



CASE STUDY

POLITICAL PARTIES AND MONEY - FROM PUBLIC TO SECRET

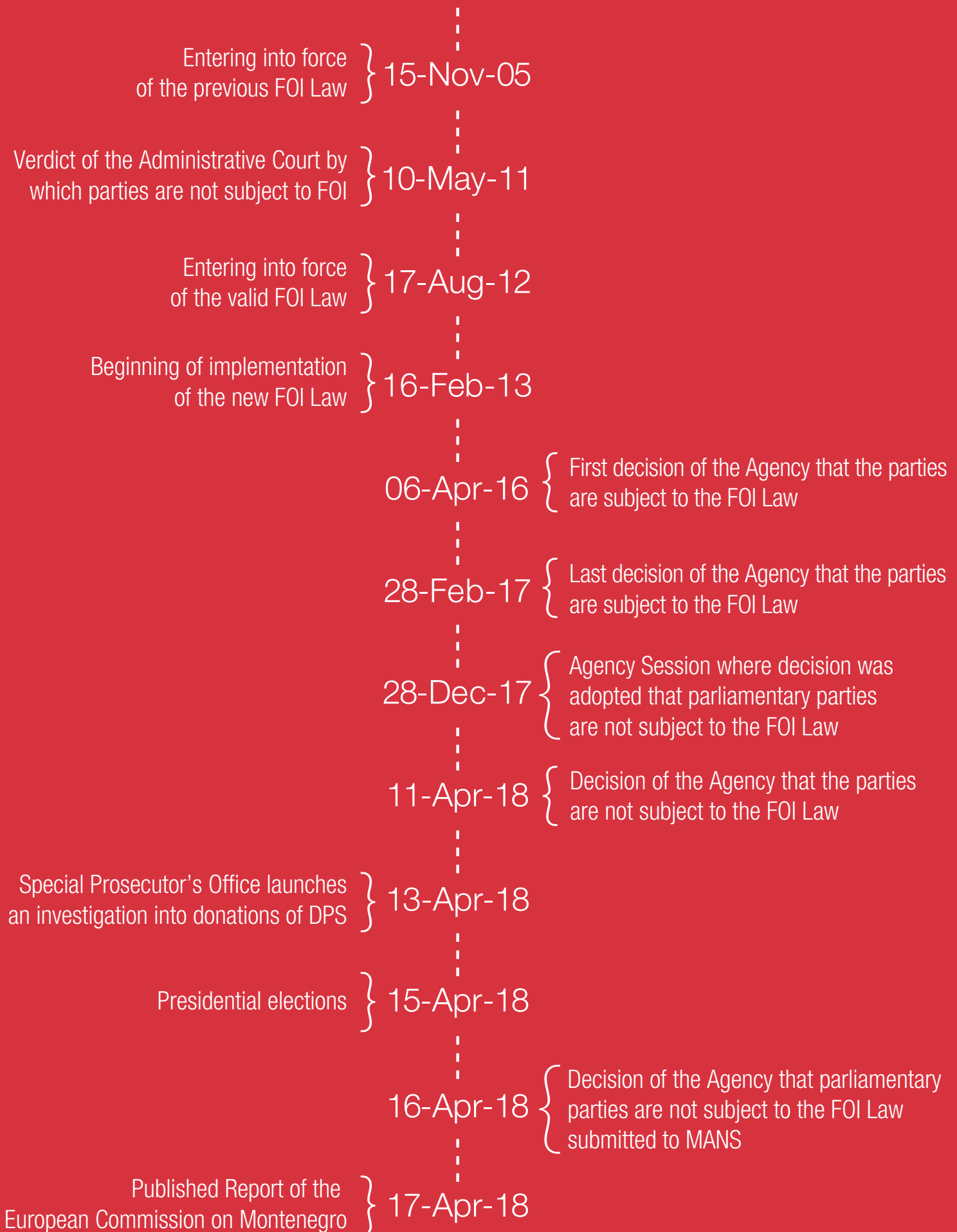
Podgorica, 2018



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HOW PUBLIC MONEY IN MONTENEGRO BECAME SECRET?





“Public institutions urgently need to improve implementation of the law and comply promptly with access to information requests, especially in areas where there is a risk of corruption.”

European Commission (2018), COMMISSION STAFF WORKING DOCUMENT Montenegro 2018 Report

The Agency for Personal Data Protection and Free Access to Information, with a sudden turn in the interpretation of the Law on Free Access to Information, contrary to the previously established practice, has enabled political parties in Montenegro to hide data on their finances.

