

7. FEES CHARGED FOR ACCESS TO INFORMATION

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According to the law, institutions are bound to calculate only actual expenses of access to information **based on a special provision which two years after the adoption of the law has not yet been passed.**

The law does not specify which institution is competent for passing this provision, so that in practice there is a dilemma whether the Ministry of Finance is the competent one or it is the Ministry of Culture, Sport and the Media. The Law does not state explicitly that the provision defining prices must be unique for all institutions.

Verdicts of the Supreme and the Administrative Court referring to the cases in which expenses of the procedure are symbolic, indicate that since there is no regulation determining the cost of the procedure, the body passing the decision determines who shall bear the costs of the procedure, their amount, who they are payable to and in what time limit, in accordance with the Law on General Administrative Procedure.

In practice, institutions calculate costs of the procedure based on their own internal enactments which foresee covering of costs significantly higher than the real ones, which represents a **significant obstacle for access to information.**

When the Administrative Court annuls the decisions by which access to information is banned, some institutions resort to calculating high costs of procedure, in order to actually prevent access to the requested information.

Law on Free Access to Information, Article 19

The requester shall bear the cost of procedure related to the exercise of the right to access information in accordance with a special provision.

The costs of procedure refer only to the actual costs of the public authority body with regard to copying in writing, photocopying, translation and sending of information. When the requester is a disabled persons, the public authority body shall bear the costs of procedure.

Case study 11: Price-list of the Secretariat for Town Planning of Podgorica City

The Guidebook for Access to Information of the Secretariat for Town Planning of the Capital City Podgorica, in the part prescribing the procedure for the exercise of the right to access information, gives the price-list which that institution uses for calculating the „actual” costs of procedure.

5. Troškovi postupka
- troškove postupka snosi lice koje traži pristup informaciji

5. Costs of procedure

- *the costs of procedure shall be born by the requester*
- *the costs of procedure refer only to actual costs with regard to copying in writing, photocopying, translating and sending of information as follows:*
 - *copying per page of A4 paper format – 1.50 Euro*
 - *copying per page of A3 paper format – 2.50 Euro*
 - *copying per 1m² – 10.50 Euro*
 - *copying on isolite per 1m² – 13.50 Euro*
 - *issuing of a copy of the digital version of the detailed town plan – 15.0 Euro*
 - *costs of procedure are paid before the execution of a decision*
 - *disabled persons shall not pay the costs of procedure*
 - *the costs of procedure are paid to the benefit of the Budget of the Capital City Podgorica, to the account no 550-3026777-19*

IV: OVLAŠĆENA I ODGOVORNA LICA

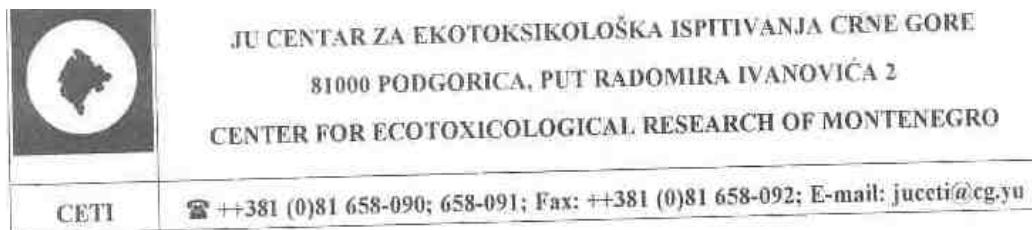
1. Lica za vodenje prvostepenog postupka po zahtjevu za pristup informaciji su

Excerpt from the Guidebook for Access to Information of the Secretariat for Town Planning of the Capital City Podgorica at www.podgorica.cg.yu/VODIC/V%20O%20D%20I%20C%20%20ZA%20Prostor%20.doc

Case study 12: Center for Eco-toxicological research

MANS asked from the Center for Eco-toxicological research (CETI) copies of all the analysis of honey for the festival "Podgorica Days of Honey", of all the enactments including information on the number of samples in which it was determined that their quality does not meet the conditions for human use, as well as copies of all the enactments including names of persons who produced honey whose quality does not meet the conditions for human use.

CETI **forbids access to information with the explanation that it represents a business secret**, because the analyses were made upon a request and for the needs of the Ministry of Agriculture, Water Management and Forestry, so they can be sent or reported only to the ordering party.



Broj 00-26-8193
Podgorica, 17.10.2006

NVO - M A N S -
broj 08/1545-1547
PODGORICA, 17.10.2006

Na osnovu člana 13,16 i člana 18 Zakona o slobodnom pristupu informacijama (Sl.list RCG br. 68/05) i člana 15 Statuta JU Centra za ekotoksikološka ispitivanja Crne Gore, rješavajući po zahtjevu Mreže za afirmaciju nevladinog sektora – MANS iz Podgorice br.00-26-8190 od 13.10.2006.godine, donosim

RJEŠENJE

„The Network for Affirmation of Non-Government Sector – MANS from Podgorica is not allowed access to information - document: analysis of honey for the festival „Podgorica Days of Honey”, the number of samples in which it was determined that they do not suit human use and the names of persons who produced the honey for which it was determined that it is not suitable for human use, because reports on sample analyses are considered a business secret of the Centre (Article 4 paragraph 1 point 3 of the Rulebook on Business Secret of the Centre).”

