Article 19: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

European Convention on Human Rights and Fundamental Freedoms, Article 10: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises."

Free access to information granted by exercising direct inspection of the requested information only, without any possibility to make photocopies, scan, take photographs or record, constitutes a significant restriction to free access to information.

Therefore, MANS remains ready, to avoid any costs of the procedure, using own human and technical resources and at own expense, to photocopy or scan the requested documents.

Pursuant to the above, I believe that the Resolution rejecting the complaint filed by MANS restricted the right of free access to information.

VRHOVNI SUD REPUBLIKE CRNE GORE, u vijeću sastavljenom od Ivanović Sretena, kao predsjednika vijeća i sudija Stojanović Petra i Bogičević dr Čedomira, kao članova vijeća, uz učešće službenika suda Orović Mirjane, kao zapisničara, rješavajući po zahtjevu za vanredno preispitivanje sudske odluke - rješenja Upravnog suda RCG, U.br.944/2006 od 11.10.2006. godine, kojeg je podnio tužilac Mreža za afirmaciju nevladinog sektora - MANS iz Podgorice, u nejavnoj sjednici održanoj dana 08.12.2006. godine, donio je

P R E S U D U

Ukida se presuda Upravnog suda RCG U. br. 944/2006 od 11. 10. 2006. godine i predmet vraća tom sudu na ponovni postupak.

** "The judgment of the Administrative Court of the Republic of Montenegro, ref. 944/2006 as of 11.10.2006 is abolished and the case returned to the same Court for re-trial."*

godine, odbijena je tužba tužioca Mreže za afirmaciju nevladinog sektora - MANS-a iz Podgorice, podnijetu protiv rješenja tuženog Ministarstva zaštite životne sredine i uređenja prostora - Podgorica, br.03-05-25/06 od 29.06.2006. godine, kojim je odlučeno o pristupu informaciji, na način utvrđen u dispozitiv tog akta.

Protiv ove presude tužilac je podnio zahtjev za vanredno preispitivanje sudske odluke, zbog povrede materijalnog prava predlažući da se pobijana odluka poništi, koji predlog se shodno odredbi člana 46. st.2. Zakona o upravnom sporu ima smatrati kao predlog za ukidanje ili preinačenje pobijane presude.

U sjednici vijeća razmotreni su cjelokupni spisi predmeta ispitana pobijana presuda u granicama propisanim u čl.45. ZUS-a i ocijenjeni navodi podnjetog zahtjeva, pa je vijeće našlo da je:

Zahtjev za vanredno preispitivanje sudske odluke je osnovan.

Odredbom člana 13. Zakona o slobodnom pristupu informacijama propisani su načini na koje se može ostvariti pravo na pristup informaciji a jedna od mogućnosti je i neposrednim uvidom u javnu evidenciju, original ili kopiju informacije u prostorijama organa vlasti.

** However, it does not imply the arbitrariness of the authority to stipulate the manner of access at own discretion. The public authority has the primary obligation to consider the possibility for the exercise of this right in the manner stated in the request, pursuant to one of the manners envisaged by Article 13 of the said Law, and if there are some objective impediments or difficulties for the exercise of such a request, envisage some other manner. This is highlighted particularly with a view of the fact that the right of access to information encompasses the right to receive, use and impart the information, as stipulated by Article 4, paragraph 1, bullet point 1 of this Law.*

Moreover, the public authority is obliged to provide explanation why it opted for the given, instead of other manners for disclosing information per the given request.

The contested judgment, however, dwells solely on the fact that there is no obligation on the part of the authority to abide by the wish of the applicant in each specific case concerning the manner of exercising certain information, but without giving the explanation why in the given case there was no possibility of exercising the right in the manner requested.

The above indicates towards the misapplication of the substantive law (Article 42, paragraph 1, bullet point 2 of the Law on Free Access to Information); hence, the said judgment should be abolished in order for the Court to discuss in re-trial the contested legal matter of the exercise of the right of free access to information and properly apply the substantive law."

... kao u izreci ove presude.

VRHOVNI SUD REPUBLIKE CRNE GORE

Podgorica, 22. 12. 2006. godine

Zapisničar,
Radojka Djordjević, s.r.



Predsjednik vijeća,
Stanka Vućinić, s.r.

B. Jovsimović

*Judgement of the Supreme Court from 22 December 2006,
abolishing the judgement of the Administrative Court*

By the new judgement, the Supreme Court abolishes the judgement of the Administrative Court and stating that the authority has the primary obligation to consider the possibility for the exercise of the right as requested, and if there are some objective impediments or difficulties for the exercise of such a request, to envisage some other manner. In addition, the authority is obliged to provide explanation why it opted for a certain manner of disclosing information, other than the requested one.