This change came after the Special prosecution launched an investigation into suspicious donations of the largest political party, based on data obtained by MANS precisely through use of the Law on Free Access to Information.

This case study presents in what way the Agency changed the interpretation of the Law and, after 152 decisions in which it obliged the parties to publish data, it found that political entities are no longer obliged to act under the same Law. This study contains evidence that it is not a legal, but a political interpretation of the Law that favours the spreading of already widespread corruption in the financing of political parties and election campaigns.

Why the public should have an insight into the finances of political parties?

There are many reasons why political parties need to be completely transparent when it comes to their finances, regardless of the type of funds the money comes from. Transparency of financing of political parties is a matter of democratic standards, but also of respecting of several laws.

According to the Law on Financing of Political Parties in Montenegro, “political entities may acquire funds for regular operation and the election campaign from public and private sources”¹, and according to the same Law, “the total amount of donations collected by parliamentary parties must not exceed the funds received from the budget”².

Hence, in the first place, **the Law stipulates that parliamentary parties are mainly financed from citizens’ money, and therefore it should not be disputable whether citizens should have an insight into the spending of that money.** However, citizens must be provided with information on the quantity and manners in which their money is spent, which is also defined by the Law on Free Access to Information (FOI Law). With the aim of exercising democratic control of power and realization of

human rights and freedoms, this law prescribes **the right of the public to know**³, which implies „access to information on a legal entity whose work is mainly funded from public revenues”⁴, and therefore on parliamentary parties.

When it comes to funds from private sources, the responsibility of the parties to the public on its spending is no less. **Full transparency of the financing of political parties, especially in countries where corruption is widespread⁵, is one of the key mechanisms to combat the impact of economic power centres on the sphere of politics.** In order for parties not to be the mean for achieving specific and individual interests of party donors, openness towards the public and transparency of cash flows are the basic guarantees of democracy and protection of the public interest, as well as legitimacy of the work of political entities.

Finally, only **a complete insight into the financial structure enables the verification of the legality in financing of parties from private funds** (sources of donations, money amounts, types of donations, etc.).

³ Article 5 of the Law on Free Access to Information

⁴ Article 9 of the Law on Free Access to Information

⁵ According to the latest Corruption Perception Index by Transparency International, Montenegro is on the scale between 0 and 100 with score 46 and still in the group of countries prone to corruption. (https://www.transparency.org/news/feature/corruption_perceptions_index_2017)

¹ Article 3 of the Law on Financing of Political Entities and Election Campaigns

² Article 12 of the Law on Financing of Political Entities and Election Campaigns

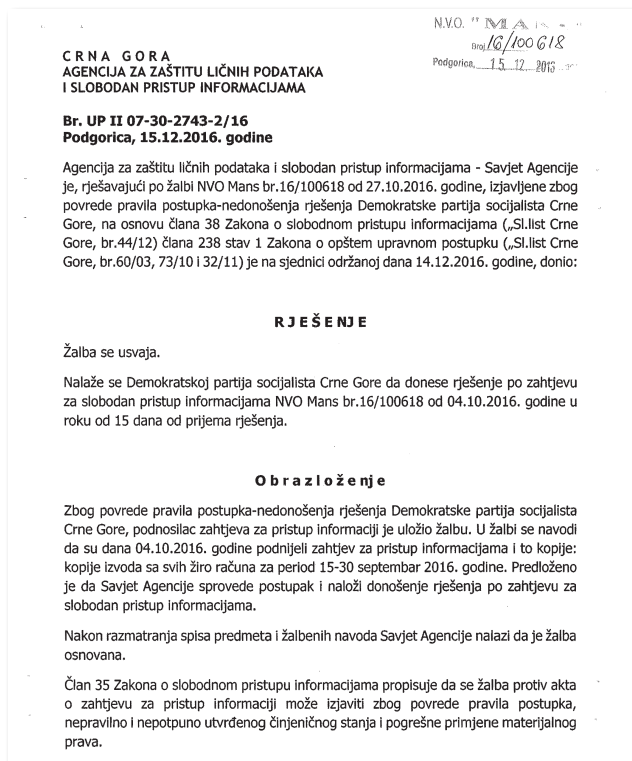
Decision of the Agency – when public money becomes secret?

The Agency for Personal Data Protection and Free Access to Information, with its decision submitted to the Network for Affirmation of NGO Sector (MANS) on April 16, 2018, abruptly changed the established decision-making practice, and enabled political parties in Montenegro to hide data on their finances. Thus, the Agency violated the FOI Law, introduced the practice of a political rather than a legally-based decision, challenged the legitimacy of its entire previous work and discredited the concept and the right of the public to have an insight into the finances of political parties.

