

The Agency for Prevention of Corruption

and acting upon reports due to violation of the Law on Financing of Political Entities and Election Campaigns during 2020 Parliamentary Elections

EYES WIDE SHUT



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Publisher:

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Editor and author:

Vanja Ćalović Marković

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Marijana Subotić

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INTRODUCTION

Full transparency of the financing of political entities and election campaigns is one of the key mechanisms for ensuring trust in the electoral process, especially in countries where corruption is widespread. Transparency of money trail and openness towards the public are the basic guarantors of democracy and protection of the public interest, as well as the legitimacy of the work of political entities.

MANS monitored the implementation of the Law on the Financing of Political Entities and Election Campaigns [1] (LFPEEC) during the campaign for 2020 parliamentary elections.

The Agency for Prevention of Corruption [2] (APC) is in charge of control and supervision over the implementation of that law, thus, the focus of this analysis is on the actions of that institution in relation to possible violations of the law determined by MANS' monitoring.

The Agency's management was changed in the eve of the parliamentary elections, but our cases show that this did not lead to a change in practice and more detailed control of the legality of financing the election process. Official APC's report again shows that there were no major abuses and violations of the law in financing of the parliamentary elections.

This analysis contains concrete case studies that point to issues in implementation of the law, and is a continuation of MANS' ongoing efforts to point to shortcomings in the Agency's actions.

The first chapter provides a brief overview of the legal framework that was amended ahead of the election campaign by the will of the then parliamentary majority, while the opposition boycotted the work of the Parliament. The second chapter analyses how the Agency interpreted and implemented the new provisions of the law governing advertising in the election campaign.

Third chapter is dedicated to the analysis of the institution's acting on reports related to possible misuse of state funds, while the fourth chapter refers to political parties.

A separate chapter points to the lack of liability of APC's management for violations of the law, as well as the fact that the Council of that institution does not substantially exercise its oversight and control role. The last chapter focuses on the lack of transparency of the Agency's work, which not only prevented the public from controlling its activities, but also from monitoring the election process.

While this publication focuses on the analysis of APC's acting on reports, MANS pointed to additional possible abuses in the financing of the election campaign in a special report. [3] Detailed information on the financing of the parliamentary election campaign is available at: http://www.mans.co.me/finansijski-profil-izbori-2020/.

See: Law on Financing of Political Entities and Election Campaigns, "Official Gazette of Montenegro", no. 3/20 and 38/20.
 In addition to the Agency, supervision over implementation of this Law shall be carried out by the State Audit Institution, which shall audit the annual consolidated financial statements of all political entities with a parliamentary status. See: Articles 55 and 63.
 MANS" report - Implementation of the Law on Financing of Political Entities and Election Campaigns- Monitoring of parliamentary elections in Montenegro. Available at: http://www.mans.co.me/en/wp-content/uploads/2021/05/Implementation-of-law-FPP.pdf.



Non-transparent, untimely and unlawful actions of the Agency for Prevention of Corruption have reduced the transparency of campaign financing for the 2020 parliamentary elections and encouraged violations of the Law on Financing of Political Parties and Election Campaigns.

The Agency determined who was subject to the law and gave interpretations of the new legal provisions only after the elections because it did not act ex officio, and it delayed adopting of decisions on reports.

This institution narrowly interpreted the provisions of the law, and found that they did not apply to marketing agencies, internet portals and billboard advertising companies, which opened space for numerous abuses.

APC rejected all reports against institutions that did not publish data on spending during the election period or hid certain transactions. Even when the institutions admitted that the data had not been published, the Agency found that they had not violated the law.

In rare cases when the Agency decided that the law had been violated, it is not known whether it initiated misdemeanour proceedings and what was the outcome.

The Agency did not monitor whether the persons who give donations to political parties are connected to companies that perform activities of public interest, although that prohibition is prescribed by the law. It delayed adopting decisions on reports, and then postponed making that information available to the public, which made it impossible for citizens to find out about illegalities in the financing of the election campaign.

The Agency itself violated the law, while its Council approved such actions. That institution published price lists of entities that provide advertising services in the election campaign, although they were submitted after the legal deadline. APC met only part of the legal obligations to ensure the transparency of data on the spending of public funds, which allowed the institutions to change the published data subsequently in order to cover up violations of the law.

By unjustifiably restricting access to data, the Agency partially or completely prevented civil society and the public from monitoring the implementation of some provisions of the law during the election campaign. By hiding the information, the Agency also limited public oversight of the legality of that institution's work. Part of the data was disclosed more than half a year after the elections, after it was previously declared secret. Some documents were completely censored prior to disclosing.

LEGAL FRAMEWORK

Financing of election campaigns is regulated by the Law on Financing of Political Entities and Election Campaigns [4] (LFPEEC), which, among other things, seeks to ensure the legality and transparency of revenues and expenditures of political entities in the election campaign. At the very end of 2019, the Parliament of Montenegro adopted this law at the proposal of the MPs of the ruling majority, without a serious discussion and with a boycott of the then opposition. [5] In April 2020, the provisions that limited the spending of the budget reserve in the election year were changed, with the explanation that it was necessary to help the economy and individuals in connection with the COVID pandemic. [6]

Legal provisions define that during the election campaign, political entities shall keep and update regularly the records of funds raised from private sources and costs of the election campaign. [7] Political entity shall submit to the Agency **a report** on the contributions of legal and natural person on a fifteen-day basis. [8] Political entity shall submit to the Agency an interim report on the expenses of the election campaign five days before the Election Day [9], while within 30 days from the day of holding of the elections, it shall prepare a report on the origin, the amount and structure of the funds from public and private sources raised and spent on the election campaign, and shall submit it to the Agency, with supporting documentation. The Agency shall publish all the abovementioned reports within the legally prescribed deadline.