Decision of CETI from 17 October 2006

MANS **lodged a complaint** to the Ministry of Environment Protection and Urban Planning, but the Ministry **refused it assessing that CETI acted in compliance with the law.**

Centar za ekotoksikološka ispitivanja Crne Gore je našao da se nijesu stekli uslovi za pristup traženoj informaciji, budući da je ista urađena po zahtjevu i za potrebe Ministarstva poljoprivrede, zaštite životne sredine i lovstva.

„The decision of the first instance body is correct and legal, for it complies with the Law on Free Access to Information.“

Pri obrazlaganju ovog rješenja Ministarstvo ukazuje, saglasno odredbi člana 240 ZUP-a, da navodi Mreže za afirmaciju nevladinog sektora – MANS, sadržani u žalbi izjavljenoj ovom ministarstvu nijesu imali uticaja na drugačije rješenje ove upravne stvari, radi čega je žalbu valjalo odbiti kao neosnovanu – član 235 istog Zakona.

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

POMOĆNIK MINISTRA
Nada Ulićević



Decision of the Ministry of Environment Protection from 27 November 2006

Excerpts from the complaint to the Administrative Court from 25 December 2006

....Decision of the Ministry of Environment Protection and Town Planning number 070501-203/06 from 13 June 2006 is refuted on the whole as unlawful for not complying with Article 1, 3, 6 and 8 of the Law on Free Access to Information, Article 3 and 18 of the Law on Health Protection.

According to Article 3 of the Law on Health Protection ("Off. Gazette RoM, no. 39/2004) noone must imperil the health of others.

According to Article 18, paragraph 6 of the Law on Health Protection, in exercising the right to health protection a citizen has the right to be correctly informed and acquainted with all the issues pertaining to his health.

Consequently, it is indisputable that the internal enactment of the public authority body, in this case the Rulebook on Business Secret of the Centre, which was never harmonized with the Law on Free Access to Information, and thus also the Law on Health Protection, cannot be taken as the legal grounds for denying access to information and that the Ministry decision is unlawful.

7. Fees charged for access to information

Apart from that, according to the Law on Free Access to Information, all the information held by the state bodies is public, except in the case of exceptions prescribed by Article 9 of the Law.

*Restriction of access to information must in every concrete case be preceded by a **harm test**...*

....In the end, since CETI has absolutely no competition in Montenegro, the publishing of the requested information could in no case imperil their commercial interests.

Administrative Court annuls the decision of the Centre for Eco-toxicological research.

U obrazloženjima, kako prvostepenog tako ni osporenog rješenja, se ne...
„The explanations, of both the first instance and the disputed decision, do not state how commercial and other interests, economic, private or public, of the Centre for Ecotoxicological Research would be imperilled by submitting of the requested information to the accusing party, thus they were passed with the violation of Article 203, paragraph 2 of the Law on General Administrative Procedure.

The fact that certain data, according to any provision whatsoever, belong to the category of a „business secret“ does not mean automatically that access to that information is restricted as the first instance and the accused body deem.

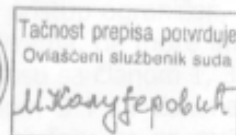
Based on the above the Court finds that the first instance and the disputed decision violated the rules of the administrative procedure due to which they are unlawful, so that the disputed decision had to be annulled.“

Sa izloženog, a na osnovu člana 37. stav 1. u vezi člana 33. stav 6. Zakona o upravnom sporu, odlučeno je kao u dispozitivu.

UPRAVNI SUD REPUBLIKE CRNE GORE
Podgorica, 25.01.2007. godine

Zapisničar,
Maja Ulićević, s.r.

PREDSJEDNIK VIJEĆA,
Vladimir Radulović, s.r.



Verdict of the Administrative Court from 25 January 2007

7. Fees charged for access to information

CETI passes a new decision after the verdict which **allows access to information, but with a calculation of procedure costs amounting to 113,40 Euro.**

Upon our request, CETI submitted to us an enactment which states that the **costs of procedure are calculated as a sum of costs for copying 500 pages in a private xerox shop of 25 Euro, and the price of work of two employees of the Centre lasting 20 work hours amounting to 88,40 Euro.**

Na osnovu člana 16 i člana 18 Zakona o slobodnom pristupu informacijama (Sl.list RCG br. 68/05), rješavajući po zahtjevu Mreže za afirmaciju nevladinog sektora iz Podgorice MANS za pristup informacijama br. 00-3597 od 13.04.2007. godine donosim sljedeće

R J E Š E N J E

1. Dozvoljava se pristup informaciji – aktu na osnovu kojeg je Centar odredio cijenu troškova postupka u Rješenju br. 00-26-2927 od 23.03.2007. godine.
2. Pristup informacijama podnosilac zahtjeva će ostvariti dostavom tražene informacije putem pošte.
3. Žalba ne odlaže izvršenje rješenja.

