

8. THE PRINCIPLE OF URGENCY

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Administrative Procedure

The time limits for passing decisions per request for access to information and its delivery to the requester are determined in accordance with the principle of urgency of procedure.

The principle of urgency of procedure conditioned that the request for access to information is to be decided upon in a summary procedure, wherein the time limits for passing an order and its delivery are precisely determined and in a period much shorter compared to time limit provided for by regulations of the general administrative procedure.

The procedure of access to information is regulated by the Law on Free Access to Information and the Law on General Administrative Procedure and encompasses requests for free access to information, repeated requests, appeals to the authority of second instance and repeated appeals.

Time limits for response on appellate briefs are:

- Upon request for information – 8 days
- Upon appeal – 15 days
- Upon repeated requests, or appeals – 7 days

It is prescribed that the appeal must be lodged within 15 days from delivery of the response, i.e. until expiration of the time for response, whereas time limits for submission of repeated requests and appeals are not prescribed.

In case of silence of administration, when an appeal is lodged on the first day upon expiration of the response time limit, and a repeated request is filed immediately upon expiration of time for appeals, that is, when legal remedies are used in a fully efficient way, the duration of the legal procedure is 30 days.

The Law on Free Access to Information, Article 15, Article 16, Item 1 and article 22

Upon the request for access to information, the governing authority decides in a summary procedure.

The governing authority shall, on request for free access to information pass a decision and deliver it to the appellant instantly, and not later than eight days from the day of submission of the request.

The governing authority competent for deciding upon an appeal shall pass a decision upon an appeal and deliver it to the appellant within a period of 15 days from the day of lodging the appeal.

The Law on General Administrative Procedure, article 224

An appeal shall be lodged within 15 days from the day of delivery of the decision, unless otherwise stipulated by the law.

The Law on Administrative Dispute, Article 18

If a second instance authority fails to reach the decision regarding the appeal of a party against a decision brought at the first instance within 60 days or in a shorter period stipulated by the law, and is not made within an additional period of 7 days upon repeated appeal, the party may institute an administrative dispute as if the appeal were dismissed.

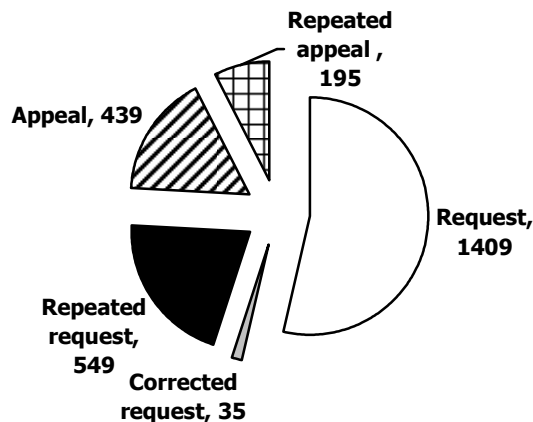
A party can also act in a manner from Item 1 of this article when upon its request a decision was not made by the first instance authority after whose act an appeal shall not be permitted.

8. The principle of urgency

Upon coming into effect of the Law on Free Access to Information on December 20th 2005 to September 30th 2007, MANS has submitted 6248 requests for information, and by October 25th 2007 the administrative procedure was completed for 95% requests submitted within the observed period, i.e. based on 5931 requests.

The access was granted for 44% or 2627 of requested information.

In the procedure upon request, i.e. within 8 days, access was granted to 54% of all information announced by institutions in all stages of the administrative procedure, whereas 1% was announced upon correction of the request, 21% upon repeated request, 17% upon appeal, and 7% upon repeated appeal.



Experience shows that when there is readiness of institutions to grant access to information, they most often do it immediately upon submission of the request, i.e. in the first stage of the administrative procedure.

Taking into account the number of requests submitted, MANS was unable to make a fully efficient use of legal remedies immediately upon expiration of time limits, but lodged appeals within 15 days from the day of response or the day of expiration of response time limit, and repeated requests and appeals immediately upon expiration of time limit, therefore all stages of administrative procedure lasted on average:

- 8 days (time limit for response to a request)
- + 15 days (time limit for lodging an appeal)
- + 15 days (time limit for a response to an appeal)
- + 7 days (time limit for a response to a repeated request or appeal)
- = 45 days**

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When calculating the average number of days required for access to information, time limits for different stages of the procedure have been used as weights. Thus for acting upon request, the time limit is 8 days and hence the weight is also 8. In case of the correction of a request, the weight is calculated as a sum of the time limit for a response upon request which is 8 days, and the time limit for response upon a repeated request of 8 days and equals 16, whereas it is implied that the corrected requests and the request for correction were submitted on the same day.

