INTRODUCTION

Following strong pressure of the international institutions and civil society organizations, after more than two years and several drafts of the law, on November 8 2005 the Parliament adopted the Law on Free Access to Information.

Thus the citizens of Montenegro obtained the right and the possibility to require and obtain information held by the state bodies, which has led to significant changes in former relations between the state and the citizen. This law represents one of the key mechanisms for public control of the institutions in the system, for only little information can remain hidden from the eyes of the public in comparison to previous practice.

Since the law came into force, MANS has been realizing a project for monitoring its implementation by testing the political will and readiness of institutions to publish delicate data which the public could not access so far.

The aim of this publication is to present the results achieved so far in the implementation of the law, as well as to indicate the current problems in accessing the information held by the state bodies and to provide grounds for considering amendments to the regulations and for improvement of practice.

The procedure of access to information is regulated by the Law on Free Access to Information, the Law on General Administrative Procedure and the Law on Administrative Dispute and includes: submission of requests for information, complaints to a second instance body and repeated request or complaint, complaints to the Administrative Court and request for extraordinary examining of the decisions of the Administrative Court submitted to the Supreme Court.

Since December 20 2005 till September 30 2007, MANS submitted 6248 requests for free access to information, and we were allowed access for 44% or 2627 requests. Procedures in which access to information was allowed lasted on average 17 days.

Many institutions tried in different ways to avoid publishing the information they hold, in all phases of the procedure.

Obstructions existed even in the phase when the request for information was submitted, for some institutions avoided to put a stamp on the submitted requests. The Administrative Court in those cases refused our complaints for reasons of silence of administration as we did not have

proofs that the requests had really been submitted. Still, this problem was overcome in practice by submitting requests by means of registered mail.

Some institutions tried to avoid the obligation of publishing information, claiming that they are not public authority bodies, in terms of the Law on Free Access to Information. Court practice has confirmed that all the legal persons that according to the law or other enactments perform activities of public interest are obliged to respect the Law on Free Access to Information.

At the beginning of implementation of the Law, certain institutions failed to submit responses in the prescribed form. After a number of complaints and appeals with the explanation of procedure violation, as well as sentences of the Administrative Court, the institutions evidently built capacities to submit responses in the form prescribed by the law.

A high degree of silence of administration in all phases of the procedure shows that this is the most frequent and the most obvious obstacle to access information. On average institutions do not respond to almost 50% of requests for information, and they treat complaints in a similar way too, and only in the last phase of the administrative procedure does the silence of administration decrease to 25% of the number of requests.

One of the key problems in the implementation of the law is the manner in which institutions make possible access to the required information. Some institutions make possible access exclusively by means of direct insight into documents, not allowing their content to be permanently recorded in any manner whatsoever. Court practice has confirmed that institutions have a primary obligation to consider the possibility to realize access to information in the manner required in the request, and to determine some other manner only if there are objective obstacles or difficulties, having at the same time the obligation to explain it.

Most institutions respect such a standing of the Court, so that even in cases when access to information is allowed in the form of insight, they allow documents to be scanned or their content to be recorded in some other manner. However, prescribing of insight into information only is still abused in practice, especially by institutions holding information on privatization.

Institutions are obliged to charge only the real costs of access to information and to do so based on a special regulation which two years after the adoption of the law has not yet been passed. In practice, certain institutions calculated procedure costs in unrealistically high amounts, which significantly hinders access to information. However, court practice has shown that the body making the decision shall determine the cost of the procedure, in accordance with the Law on General Administrative Procedure.

Certain institutions tried to restrict access to information of public importance by quoting exceptions prescribed by the Law, and not explaining how the publishing of information could threat other interests. Court practice has confirmed that institutions have the obligation to conduct legally prescribed noxiousness test and to prove that damage caused by publishing of the requested information would be greater than the public interest to know is.

The law prescribes that the procedure based on the complaint related to access to information is urgent, but the time limit for rendering the verdict is not defined, which in practice causes significant problems. On average, the period of waiting for a verdict of the Administrative Court to be rendered is 5 months.

Administrative Court has not yet made any competent decisions, so that despite the verdicts by which the decisions are annulled and making of new ones ordered, institutions frequently ban access to information on the same grounds again, which turns an already long procedure of access to information into a vicious circle.

Efforts of the citizens to exercise their right to information have met resistance of particular structures of the system, especially of those whose work has so far been covered by a veil of secrecy. Those institutions directly or indirectly try to influence the requestors, which represents a significant restriction of the right to free access to information.

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