The political entity shall submit a report on **media advertising** during the election campaign to the Agency within seven days before the Election Day on the prescribed form, including information on the price and received discounted price for media advertising of the political entity. Entities offering services of media advertising of the election campaign shall submit the **price list** for the services of media advertising to the Agency that shall not be changed during the election campaign, as well as contracts they have concluded with political entities. [10]

In the process of determining a possible violation of the law, in addition to regular reports, political entities shall also submit other necessary information to the Agency upon request. In case of violation of the law, the Agency may pronounce the measure of issuance of warning to the political entity if it finds shortcomings which can be remedied during the control, initiate misdemeanour proceedings [11], and make decisions on temporary suspension of the transfer of budgetary assets to political entities, in accordance with law. In addition, decisions of the Agency may cause a political entity a partial or complete loss of allocated amount of budgetary assets to finance election campaign expenses when it generates revenues or uses funds contrary to the law. [12] For violating the law, a **fine** from 5,000 euros to 20,000 euros shall be imposed on a legal entity, and 500 to 2,000 euros for natural persons. [13]

Within 60 days from the announcement of the final election results, the Agency shall publish a **report on the control** and supervision of election campaign financing. [14]

[4] See: Law on Financing of Political Entities and Election Campaigns, "Official Gazette of Montenegro", no. 3/20 and 38/20.
 [5] The law was discussed and adopted at the same session as the controversial Law on Freedom of Religion.
 [6] More information in the MANS' Publication "Implementation of the Law on Financing of Political Entities and Election Campaigns- Monitoring of parliamentary elections in Montenegro", Chapter S2.3. Amendments to the Law on Financing of Political Entities in the run-up to the elections, p. 93; available at: http://www.mans.co.me/en/wp-content/uploads/2021/05/Implementation-of-law-FPP.pdf.

FPP.pdf . [7] See: Article 58, paragraph 1. [8] See: Article 53. [9] See: Article 54. [10] See: Article 54. [11] The procedure in which it is decided whether there is a violation of the Law may be initiated ex officio by the Agency, based on its own knowledge or upon a report by a natural or legal person, see Article 56. [12] See: Article 60. [13] See: Chapter IX. Penal provisions - Law on Financing of Political Entities and Election Campaigns, "Official Gazette of Montenegro", no. 3/20 and 38/20. [14] See: Article 58. Paragraph 6.

2. ADVERTISING IN THE ELECTION CAMPAIGN

The Agency's unlawful and untimely actions encouraged violations of the law by media advertising companies and reduced the transparency of election campaign financing. Thus, during the campaign, participants in the election process did not know which advertisers were acting in accordance with the law.

First, the Agency published price lists of entities that provide advertising services in the election campaign that were submitted after the legal deadline. Only after MANS' initiatives did they admit that they had arbitrarily extended the deadline and stated that those who did not comply with it must not broadcast political marketing during the election campaign.

While the Agency delayed decision-making, these entities started providing services to electoral lists. Instead of determining violations of the law ex officio, APC reacted only after MANS filed reports, and with a great delay, thus, it made most of the decisions after the elections. Even today, it is not known whether it initiated misdemeanour proceedings and what was the outcome.

The Agency narrowly interpreted the provisions of the law, and found that they did not apply to marketing agencies, internet portals and billboard advertising companies. This opened space for numerous abuses and reduced transparency of financing of the election campaign.

In cases when the media did not submit marketing contracts with political entities within the prescribed period of five days, APC found that they had violated the law, but did not initiate these procedures ex officio as well.

APC also published price lists of public broadcasters which were prohibited from paid advertising of political entities during the election campaign. When it comes to MANS' reports, APC stated it had no competence to make decisions.

2.1. Overview of filed reports

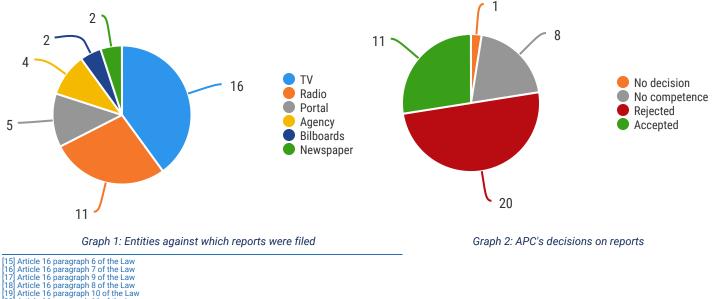
Latest amendments to the Law prescribe a number of obligations for entities offering services of media advertising during the election campaign:

- They shall submit the **price** list for the services of media advertising to the Agency, within **ten days following the election call.** [15]
- If they do not submit the price list with the legal deadline, they shall be **prohibited** from providing media advertising services during the election campaign. [16]
- It is specified that **the price list shall not be changed** [17] during the election campaign, while the price for all services provided to political entities shall be **nominally set.** [18]
- They shall submit **contracts they have concluded with political entities** in connection with the election campaign to the Agency within five days from the date of contract conclusion [19], while the Agency shall publish it within five days. [20]

Additionally, the Law on the Election of Councillors and Members of Parliament stipulates that **local public** broadcasters shall ensure free of charge presentation of validated candidate lists submitting entities and **shall not be allowed**, **under any conditions**, **to enable the presentation and explanation of electoral programme of candidate list submitting entities or their advertising beyond those timeslots**. [21]

MANS filed reports against the media, portals, marketing agencies and billboard advertising companies for not submitting price lists on time, while APC published them on its website as valid. We also filed report against entities that published political marketing according to the price list that was submitted late or was not submitted at all. In addition, MANS filed report against the media that did not submit contracts with political entities in a timely manner, as well as public broadcasters that broadcasted paid political marketing.