Over the past two years⁶ MANS has submitted nearly 2000 requests for access to information to all parliamentary political parties in Montenegro, based on the Law on FOI. Bearing in mind that for about two-thirds of the requests (1,282) we have not received the responses from the parties, MANS filed appeals to the Agency according to the Law. The first decision approving MANS' appeal was submitted in April 2016, thus confirming that political parties in Montenegro are subject to the FOI⁷.

⁶ Period from July 28, 2016 until May 2018

⁷ No. UP II 07-30-150-2/16 as of April 6, 2016

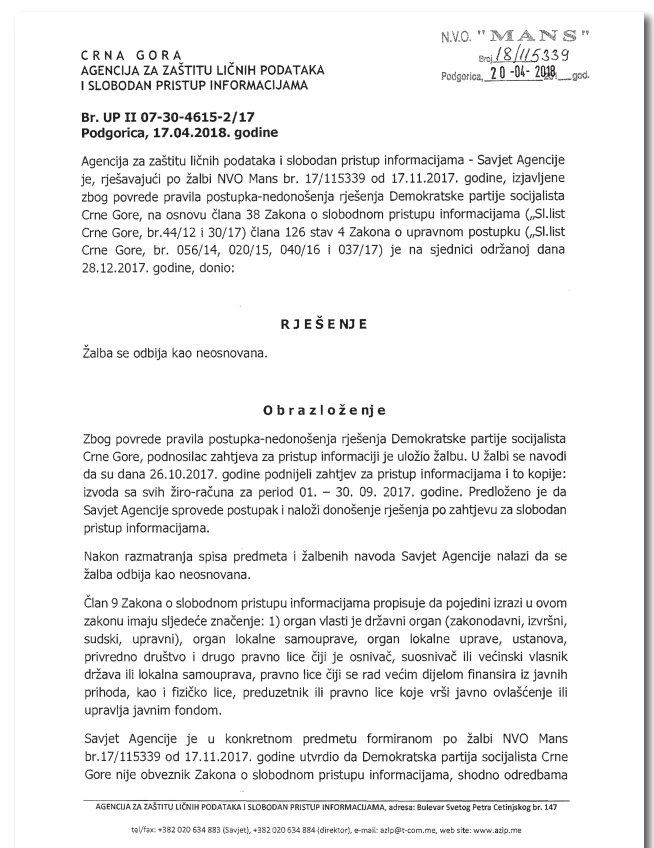


This institution then passed another 152 identical decisions, and the last one⁸ was submitted to MANS in March 2017. After that, there was a one-year period during which the Agency did not make any decision regarding complaints related to financing of political parties, although the deadline for decision making is 15 days, according to the Law.

In April 2018, the Agency for the first time submitted a decision rejecting the appeal, on the grounds that political parties are not obliged to act on requests for free access to information. Thus, during the validity of the same law, regarding the same request and the same party (Democratic Party of Socialists), the Agency made two completely different decisions.

The first controversial decision was submitted to MANS the day after the presidential elections in Montenegro, i.e. three days after the Special Prosecutor launched an investigation into suspicious donations of DPS, which MANS discovered precisely thanks to the data obtained based on the FOI Law.

⁸ No. UP II 07-30-7-2/17 as of February 28, 2017



Same Law, same request, same party, different decisions

This decision was adopted at the session held on December 2017⁹, while it took almost four months for the Agency to submit it to MANS.

However, immediately after submitting this decision, in less than a week, the Agency submitted MANS another 90 decisions in similar cases, for which it made no decision for months. Each of them enabled political parties to hide data on finances.

When public money becomes secret – what is the legal issue?

In new decisions, the Agency refers to the Administrative Court verdict from May 2011 according to which political parties are not obliged to act under the FOI Law.¹⁰

This verdict states that only the **legal entities that exercise public authority** are obliged to publish information in accordance with the FOI Law. Therefore, although parliamentary parties are fi-

nanced from public funds, since they do not exercise public authority, they are not obliged to comply with the Law.

However, this **verdict was adopted at the time of validity of the old provision**¹¹.

The amendments to the Law that came into force in 2013 define differently the legal entities that are obliged to act under the Law¹².

The requirement that legal entities be entrusted with the exercise of public authority is removed, hence, it is sufficient that their work is financed mainly from public revenues.