Obrazloženje

- *"photocopying of 500 pages x 0,05 Eur (the price taken is the price of photocopying one page of the authorized company "Scepanovic" 25.00 Eur*
- *work of two employees (the main technician and chemical technician) for 20 hours of photocopying x 2.21 Eur 88.40 Eur (based on the criteria from the Collective Agreement of the Centre the gross hourly rate of employees is determined as follows:"*

2,21 EUR-a 88,40 EUR-a (na osnovu kriterijuma iz Kolektivnog ugovora Centra utvrđena je prosječna bruto satnica zaposlenih na način:

- a) glavni tehničarcijena rada 57,20 EUR-a; osnovni koeficijent 4,20; uvećanje koeficijenta po osnovu minulog rada 5% i iznosi 4,41; koeficijent 4,41 pomnožen sa cijenom rada 57,20 EUR-a i podijeljen sa 176/ mjesečni fond časova dobija se neto satnica 1,44 EUR-a.
- b) hemijski tehničarcijena rada 57,20 EUR-a; osnovni koeficijent 3,80; uvećanje koeficijenta po osnovu minulog rada 5% i iznosi 3,99; koeficijent 3,99 pomnožen sa cijenom rada 57,20 EUR-a i podijeljen sa 176/mjesečni fond časova i dobija se neto satnica 1,30.
- c) prosječna neto satnica dva zaposlena je 1,37 EUR-a – prevedena na bruto satnicu 2,21 EUR-a.

Ukupno: 113,40 EUR-a

Sa izloženog riješeno je kao u dispozitivu.

Pravna pouka: Protiv ovog rješenja podnosilac zahtjeva ima pravo žalbe Ministarstvu turizma i zaštite životne sredine u roku od 15 dana od dana dostavljanja.

Dostavljeno


DIREKTOR
Ana Misaurović, spec. tog. hem.

Decision of CETI from 23 April 2007

Court practice

Verdicts of the Administrative and the Supreme Court state that, since there is no special regulation by which costs of procedure are determined, the body that passes the decision shall determine who shall bear the costs of procedure, their amount and the time limit in which they are to be paid, in compliance with the Law on General Administrative Procedure.

Court verdicts refer to cases in which the costs of the procedure are symbolic, and there is still no verdicts for those where the costs are calculated at an unrealistically high level.

Naime, nesporno je da troškove postupka u vezi sa ostvarivanjem prava na pristup informaciji snosi podnosilac zahtjeva, tj. u konkretnom slučaju tužilac.

Takodje je nesporno da je tuženi organ obračunao samo stvarne troškove koji su za njega nastali prilikom pružanja tražene informacije, u skladu sa članom 19. stav 2. Zakona o slobodnom pristupu informacijama.

Kako je odredbom člana 24. stav 1. pomenutog zakona propisano da podnosilac zahtjeva za pristup informaciji i drugo zainteresovano lice imaju pravo na sudsku zaštitu u upravnom sporu to je nesumnjivo da se postupak

„Having that in mind, the Court deems that the accused body acted correctly when deciding on the costs of the procedure, it applied provisions of Article 107 paragraph 1 of the Law on General Administrative Procedure, since a specific regulation which would govern this issue has not been adopted.”

propis kojim bi se regulisalo ovo pitanje.

Sa izloženog, a na osnovu člana 37. stav 1. Zakona o upravnom sporu, Sud je tužbu odbio kao neosnovau.

UPRAVNI SUD REPUBLIKE CRNE GORE
Podgorica, 03.10.2006. godine

Zapisničar,
Marina Nedović, s.r.

PREDSJEDNIK VIJEĆA,
Gordana Pot, s.r.



Tačnost prepisa potvrđuje
Ovlašteni službenik suda
U. Kanyfepobuh

Verdict of the Administrative Court from 3 October 2007

Po nalaženju ovoga suda odluka Upravnog suda da se tužba odbije kao neosnovana pravilna je i zasnovana na zakonu i takvom odlukom nije povrijeđen zakon na štetu tužioca, pri čemu su u presudi dati pravilni razlozi kojima se sud rukovodio prilikom donošenja presude.

Nije sporno da troškove postupka (stvarne troškove) u vezi sa ostvarivanjem prava na pristup informaciji snosi podnosilac zahtjeva, u skladu sa posebnim propisom (čl.19. Zakona o slobodnom pristupu informacijama).

„Having in mind that in terms of Art. 19 of the cited law a special regulation has not been passed, it is clear that by applying Art. 3 and 107 para 1 of the Law on General Administrative Procedure the accusing party i.e. the requester has the obligation to compensate obviously actually incurred costs of procedure, for the request.”

Sa izloženog a na osnovu čl.46. st.2. Zakona o upravnom sporu odlučeno je kao u izreci.

VRHOVNI SUD REPUBLIKE CRNE GORE

Podgorica, 28.11.2006. godine

Zapisničar,
Mirjana Orović, s.r.



Predsjednik vijeća,
Stanka Vučinić, s.r.

Stanka Vučinić

Verdict of the Supreme Court from 28 November 2007