MANS submitted 40 reports to APC, of which 11 were accepted, 20 were rejected, for eight the institution stated that it had no competence to make decisions, while regarding one we were informed that a procedure had been initiated, but the decision was never submitted to us.



[20]	Article 16	paragraph 11	of the Law	Councillors and		
[21]	Article 51	of the Law on	Election of	Councillors and	d Members of	of Parliament

Name of the media or company	Date of submitting of the price list	Grounds for report	APC's decision
Television			
Serbian Radio Television	07.07.2020	Price list after the deadline	Rejected
	21.07.2020	Price list after the deadline	Accepted
RTV Budva		Publishing, price list after the deadline	Rejected
		Advertiser - public broadcaster	No competence
	15.07.2020	Price list after the deadline	Accepted
RTV Rožaje		Advertiser - public broadcaster	No competence
	09.07.2020	Price list after the deadline	Rejected
RTV Nikšić		Advertiser - public broadcaster	No competence
RTV Herceg Novi		Advertiser - public broadcaster	No competence
A1	04.08.2020	Publishing, price list after the deadline	Accepted
Novi TV		Publication without the price list	Accepted
TV Corona	10.08.2020	Publishing, price list after the deadline	Accepted
	03.07.2020	Publishing, price list after the deadline	Rejected
RTV Pljevlja		Advertiser - public broadcaster	No competence
Nova M		Contract not published	Rejected
Prva		Contract not published	Rejected
Radio			
Radio Antena M	22.07.2020	Price list after the deadline	Accepted
Radio Titograd	06.07.2020	Price list after the deadline	Rejected
Radio Mag	29.07.2020	Price list after the deadline	Accepted
	07.07.2020	Price list after the deadline	Rejected
Radio Bar		Advertiser - public broadcaster	No competence
Radio S1 and S2 Herceg Novi	09.07.2020	Price list after the deadline	Rejected
	29.07.2020	Price list after the deadline	Accepted
Radio Elmag		Publishing, price list after the deadline	Rejected
Skala radio		Publishing without the price list	Accepted
Radio Tivat		Advertiser - public broadcaster	No competence
Radio Kotor		Advertiser - public broadcaster	No competence

Name of the media or company	Date of submitting of the price list	Grounds for report	APC's decision
Newspaper			
Dnevne novine		Contract not published	Accepted
Pobjeda		Contract not published	Accepted
Portals			
Portal Antena M	23.07.2020	Publishing, price list after the deadline	Rejected
		Publishing without the price list	Rejected
Borba		Contract not published	No decision
Portal Volim Podgoricu	03.08.2020	Publishing, price list after the deadline	Rejected
Pv informer	23.07.2020	Price list after the deadline	Rejected
Marketing agencies			
	24.07.2020	Price list after the deadline	Rejected
Pink Media M		Publishing, price list after the deadline	Rejected
		Contract not published	Rejected
		Contract not published	Rejected
Billboards			
CG MEDIA LLC Berane	10.07.2020	Price list after the deadline	Rejected
Budva Media	15.07.2020	Price list after the deadline	Rejected

Table 1: Overview of MANS' reports submitted to APC against advertisers

2. 2. Late submitting of the price list

Following our initiatives, APC admitted that it had arbitrarily extended the deadline for submitting the price list and stated that those who did not comply with it were not allowed to provide services during the election campaign. The Agency published on its website the price lists that the advertisers had submitted after the legal deadline, and only after our initiative did they mark them separately.

During the election campaign, due to the untimely actions of the APC, participants in the election process could not know which advertisers were acting in accordance with the law. Disputed advertisers started providing services, but the Agency did not react ex officio, instead, it found violations of the law only after our reports. However, it is not known whether it initiated misdemeanour proceedings and what was their outcome.

The decision to call elections for MPs in the Parliament of Montenegro was passed on June 20, 2020, and according to Article 3 of that decision, it came into force on the day it was passed, thus the **deadline for submitting the price list was June 30, 2020**.

APC published the price lists of certain media on its website, although they were submitted to it after the deadline. [22] MANS filed reports and asked APC to remove all price lists that were not submitted in accordance with the Law, so as not to mislead the participants in the election process, and initiate misdemeanour proceedings if any of the registered media provided media advertising services.

APC extended the legal deadline

Following our reports, APC issued a press release [23] confirming that the media that submitted price lists after July 3 were prohibited from providing services to political entities during the election campaign.

Saopštenje

Svi subjekti koji su planirali da pružaju usluge medijskog oglašavanja tokom izborne kampanje, bili su dužni da do 3. jula 2020. Agenciji za sprječavanje korupcije dostave cjenovnik usluga medijskog oglašavanja u izbornoj kampanji.

Do tog roka, ukupno 27 subjekata je dostavilo cjenovnike, a Agencija je u cilju potpune transparentnosti sve cjenovnike koji su joj dostavljeni u roku, kao i nakon roka, objavila na svojoj internet stranici.

Svi subjekti koji su dostavili cjenovnike u roku, sa stanovišta zakona iz nadležnosti Agencije, mogu nesmetano da političkim subjektima pružaju usluge medijskog oglašavanja tokom izborne kampanje.

Sa druge strane, Agencija će izvršiti monitoring i pokrenuti prekršajne postupke protiv onih obveznika zakona za koje utvrdi da su političkim subjektima pružali usluge medijskog oglašavanja tokom kampanje, a nisu u roku ili uopšte nisu dostavili cjenovnik ovom organu.