In accordance with such legal solution, it is undeniable that parliamentary parties are subject to the FOI Law and are obliged to provide the public with information on their work, since they are mainly financed from the budget.

⁹ Data form decision by APDP UP II 07-30-4615-2/16 as of April 17, 2018

¹⁰ UP no. 394/2011 as of May 10, 2011

¹¹ Official Gazette of Montenegro, no. 68/2005 as of November 15, 2005

¹² Article 9, paragraph 1, Law on Free Access to Information

WHY PARLIAMENTARY PARTIES ARE SUBJECT TO THE FOI LAW?

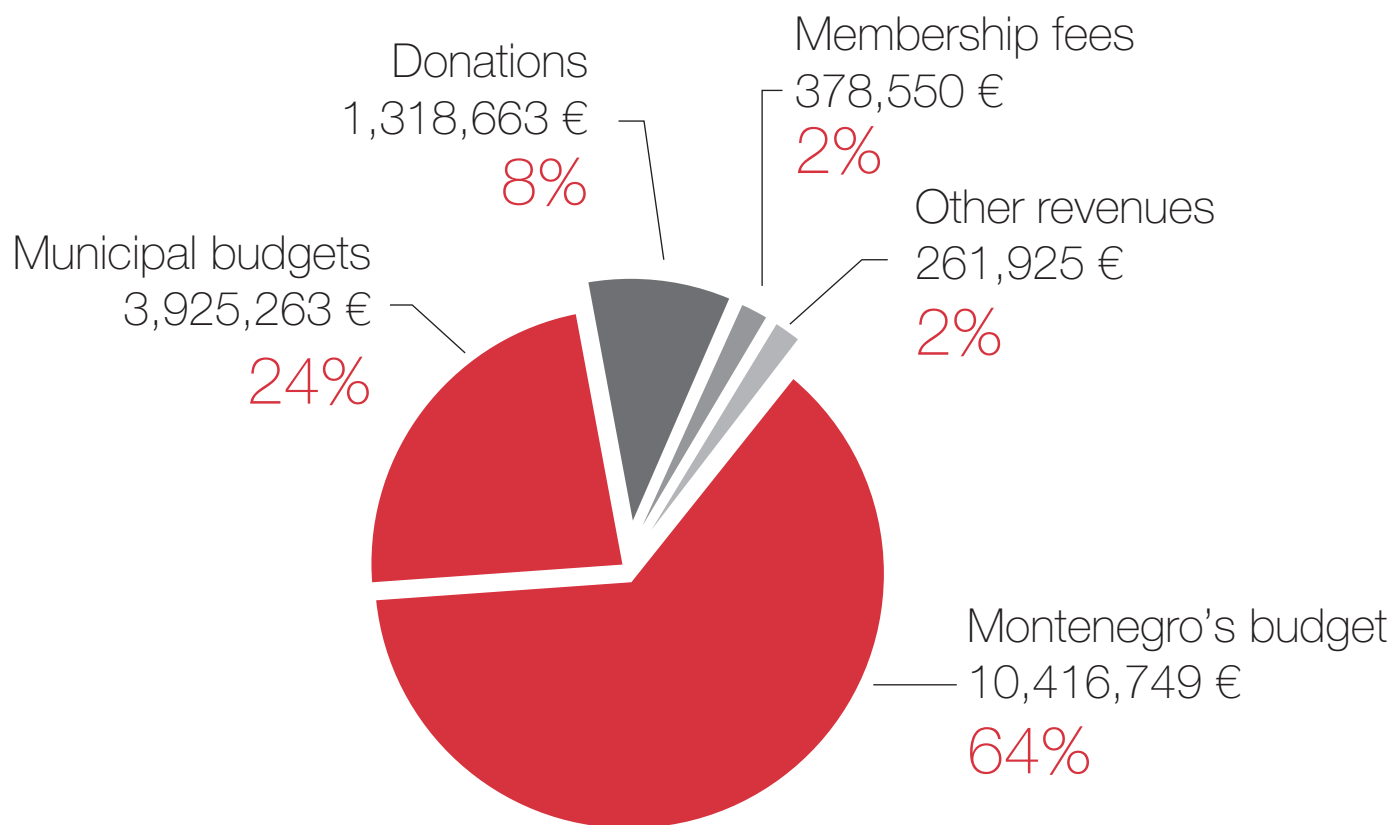
Public authority shall mean a state authority (legislative, executive or judicial); local self-government authority; local government authority; public institution; public company or other business entity that has been granted to perform public powers, which is founded by the State or a local self-government authority or which is funded from public revenues and with which the information is filed;