Upon repeated request, the weight is calculated by adding up the time limit for response upon request and the time limit for response upon a repeated request and amounts to 15 days since the repeated requests were submitted immediately upon expiration of the time due for response. The weighted average for an appeal is calculated as the sum of time limit of 8 days for a response upon a request, the time limit of 15 days for lodging an appeal and the time limit of 15 days for a response upon an appeal and equals 38 days.

In case of repeated appeal, the weight is extended by additional 7 days compared to an appeal and amounts 45 days, since the repeated appeals were lodged immediately upon expiration of time prescribed for response upon an appeal.

The account of the total time expressed in days (item no. 3), required for access to all information to which access has been granted is made by multiplying the number of notices by weights regarding the stage of the procedure.

Finally, the average number of days required for access to all information is calculated by division of the total time required for access to all approved information in all stages of the procedure by the total number of information to which the access has been granted.

Item No.	Description	Request	Correction of request	Repeated request	Appeal	Repeated appeal	Total
1	Number of information to which access is granted	1.409	35	549	439	195	2.627
2	Time limit (in days)	8	$8 + 8 = 16$	$8 + 7 = 15$	$8 + 15 + 15 = 38$	$8 + 15 + 15 + 7 = 45$	-
3	Total time required for access to all approved information, in days (1 x 2)	11.272	560	8.235	16.682	8.775	45.524
Average number of days required for access to information (45.524/ 2.627)							17.33

On average, the access to information is granted within a period of 17 days.

Administrative Dispute

In case the requester does not get a response or is not satisfied with the reply in the administrative procedure within a period of 30 days, he may file a complaint to the Administrative Court, thus instituting an administrative dispute.

The administrative dispute is regulated by the Law on Administrative Disputes which does not stipulate the period within which the verdict should be given.

The Law on Free Access to Information, Article 24

The requester for access to information or another privy has right to a judicial protection in an administrative dispute.

The procedure upon an action regarding the access to information is urgent.

The Law on Administrative Dispute, Article 1

In an administrative dispute the court decides on the legitimacy of an administrative act and the legitimacy of another specific act when stipulated by the law.

The Law on Free Access to Information stipulates that the procedure upon an action regarding access to information is urgent, but the time for giving verdicts is not prescribed, which causes significant problems in practice in terms of time required for access to information.

Upon our request for interpretation of the principle of urgency in the administrative procedure, we have been delivered a response of the Registrar of Court and the Minutes of the meeting of the Administrative Court.

UPRAVNI SUD REPUBLIKE CRNE GORE

Su. br. I – 25/05

Podgorica, 29.08.2005. godine

ПОДГОРИЦА

ZAPISNIK (Izvod)

sa VI Sjednice sudija Upravnog suda RCG održane dana 29.08.2005. godine.

Sjednica započeta u 10 časova.

Sjednicom predsjedava Branislav Radulović – predsjednik suda
Zapisnik vodi Mirjana Miličković - stručni saradnik

Predsjedavajući je predložio dnevni red, a kako predloga za izmjenu ili dopunu istog nije bilo, za Sjednicu je usvojen sljedeći:

Dnevni red:

1. Godišnji raspored poslova : dodjela predmeta sudijama i formiranje vijeća.

Tok sjednice:

1. Godišnji raspored poslova : dodjela predmeta sudijama i formiranje vijeća.

"The presiding judge and other judges agreed that older cases and urgent cases shall have the priority in deciding. However, the President of the Court, in agreement with the presidents of panels, shall state the real reasons for urgent procedures, so that urgent actions upon some cases shall not be abused in so much as the aforementioned shall receive clients on Tuesdays from 9 to 12 a.m. and thereby be familiar with reasons for urgent actions."

ZAPISNIČAR
Mirjana Miličković

Mirjana Miličković

PREDSEDNIK SUDA
Branislav Radulović

Branislav Radulović

The decision/act delivered by the Administrative Court on March 15th, 2006

8. The principle of urgency

UPRAVNI SUD
REPUBLIKE CRNE GORE

Su.br. IV-87/06
Podgorica, 15.03.2006.

NVO - M A N S -
BROJ. 061430-440 odgovor
PODGORICA, 23.03.2006.

MREŽA ZA AFIRMACIJU NEVLADINOG SEKTORA

81 000 Podgorica,
Stari aerodrom, zgrada Čelebić II/9

PREDMET: Zahtjev za dostavljanje informacije od 15.03.2006.