Photo 1: Press release of the Agency for Prevention of Corruption, issued on August 12, 2020

^[22] Available at: https://www.antikorupcija.me/me/kontrola-politickih-subjekata-izbornih-kampanja/2007021132-cjenovnici-kampanji/ [23] Available at APC's website: http://www.antikorupcija.me/me/novosti/2008121149-saopstenje/.

However, in that statement, they did not explain why July 3 was set as the deadline for submitting the price list when, according to the law, the deadline had expired three days earlier.

We learned from the APC's note that the institution extended the deadline for submitting the price list until July 3 referring to Article 8 of the Law on Administrative Procedure.

član 16 Zakona o finansiranju političkih subjekata i izbornih kampanja propisuje obavezu subjektima koji pružaju usluge <u>medijskog oglašavanja</u> izborne kampanje da Agenciji dostave cjenovnik usluga medijskog oglašavanja u izbornoj kampanji u roku od deset dana od dana raspisivanja izbora, odnosno do 30. juna kada je u pitanju izborna kampanja za izbore koji će biti održani 30. avgusta 2020. godine. U tom roku, samo je 13 subjekata dostavilo cjenovnika izbornog oglašavanja Agenciji za sprječavanje korupcije. Nalazeći da je zbog epidemije kovid-19 i mjere NKT-a kojom se ograničava okupljanje na otvorenom i zatvorenom prostoru, medijski prostor od ključnog značaja za predstavljanje političkih subjekata i njihovih predizbornih programa, Agencija je 1. jula 2020. godine, a nakon isteka zakonskog roka, na osnovu čl.8 Zakona o upravnom postupku, uputila poziv medijskim subjektima da dostave cjenovnike medijskog oglašavanja, kako bi se omogućila što kvalitetnija izborna kampanja i ravnopravno predstavljanje svih političkih subjekata. Nakon poziva Agencije, u roku od tri dana, još 14 medijskih subjekata je

Kralja Nikole 27/V	Agencija za sprječavanje korupcije	+382 20 44 77 01
Podgorica		kabinet@antikorupcija.me
Crna Gora		www.antikorupcija.me

Photo 2: Excerpt from APC's response, number: UPI-00-226/2-2020 from 20 August 2020

Law on Financing of Political Entities and Election Campaigns, Article 16, paragraphs 6 and 7

Entities offering services of media advertising of the election campaign shall submit the price list for the services of media advertising to the Agency, within ten days following the election call.

Entities that do not submit the price list for election advertising to the Agency in accordance with the deadline referred to in paragraph 6 of this Article shall be prohibited from providing media advertising services during the election campaign.

Law on Administrative Procedure, Article 8

A public authority shall enable the parties and other participants in the administrative procedure to exercise and protect their rights and legal interests as easily and efficiently as possible, taking care that the exercise of their rights and legal interests is not at the expense of the rights and legal interests of other persons and that it is not contrary to a public interest.

When an authorised person acting in official capacity who conducts an administrative procedure and renders an administrative act (hereinafter: authorised official), in the light of the existing factual situation, finds out or estimates that a party or another participant in the administrative procedure have grounds for exercising a right or legal interest, he/she shall warn the party or other participant of the legal consequences of their actions or omissions.

The ignorance or lack of awareness of the party or other participant in the administrative procedure cannot be at the expense of the protection of their rights and legal interests.

However, the Law on Financing of Political Entities and Election Campaigns specifies a deadline of 10 days and does not leave the possibility of extension, but it clearly prohibits providing of services in the election campaign in case the price lists are not submitted within the prescribed deadline.

APC warned entities that provide media advertising services only **after the deadline**, when the conditions were met to prohibit them from providing services. Article 8 of the Law on Administrative Procedure prescribes that a public authority shall enable the parties to exercise and protect their rights, taking care that it is not at the expense of the rights and legal interests of other persons.

In this case, legal entities that submitted price lists within the legal deadline were injured by the fact that their competition, which submitted price lists after the legal deadline, was enabled to provide services.

Subsequently marked price lists submitted with delay

The Agency did not remove the price lists submitted even after the deadline which it had extended by three days, but marked them as "price list after the deadline" after MANS publicly indicated and filed initiatives for the removal of those price lists.

Cjenovnik van 1	roka-Portal Onogošt	
		datum: 14.08.2020. objavljen: 14.08.2020
Cjenovnik van r	oka-Elmag i Mag radio	
		datum: 30.07.2020. objavljen: 30.07.2020
Cjenovn <mark>ik</mark> van r	roka-PV Informer Pljevlja	
		datum: 27.07.2020. objavljen: 27.07.2020
Cjenovnik van r	roka-Pink Media M	
		datum: 26.07.2020. objavljen: 27.07.2020.
Cjenovnik van r	roka-Antena M	
		datum: 23.07.2020. objavljen: 23.07.2020
Cjenovnik van 1	oka-Radio televizija Budva	
		datum: 22.07.2020. objavljen: 22.07.2020
Cjenovnik van r	oka-Radio televizija Rožaje	
		datum: 16.07.2020. objavljen: 16.07.2020.
Cjenovn <mark>ik</mark> van r	roka-S.O. Group DOO Budva	
		datum: 15.07.2020. objavljen: 15.07.2020.
Cjenovnik van r	roka -CG-Media DOO Berane	
		datum: 15.07.2020, objavljen; 15.07.2020.
Cjenovnik van r	oka - RTV Nikšić	
		datum: 10.07.2020. objavljen: 10.07.2020.
Jkupno: 169	# datum dokumenta	🔹 1 7 🚯 9 17 🍝

Photo 3: Part of the price lists on the APC's website that were marked as submitted after the expiration of the legal deadline