Law on Free Access to Information – Article 4, Paragraph 1, Item 3 OLD PROVISION VALID UNTIL 2013

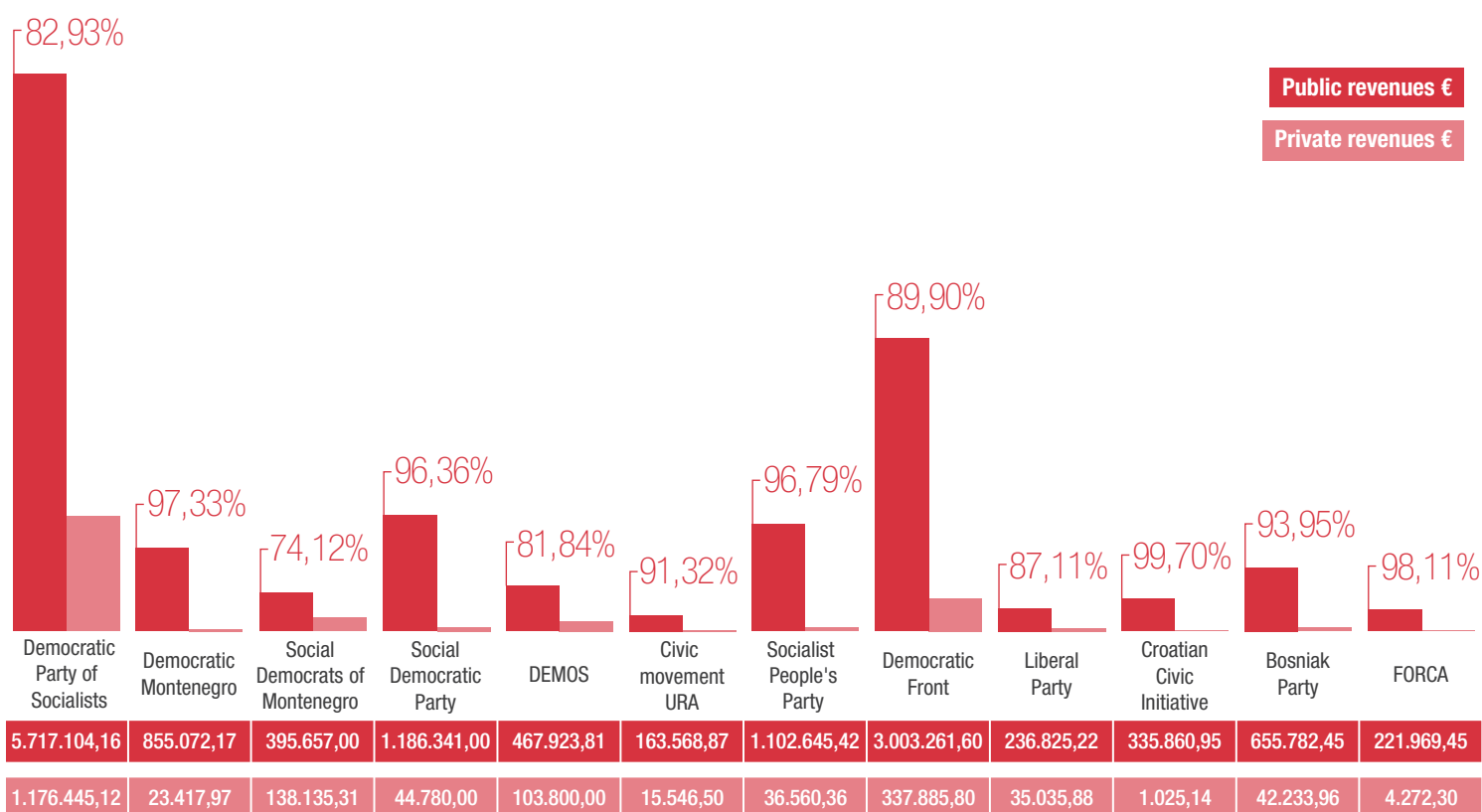
Public authority shall mean a state authority (legislative, executive or judicial); local self-government authority; local government authority; public institution; public company or other business entity another legal person founded, co-founded or majority owned by the State or a local self-government authority, a legal entity whose work is mainly financed from public revenues, as well as a natural person, entrepreneur or legal entity that exercises public authority or manages a public fund;

Law on Free Access to Information – Article 9, Paragraph 1 NEW PROVISION VALID FROM 2013