"The Administrative Court, in principle, decides upon cases in order of arrival of actions to the court, which means that older cases have priority over, tentatively speaking, more recent ones.

It should be taken into consideration that all specific cases to be decided upon before the Administrative Court are, more or less, matters of urgency. That, however, requires, in the nature of things, that the priority should be given to older cases. "

Sl.list RCG 27/04). Zakon nekad i izričito navodi da se odluka mora donijeti u tačno određenom roku, pa se mora dati prioritet takvim predmetima u odnosu na ostale (npr. član 14 st. 2 Zakona o upravnom sporu - Sl.list RCG 60/03).

Međutim, u određenim situacijama, i u slučaju kada zakon ne daje prioritet nekom predmetu, taj predmet se može na osnovu pismene predstavke hitno uzeti u razmatranje, što zavisi od mnogih okolnosti koje se ne mogu unaprijed predvidjeti. Te okolnosti stranka obrazlaže u podnesku koji

"There is no a specific act by which defines the procedure of submitting an initiative for a case to be acted upon as a matter of urgency. However, in connection with that, pursuant to the law on Free Access to Information, we are you sending a copy of the abstract of the record from the meeting of judges of the Administrative Court held on 29.08.2005, which in a way, relates to your request."

zapisnika sa sjednice sudija Upravnog suda održane 29.08.2005. godine koji se na neki način odnosi na ono što tražite.



SEKRE TAR SUDA
Srđan Žarić

The Act of The Administrative Court from March 15th, 2007

8. The principle of urgency

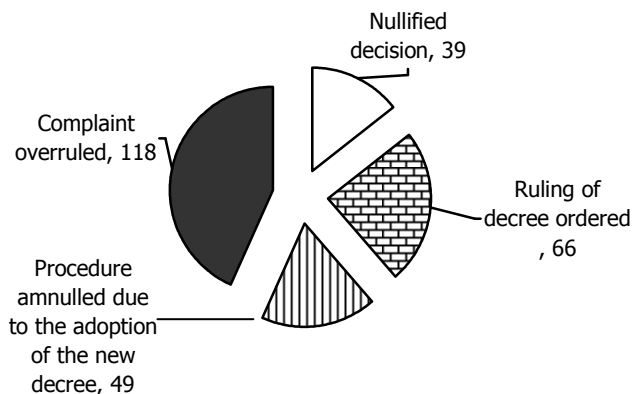
From coming into effect of the Law on Free Access to Information on December, 20th 2005 to September, 30th 2007, MANS filed 959 complaints, out of which 234 or 24% referred to misuse of substantive law, 702 or 73% were related to the violation of procedure, and 23 or 2% of all complaints were based on more accounts.

Description	Filed complaints	% of the total number of complaints	Given verdicts	% of verdicts compared to the number of submitted complaints
Misuse	234	24%	69	29%
Violation of procedure	702	73%	189	27%
On more accounts	23	2%	14	61%
Total	959		272	28%

The Administrative Court has given 272 verdicts, and the Administrative dispute has been completed for **28% of filed actions**, out of which 29% were filed for the misuse of law, 27% brought on the account of the violation of procedure and 61% of actions brought on more accounts.

In 56 % of verdicts, The Administrative Court ruled in favour of MANS by revoking the decisions in dispute or warranting their passing, or the institutions, during the procedure passed decisions we were satisfied with and the procedure was consequently annulled.

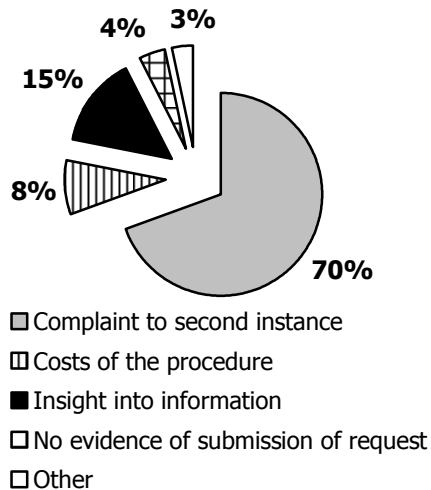
Namely, upon bringing an action it is delivered to the sued party/defendant/respondent by the Administrative Court for explanation. In that stage the sued party can make a decision to annul its own decision, or, in the case of silence of the administration, pass a decision.



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In that case the Court requires that the appellant declares whether he/she abates the action or extends it to a new decision. The statistical data show that only in 18% of cases upon which an administrative dispute is put in issue, the procedure is dismissed because the institutions, during the procedure before the Court, passed new orders which we, as requesters, were content with.