Decisions on the price lists only after the elections

Only after the elections the APC determined that the media that had submitted the price lists after the deadline did not violate the law if they did not provide services at the time of filing the initiatives.



mans

CRNA GORA Agencija za sprječavanje korupcije Mreža za afirmaciju nevladinog sektora - MANS Dalmatinska 188, 81000 Podgorica, Crna Gora Tel/fax: +382.20.266.326; 266 327; +382.69.446.094 mans@t-com.me, www.mans.co.me



Na osnovu člana 56 Zakona o finansiranju političkih subjekata i izbornih kampanja, podnosimo:

PRIJAVU

zbog povrede Zakona o finansiranju političkih subjekata i izbornih kampanja

Na internet stranici Agencije za sprječavanje korupcije objavljen je cjenovnik usluga izbornog oglašavanja Radio Bara, iako je <u>istekao rok za njegovo dostavljanje shodno članu 16 stav 6</u>Zakona o finansiranju političkih subjekata i izbornih kampanja.

Radio Bar je poslao cjenovnik ASK-u dana 07. jula 2020. godine.

DOKAZ: Odštampan prikaz e-maila kao i cjenovnika objavljenog na sajtu ASK-a, na adresi http://www.antikorupcija.me/media/documents/Radio_Bar.pdf

Photo 4: Excerpt from the NGO MANS' report, number: 59-RBR, from 24 July 2020





Crna Gora Agencija za sprječavanje korupcije Broj:UPI-02-02-171/42-2020

AGENCIJA ZA SPRJEČAVANJE KORUPCIJE na osnovu člana 56 Zakona o finansiranju političkih subjekata i izbornih kampanja ("Sl. list CG", br. 3/2020 i 38/2020) u vezi sa članom 18 Zakona o upravnom postupku ("Sl. list CG", br. 56/2014, 20/2015, 40/2016 i 37/2017), odlučujući o prijavi broj UPI 02-02-171/2020 od 24.07.2020. godine, podnijetoj protiv Radio Bara, zbog kršenja člana 16 stav 6 Zakona o finansiranju političkih subjekata i izbornih kampanja, dana 08.09.2020. godine, donijela je

RJEŠENJE

UTVRĐUJE SE da Radio Bar nije prekršio član 16 stav 6 Zakona o finansiranju političkih subjekata i izbornih kampanja nedostavljanjem cjenovnika usluga medijskog oglašavanja u izbornoj kampanji u roku od deset dana od dana raspisivanja izbora i pružanjem usluge medijskog oglašavanja izborne kampanje.

Photo 5: Excerpt from the APC's decision on the report, number: 59-RBR from September 8, 2020

On July 24, MANS filed reports with APC against the media that submitted the price list after the deadline, while that institution made decisions only on September 7 and 8, 2020.

During the

election campaign, due to untimely actions by APC, participants in the election process did not know which advertisers were acting in accordance with the law.

Despite the monitoring, violations found only after the reports

Only after our initiatives, the Agency determined that the law had been violated by those media for which there was evidence of publishing political marketing, and which submitted price lists after the legally prescribed deadline.

While APC was deciding on MANS' reports related to the delay in publishing the price list, most of the entities to which reports referred started providing services to political entities.

The Agency was obliged to initiate proceedings ex officio because it also conducted media monitoring. A press release [24] of that institution states:

"...The Agency will monitor and initiate misdemeanour proceedings against the reporting entities of the law that provided media advertising services to political entities during the campaign but did not submit the price list to this body within the deadline or at all."

APC's report on monitoring during the election campaign [25] also states that APC monitored the media advertising of political entities.

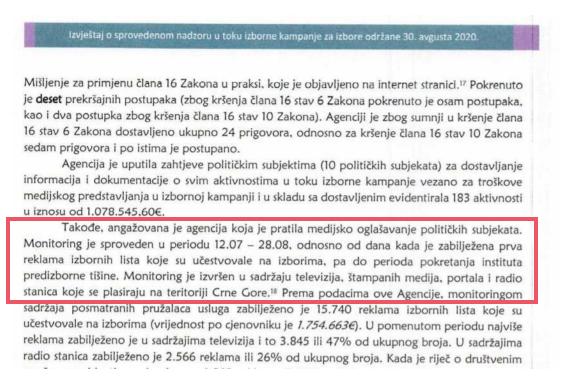


Photo 6: Excerpt from APC's report on conducted supervision during the election campaign for the elections held on August 30, 2020.

We expected APC to initiate proceedings ex officio, especially after the omissions they made with the price lists. However, during the election campaign, APC did not inform the public about violations of the law by some advertisers who were late in submitting the price list but started providing services.

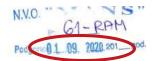
[24] Available at APC's website: http://www.antikorupcija.me/me/novosti/2008121149-saopstenje/ .
[25] http://antikorupcija.me/media/documents/lzvjestaj_o_sprovedenom_nadzoru_u_toku_izborne_kampanje_2020._god_1.pdf

Therefore, we filed new reports to APC and submitted the evidence of services provided, i.e. recordings or photographs of the advertisements.

Although APC was obliged to act ex officio, it was only after our initiatives that it established that certain entities had violated the law.