OFFICIAL SOURCES OF FINANCING OF POLITICAL PARTIES IN 2016 AND 2017



PRIVATE AND PUBLIC REVENUES OF PARLIAMENTARY PARTIES IN MONTENEGRO IN 2016 AND 2017



Official data¹³ show that **in the last two years parliamentary political parties received € 14.3 million from the state and local budget or 88% of the total funds available to them.** The data show that each parliamentary party was mainly financed from public funds. Moreover, the majority financing of parliamentary political parties from public funds is envisaged by the Law on Financing Political Entities and Election Campaigns. Therefore, it is undisputable that **the work of all parliamentary political parties is mainly financed from public revenues, and they are therefore obliged to act in accordance with the FOI Law.**

Bearing in mind the aforementioned, MANS will file lawsuits with the Administrative Court against all decisions of the Agency for Free Access to Information which allowed the parties to hide data, in the hope that the verdicts will be rendered as soon as possible, taking into account the importance of access to information in combating political corruption.

When public money becomes secret – public explanation

The lack of harmonisation of the Agency's decision with the Law raises the issue of the grounds for establishing a legally unfounded practice as a principle of the work of this institution. Muhamed Gjokaj, President of the Agency Council, publicly referred only to the issue of delays in submitting new decisions, but not on changing of the practice.¹⁴

The only explanation of the reasons for different handling of the same appeals came from Radenko Lacmanović, a member of the Council of that institution. According to him, the Agency decided to change the interpretation of the Law after meeting with “international practice” within the “study visit” to Serbia, Slovenia, Croatia, Macedonia and Poland.¹⁵

Obviously, this **stance is not based on Montenegrin Law, nor on valid international documents and standards, but on laws and practices of certain countries that are not applied in any way in Montenegro.**

In addition, the member of the Agency Council justifies the new practice of the Agency with the fact that parties according to the Law on Financing of Political Entities submit reports on their revenues to the Agency for Prevention of Corruption (APC), and that the public can thus be informed on parties' finances.¹⁶

It is familiar, however, that **parties in APC forms report only in terms of total figures, without publishing invoices, contracts or bank account statements, which are the only way to prove in what way the money is actually spent. Moreover, even if all data is submitted to APC, political parties are still obliged to comply with the FOI Law and publish documentation of their finances.**

Finally, Lacmanović's latest argument is that according to the FOI Law, not all entities financed by public funds must provide information to the public on the consumption of that money unless they exercise public authority.¹⁷

As already mentioned, **such provision existed in the old Law, while according to the current provision, the circle of legal entities that have an obligation to comply to it, including all those financed mainly from public revenues, is wider.**

When public money becomes secret – what is the political issue?

Based on documents obtained under the Law on Free Access to Information, MANS discovered suspicious donations of the ruling Democratic Party of Socialists (DPS).

Namely, according to financial documentation provided by DPS, at least € 30,000 of donations to that party was paid from bank accounts of inhabitants of one of the poorest settlements in Montenegro. In addition, dynamics of donation, especially of the top officials of the party, were also suspicious, as well as the way of paying the money. Following the publication of the MANS investigative story¹⁸, **the Special Prosecution announced on April 13 that it launched an investigation against DPS.**

¹³ The data is taken from the Report of the State Audit Institution for 2016 and from the Annual Consolidated Financial Report (Agency for the Prevention of Corruption)

¹⁴ Newspaper Pobjeda, Odluku donijeli prošle godine, April 26, 2018

¹⁵ TV Vijesti, Show Direktno, May 13, 2018

¹⁶ Ibid.

¹⁷ Ibid.


¹⁸ <http://www.mans.co.me/en/donations-of-citizens-or-black-funds/>

IZVIĐAJU DONACIJE 13.4.2018 20:27

Specijalno tužilaštvo "češlja" uplate DPS-u

MANS navodi kako DPS više od godinu odbija da dostavi izvode sa svog žiro računa za posljednje dvije sedmice parlamentarne kampanje 2016. godine. Za te dvije sedmice DPS je prikupio 170.000 eura čije porijeklo još nije analizirano

818 PREGLEDA 12 KOMENTARA



AUTOR: Ljubica Miličević **FOTO:** SCREENSHOT (TV VIJESTI)

MANS-ova analiza finansijske dokumentacije DPS-a, prema kojoj je ta partija za parlamentarne izbore 2016. godine, za svega nekoliko dana, prikupila najmanje 30.000 eura donacija iz siromašnog podgoričkog naselja Vrela Ribnička, kao i podatak da su donacije u Beranama stizale i od onih koji su 2012. od Centra za socijalni rad dobijali novčanu pomoć, doveli su do reakcije Specijalnog tužilaštva.