In 43% or 118 decisions our actions were dismissed. Of this number, 70% of verdicts refer to complaints refer to silence of administration, wherein the second instance authority was not known to us and therefore we did not lodge appeals, because of which bringing of actions was not permitted. In 15% of cases the verdicts dismissed requests by which we contended the manner by which access to information was granted, 8% referred to actions due to costs of the procedure, in 4% we did not have evidence that the request had been submitted, and 3% of actions were dismissed for other reasons.



The Court has the possibility to give a meritory verdict which shall fully replace a decision of an authority.

The Administrative Court, has not given a meritory verdict yet, and when it was claimed by an action the Court stated that "the state of facts in the documents of the case offers no ground for giving such a verdict."

In spite of verdicts by which decisions are annulled and passing new of ones is warranted while taking into account the objections from the verdict, the institutions, often, on the same grounds, repeatedly deny access to information, by which the long procedure of access to information is turned into a vicious circle.

The Law on Administrative Dispute, Article 35

If The Administrative Court annuls the disputable decision and the nature of things permits this the Court may pass a meritory judgement on the case if:

- The Court established the actual facts during an oral debate;
- the annulment of the disputable decision and a renewed procedure before the appropriate authority caused a damage to the complainant which would be difficult to compensate;
- it is evident, on the grounds of public hearing or other evidence in the source of case, that the actual facts are different from those established during the administrative procedure;
- a decision has already been annulled in the same dispute, and the competent authority has fully acted upon the verdict;
- a decision has already been annulled in the same dispute, and the competent authority does not pass a new decision within 30 days of the annulment or within other time determined by the Court;
- competent second instance authority of has not passed an order on the basis of submitted appeal, or the first instance authority when an appeal is denied by the law.

In case from paragraph 1, items 4, 5, and 6 of this article the Administrative Court may establish the facts itself and on the grounds of the facts established in such a way give a verdict.

An order/decision from paragraph 1 of this article shall fully replace the annulled decision.

Case study 13: Acting of authorities upon an action and extending of the procedure

The Agency for Economic Restructuring and Foreign Investments of Montenegro proclaimed the contracts on privatization of the biggest companies in Montenegro proclaimed a trade secret, the revealing of which might jeopardize commercial and other economic, private and public interests.

Upon action of MANS, The Administrative Court annuls the decision of the Agency as unlawful and warrants passing of a new order.

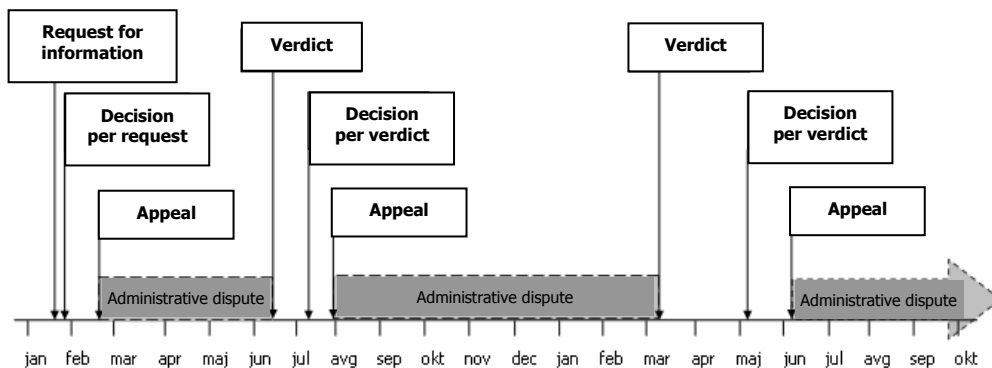
The Agency passes a new decision upon a verdict and on the same grounds forbids access to information.

The Administrative Court, upon a new action, re-annuls the order as being unlawful.

The Agency passes a new decision upon a verdict wherein it requests not to be in possession of required information.

MANS re-lodges an action.

Description of the procedure	Date	Result
Date of submitting a request	January 18, 2006	-
Date of passing a decision	January 24, 2006	Access denied
Date of bringing an appeal	February 23, 2006	-
Date of giving of a verdict	June 13, 2006	Decision annulled
Date of passing an order upon the verdict	June 21, 2006	Access denied
Date of rebringing an appeal	July 31, 2006	-
Date of giving of a verdict	March 10, 2007	Decision annulled
Date of passing an order upon the verdict	May 4, 2007	No information
Date of bringing an appeal	June 6, 2007	Pending



The procedure has not been completed yet, having lasted for 20 months.