It is not known how many misdemeanour proceedings were initiated by APC and against which media. This information was first declared secret. and then APC allowed access to them, having previously deleted all information from the misdemeanour warrants, including the names of the legal entities against which they were initiated. [26]





Crna Gora Agencija za sprječavanje korupcije

Broj:UPI-02-02-173/5-2020

AGENCIJA ZA SPRJEČAVANJE KORUPCIJE na osnovu člana 56 Zakona o finansiranju političkih subjekata i izbornih kampanja ("Sl.list CG", br.3/2020 i 38/2020) u vezi sa članom 18 Zakona o upravnom postupku ("Službenom listu CG", br. 56/2014, 20/2015, 40/2016 i 37/2017), odlučujući o prijavi broj UPI 02-02-173/2020 od 24.07.2020.godine, podnijetoj protiv Radio Antene M, zbog kršenja člana 16 stav 6 Zakona o finansiranju političkih subjekata i izbornih kampanja, dana 28.08.2020.godine donijela je

RJEŠENJE

UTVRĐUJE SE da je Radio Antena M prekršila član 16 stav 6 Zakona o finansiranju političkih subjekata i izbornih kampanja nedostavljanjem cjenovnika usluga medijskog oglašavanja u izbornoj kampanji u roku od deset dana od dana raspisivanja izbora i pružanjem usluge medijskog oglašavanja izborne kampanje.

Obrazloženje

* * *

Nakon razmatranja spisa predmeta i ocjene navoda iz podnijete prijave, dostavljenog izjašnjenja te zakonskih odredbi, imajući u vidu da je Predsjednik Crne Gore izbore za poslanike Skupštine Crne Gore, za odbornike u Skupštini Opštine Andrijevica, Skupštini opštine Budva, Skupštini opštine Gusinje, Skupštini opštine Kotor i Skupštini opštine Tivat raspisao dana 20.06.2020.godine, da je krajnji rok za dostavljanje ejenovnika bio 3.jul.2020.godine, kao i da je cjenovnik Radio Antena M dostavila ASKu dana 21.07.2020.godine, te da je ista pružala usluge medijskog oglašavanja, što potvrđuju dostavljeni ugovori br.96/20 i br.97/20, Agencija za sprječavanje korupcije utvrđuje da je prijava broj UPI 02-02-173/2020 od 24.07.2020.godine osnovana, odnosno da je Radio Antena M prekršila odredbu člana 16 stav 6 Zakona o finansiranju političkih subjekata i izbornih kampanja.

Na osnovu izloženog odlučeno je kao u dispozitivu ovog rješenja.

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Photo 7: Excerpts from APC's decision, number: UPI-02-02-173/5-2020 from 28.08.2020

2. 3. Who are (not) the advertisers?

The Agency narrowly interpreted the provisions of the law, and found that they did not apply to marketing agencies, internet portals and billboard advertising companies. This opened up space for numerous abuses and reduced the transparency of election campaign financing.

Marketing agencies are not subject to the law

According to the Agency, advertising agencies which resell airtime do not provide media advertising services, and thus they are not subject to the law. Such interpretation has opened up a huge space for the abuse and the purchase of airtime through marketing agencies, without any public insight into the prices of that advertising.

MANS filed a report with APC against the company "Pink media M", which submitted the price list with a significant delay.

APC addressed the Agency for Electronic Media with a request to provide it with an opinion on whether the company is an electronic media, i.e. whether it can be considered an entity that provides media advertising services.

When they received an answer that the company had not been issued a broadcasting license, i.e. that it did not have the status of a broadcaster, APC concluded that the law did not apply to them. U vezi sa predmetnim, Agencija za sprječavanje korupcije se dopisom br. 02-02-175/5-2020 od 14. avgusta 2020. godine obratila Agenciji za elektronske medije da joj dostavi mišljenje li je "Pink media M" d.o.o. elektronski mediji u smislu Zakona o elektronskim medijima ("Sl. list CG", br. 46/10, 53/11, 6/13, 55/16 i 92/17) tj. da li se isti mogu smatrati subjektom koji pruža usluge medijskog oglašavanja izborne kampanje.

Agencija za elektronske medije je dana 21.08.2020.godine dostavila odgovor br. 02-837/1 u kojem se navodi da ta Agencija nije izdala odobrenje za emitovanje bilo televizijskog bili radijskog programa privrednom društvu »Pink media M« d.o.o. i da ovo privredno društvo nema status emitera u smislu važećeg Zakona.

Imajući u vidu sve navedeno, Agencija za sprejčavanje korupcije utvrđuje da je prijava broj UPI 02-02-175/2020 od 28.07.2020.godine, podnijeta protiv »Pink media M« d.o.o. neosnovana, odnosno da »Pink media M« d.o.o nije prekršio odredbu člana 16 stav 6 Zakona o finansiranju političkih subjekata i izbornih kampanja, jer isto privredno društvo nema status emitera u smislu važećeg Zakona pa se ne može se smatrati subjektom koji pruža medijsko oglašavanje.

Na osnovu izloženog odlučeno je kao u dispozitivu ovog rješenja.

Uputstvo o pravnoj zaštiti:

Protiv ovoga rješenja stranka može tužbom pokrenuti upravni spor pred Upravnim sudom Crne Gore, u roku od 20 dana od dana dostavljanja rješenja.



Photo 8: Excerpt from the decision of APC, number: UPI-02-02-175/7-2020 from 02.09.2020

Portals (are) not subject to the law

According to the Agency, portals are not subject to the law, because they were not recognized in the then applicable Law on Electronic Media and the Law on Media.

MANS filed a complaint against the portal Borba which published advertisements during the election campaign, although it had not previously submitted the price list.

According to the portal, it is a personal blog with free advertisements, and it does not have contracts with political entities.

APC requested explanations from the Agency for Electronic Media (AEM) and the Ministry of Culture on whether the portals fall into the category of the media.