To je Televiziji Vijesti saopštila specijalna tužiteljka Sanja Jovičević.

"U Specijalnom državnom tužilaštvu, nakon objave MANS-a koja se odnosi na podatke u vezi sa uplaćenim donacijama DPS-u tokom parlamentarnih izbora u 2016. godini, formirani su spisi predmeta i u toku izviđaja u tom pravcu prikupiće se podaci i dokumentacija radi ocjene iznijetih navoda", navodi se u saopštenju.

News on launching an investigation by the Special Prosecutor's Office on donations of DPS

Portal Vijesti, April 13, 2018

On April 15, the presidential elections were held. The following day, the Agency submitted the first decision to MANS that changed the practice and released parties from obligation to publish information. At the same time, the President of the Agency Council was a member of DPS immediately prior to the appointment, although the Agency, according to its Statute, was an "independent body"¹⁹.

Two days after submitting the decision, the European Commission Report was published indicating that procedures regarding the cases of possible misuse of public funds for political purposes have not been completed and criticized the lack of results in the field of fight against corruption, especially at the highest levels.

¹⁹ Article 1 of the Statute of the Agency for Personal Data Protection and Free Access to Information

At the same time, **this was a period in which one election campaign ended, and the new one started**, which involved collecting of the new party money, bearing in mind that local elections in 11 municipalities in Montenegro were scheduled for May 20 and May 27.

This dynamics of events on Montenegro's political scene gives a specific context for a sudden shift in the Agency's conduct. This enabled the parties to finance their campaigns and activities under the veil of secret, which may be contrary to the Laws, which in such circumstances cannot be established, since the FOI Law is the only legal act that allows full transparency of the parties' finances.

International organization Transparency International (TI) also believes that denial of the request for free access to parties' finance information is a political issue and a step backwards for transparency, and **condemned Agency's conduct**. "Governments should be transparent about how political campaigns are funded and where the money comes from. Freedom of information requests are a vital way for citizens and civil society to hold their governments to account", said Delia Ferreira Rubio, chair of Transparency International.

N.V.O. "MANS"
Brod: _____
Podgorica, 16.04.2018. god.

CRNA GORA
AGENCIJA ZA ZAŠTITU LIČNIH PODATAKA
I SLOBODAN PRISTUP INFORMACIJAMA

Br. UP II 07-30-947-2/18
Podgorica, 11.04.2018. godine

Agencija za zaštitu ličnih podataka i slobodan pristup informacijama - Savjet Agencije je, rješavajući po žalbi NVO Mans br. 18/116610 od 14.02.2018. godine, izjavljene zbog povrede pravila postupka-nedonošenja rješenja Liberalne partije Crne Gore, na osnovu člana 38 Zakona o slobodnom pristupu informacijama („Sl.list Crne Gore, br.44/12 i 30/17) člana 126 stav 4 Zakona o upravnom postupku („Sl.list Crne Gore, br. 056/14, 020/15, 040/16 i 037/17) je na sjednici održanoj dana 05.04.2018. godine, donio:

RJEŠENJE

Žalba se odbija kao neosnovana.

Obrazloženje

Zbog povrede pravila postupka-nedonošenja rješenja Liberalne partije Crne Gore, podnositelj zahtjeva za pristup informaciji je uložio žalbu. U žalbi se navodi da su dana 24.01.2018. godine podnijeli zahtjev za pristup informacijama i to kopije: izvoda iz knjige blagajne za period 1 septembar – 30 novembar 2017.godine. Predloženo je da Savjet Agencije sprovede postupak i naloži donošenje rješenja po zahtjevu za slobodan pristup informacijama.

Nakon razmatranja spisa predmeta i žalbenih navoda Savjet Agencije nalazi da se žalba odbija kao neosnovana.

Član 9 Zakona o slobodnom pristupu informacijama propisuje da pojedini izrazi u ovom zakonu imaju sljedeće značenje: 1) organ vlasti je državni organ (zakonodavni, izvršni, sudski, upravni), organ lokalne samouprave, organ lokalne uprave, ustanova, privredno društvo i drugo pravno lice čiji je osnivač, suosnivač ili većinski vlasnik država ili lokalna samouprava, pravno lice čiji se rad većim dijelom finansira iz javnih prihoda, kao i fizičko lice, preduzetnik ili pravno lice koje vrši javno ovlaštenje ili upravlja javnim fondom.

AGENCIJA ZA ZAŠTITU LIČNIH PODATAKA I SLOBODAN PRISTUP INFORMACIJAMA, adresa: Bulevar Svetog Petra Cetinjskog br. 147
tel/fax: +382 020 634 883 (Savjet), +382 020 634 884 (direktor), e-mail: azp@t-com.me, web site: www.azp.me

First decision that changed the practice of the Agency Submitted to MANS on April 16, 2018

WHY THE DECISION BY AGENCY IS BASED POLITICALLY AND NOT LEGALLY?

- *Inconsistency in interpretation of legal norms*
- *Political argumentation and explanation of decisions*
- *Political meaning of decision-making terms*
- *Legitimizing the hiding of political parties' finances*
- *Less transparency = more space for political corruption*

This organization has particularly expressed concern about the timing of the FOI rejections which was in proximity to upcoming local elections, which also raised concerns that the FOI process has become politicised.²⁰

When public money becomes secret – space for political corruption

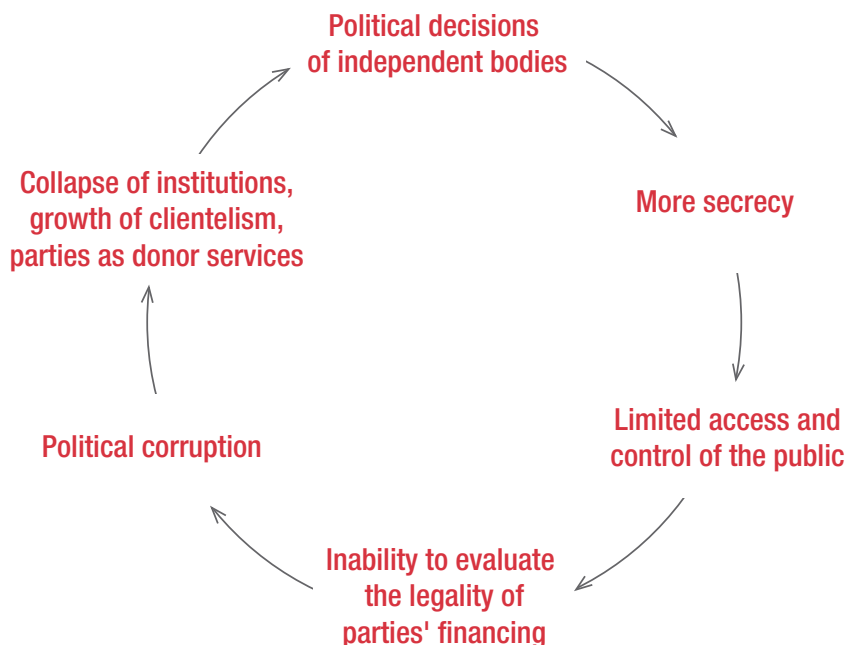
Changing the practice by which Agency attempts to legitimize the hiding of data on parties' finances, in addition to direct violation of the Law by the institution that should be the first guarantor of its implementation, as well as politicization and discrediting of the entire process and the concept of free access to information, **such behaviour of the Agency provides a wide space for political corruption.**

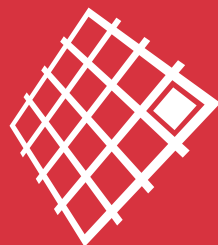
In the legal system of Montenegro, only the Law on Free Access to Information provides a legal mechanism for full public control of the financing of po-

litical parties. As noted, according to the Law, the Agency for Prevention of Corruption may obtain reports from the parties indicating only the amount of money spent per party, but without documentation on the basis of which the legality of spending of that (mainly public) revenues can be measured. If we add the fact that political parties are among institutions most prone to corruption, as indicated in numerous studies by Transparency International, a proactive stance regarding disclosure of their finances cannot be expected.

Since political corruption is most prominent in systems that had a transition to multi-party system, which the European Commission continuously warns about, it is clear that full transparency guaranteed by the power of the Law is necessary on the path to eradicating corrupt practices and establishing of clientelistic relationship, in which parties represent services for policy-making and decision-making in the interests of their donors. Finally, non-selectivity and timeliness in informing voters on political entities are crucial in the choice of their legitimate representatives.

²⁰ https://www.transparency.org/news/pressrelease/rejection_of_freedom_of_information_requests_raises_alarm_in_montenegro





mans

www.mans.co.me