AEM responded that the portals are electronic publications, not electronic media. The Ministry of Culture stated that, according to the Law on Media, portals are not treated as the media. Informativni portal "Borba" je, putem elektronske pošte dostavila izjašnjenje, koje je u Agenciji zavedeno pod brojem UPI 02-02-215/4-2020 od 19.08.2020. godine u kojem je navedeno da Portal Borba nije registrovan kao medij, već je riječ o ličnom blogu i da su sve reklame koje se na portalu nalaze besplatne. U izjašnjenju je takođe navedeno da se sa koalicijama i partijama može provjeriti da ne ppostoje nikakvi ugovori niti obaveze plaćanja jer je sve besplatno.

Clanom 16 stav 6 Zakona o finansiranju političkih subjekata i izbornih kampanja je propisano da su subjekti koji pružaju usluge medijskog oglašavanja izborne kampanje dužni da Agenciji dostave cjenovnik usluga medijskog oglašavanja u izbornoj kampanji u roku od deset dana od dana raspisivanja izbora.

U vezi sa tumečenjem ovog člana Zakona, Agencija za sprječavanje korupcije se dopisom br. 02-02-1882/2678 od 12. avgusta 2020. godine obratila Agenciji za elektronske medije da joj dostavi mišljenje o tome da li Zakon o elektronskim medijima podrazumjeva i portale, odnosno elektronske publikacije kao medije, odnosno subjekta koji pružaju usluge medijskog oglašavanja. U svom odgovoru br. 02-750/1 od 14.08.2020. godine Agencija za elektronske medije, pored ostalog, ukazuje na član 8 tačka 1 Zakona o elektronskim medijima kojim se definiše da je AVM usluga ona usluga koja je pod uređivačkom odgovornošću pružaoca usluge, čija je osnovna namjena emitovanje programa za informisanje, zabavu ili obrazovanje opšte javnosti putem elektronskih komunikacionih mreža, a može biti u obliku elektronskog medija (radijski ili televizijski program), AVM usluge na zahtjev i komercijalne audiovizuelne komunikacije. Takođe, ukazuju i na član 8 tačka 19 koji definiše elektronske publikacije kao urednički oblikovane internet stranice i/ili portali koji sadrže elektronske verzije štampanih medija i/ili informacije iz medija na način da su dostupni

širokoj javnosti bez obzira na njihov opšteg. Dalje, u svom odgovoru navode da Zakon o elektronskim medijima jasno pravi razliku između radijskih i televizijskih programa kao elektronskih medija i elektronskih publikacija, odnosno ne podrazumijeva ih kao elektronske medije.

Takođe, Agencija za sprječavanje korupcije se obratila i Ministarstvu kulture da joj dostavi mišljenje o tome da li Zakon o medijima podrazumjeva i portale kao medije. U svom odgovoru, koji je kod Agencije zaveden po brojem 02-02-1882/3056 od 19.08.2020. godine, Ministarstvo kulture navodi da se shodno Zakonu o medijima (»Sl.list RCG« br.51/02, 62/02) medijima smatraju štampa, radio i televizija, servisi informativnih agencija, teletekst i drugi oblici periodičnog objavljivanja urednički

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Photo 9: Excerpt from the decision of APC, number: UPI-02-02-215/5-2020 from 03.09.2020 Based on these opinions, APC concluded that the portals were not considered media, "and therefore the information portal 'Borba' cannot be considered an entity that provides media advertising."

oblikovanih programskih sadržaja sa prenosom zapisa zvuka ili slike na način koji je dostupan javnosti, te se portali shodno tom Zakonu ne tretiraju kao mediji.

U skladu sa prethodno navedenim, Agencija za sprejčavanje korupcije utvrđuje da je prijava broj UPI 02-02-215/2020 od 14.08.2020.godine neosnovana, odnosno da Informativni portal "Borba" nije prekršio odredbu člana 16 stav 6 Zakona o finansiranju političkih subjekata i izbornih kampanja, jer se portali ne smatraju medijima, pa samim tim ni Informativni portal "Borba" ne može se smatrati subjektom koji pruža medijsko oglašavanje.

Na osnovu izloženog odlučeno je kao u dispozitivu ovog rješenja.

Uputstvo o pravnoj zaštiti:

Protiv ovoga rješenja stranka može tužbom pokrenuti upravni spor pred Upravnim sudom Crne Gore, u roku od 20 dana od dana dostavljanja rješenja.



Photo 10: Excerpt from the APC's decision, number: UPI-02-02-215/5-2020 from 03.09.2020

Billboard advertising companies are not subject to the law

APC found that billboard advertising companies were not subject to the law because billboard advertising cannot be considered media advertising.

Zakon o medijima ("Službeni list Republike Crne Gore", br. 051/02 od 23.09.2002, 062/02 od 15.11.2002, Službeni list Crne Gore", br. 046/10 od 06.08.2010, 073/10 od 10.12.2010, 040/11 od 08.08.2011) u članu 6 stav 1 definiše se pojam medija, odnosno medijem u smislu tog zakona, smatraju se: štampa, radio i televizija, servisi informativnih agencija, teletekst i drugi oblici periodičnog objavljivanja urednički oblikovanih programskih sadržaja sa prenosom zapisa zvuka ili slike na način koji je dostupan javnosti.

Dakle, pomenuti Zakon o medijima ne prepoznaje bilborde kao medije, pa se tako ni oglašavanje putem bilborda ne može smatrati

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medijskim oglašavanjem, a samim tim firma CG-Media D.O.O., koja se bavi iznajmljivanjem bilborda ne može se smatrati subjektom medijskog oglašavanja, u smislu Zakona o finansiranju političkih subjekata i izbornih kampanja.

Agencija za sprječavanje korupcije je utvrdila da je prijava broj UPI 02-02-177/2020 od 28.07.2020.godine, u cjelosti neosnovana, te da CG-Media D.O.O. nije prekršila odredbu člana 16 stav 6 Zakona o finansiranju političkih subjekata i izbornih kampanja.

Photo 11: Excerpt from the APC's decision, number: UPI-02-02-176/5-2020 from 25.08.2020

2. 4. Non-publishing of contracts with political entities

Upon MANS' reports, in cases when the media outlets did not submit marketing contracts with political entities within the prescribed deadline of five days, APC concluded that they had violated the law.

Ugovor o reklamiranju između "Nova Pobjeda" d.o.o. i političkog subjekta "Socijaldemokrate Crne Gore", kojim se reguliše način pružanja usluga političkog reklamiranja u dnevnoj novini Pobjeda, je zaveden kod "Nova Pobjeda" d.o.o. pod br.1522 dana 21.08.2020.godine, dok je kod političkog subjekta "Socijaldemokrate Crne Gore" zaveden pod br.1453/IV dana 18.08.2020.godine.

Navedeni ugovori su dostavljeni Agenciji za sprječavanje korupcije dana 01.09.2020.godine i zavedeni pod br.02-02-1882/4212.

Članom 16 stav 10 Zakona o finansiranju političkih subjekata i izbornih kampanja ("Sl. list CG", br. 3/2020 i 38/2020) precizirano je da su subjekti koji pružaju usluge medijskog oglašavanja u izbornoj kampanji dužni da dostave Agenciji ugovore koje su zaključili sa političkim subjektima u vezi sa izbornom kampanjom u roku od pet dana od dana zaključenja ugovora.

Nakon razmatranja spisa predmeta i ocjene navoda iz podnijete prijave, imajući u vidu da je Predsjednik Crne Gore izbore za poslanike Skupštine Crne Gore, za odbornike u Skupštini Opštine Andrijevica, Skupštini opštine Budva, Skupštini opštine Gusinje, Skupštini opštine Kotor i Skupštini opštine Tivat raspisao dana 20.06.2020.godine, te imajući u vidu činjenicu da su ugovori o reklamiranju-pružanju usluga političkog reklamiranja zaključeni 12.08. odnosno 24.08.2020.godine, dok su isti dostavljeni Agenciji za sprječavanje korupcije dana 01.09.2020.godine, odnosno da su ugovori dostavljeni ASK-u nakon isteka roka od 5 dana od dana zaključenja istih, utvrđuje se da je prijava broj UPI 02-02-251/2020 od 25.08.2020.godine osnovana, odnosno da je novina Pobjeda prekršila

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Photo 12: Excerpt from APC's decision, number: UPI-02-02-251/5-2020 from 03.09.2020

However, concrete examples show that some media outlets started broadcasting political marketing before signing contracts with political entities. In those cases, APC concluded that there had been no violations of the law.

Such

interpretation by APC opens up a huge space for the abuse, because it means that political entities and the media can indefinitely delay formal conclusion of contracts in order to reduce transparency. TV Prva/Ast D.O.O. je elektronskim putem dostavila izjašnjenje, koje je u Agenciji zavedeno pod br. UPI-02-02-229/4-2020 od 26.08.2020. godine, u kojem je, pored ostalog, navedeno da je Demokratska partija socijalista dana 07.08.2020. godine pred kraj radnog vremena izrazila želju da zakupi oglasni prostor u programu Prve TV. Ugovor o zakupu vremena za političko oglašavanje sa Demokratskom partijom socijalista je potpisala 10.08.2020. godine, prvog radnog dana nakon potvrde o saradnji, sa naznakom da se TV Prva obavezuje da obezbijedi Demokratskoj partiji socijalista emitovanje predizbornih oglasnih poruka u periodu od 08.08.2020. do 28.08.2020. godine. U izjašnjenju se dalje navodi da je TV Prva/Ast D.O.O. Agenciji dostavila ugovore u petak 14.08.2020. godine, što je u zakonskom okviru od pet dana. U prilogu su dostavili i pomenuti Ugovor.

Nakon razmatranja spisa predmeta i ocjene navoda iz podnijete prijave, ovaj organ je našao da se neosnovano tvrdi da je TV Prva/Ast D.O.O. prekršila odredbe člana 16 stav 10 Zakona o finansiranju političkih subjekata i izbornih kampanja. Ovo iz sledećih razloga:

Agencija je navode iz izjašnjenja TV Prva/Ast D.O.O., cijenila kao jasne i istinite, jer je uvidom u Ugovor o zakupu vremena za političko oglašavanje sa Demokratskom partijom socijalista utvrđeno da je isti potpisan 10.08.2020.godine i da se odnosi na emitovanje predizbornih oglasnih poruka, TV spotova čije trajanje i vrsta su određeni cjenovnikom, u periodu od 08.08.2020. do 28.08.2020. godine. Uvidom u službenu evidenciju Agencije utvrđeno je da je TV Prva/Ast D.O.O. dostavila Ugovor Agenciji putem elektronske pošte dana 14.08.2020. godine, a da je u Agenciji zajedno sa još dva ugovora koja je Prva/Ast D.O.O. dostavila elektronskom poštom, zaveden u ponedjeljak 17.08.2020. godine. Agencija je Ugovor objavila na svojoj internet stranici dana 20.08.2020. godine.

Cijeneći gore navedeno, Agencija za sprječavanje korupcije utvrđuje da je prijava broj UPI 02-02-229/2020 od 19.08.2020.godine u cjelosti neosnovana.

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Photo 13: Excerpt from the APC's decision, number: UPI -02-02-229/5-2020 from 27.08.2020

2. 5. Political marketing of public broadcasters

APC stated that it was not competent to address paid advertising of political entities on public broadcasters, although it had previously published their price lists.

Several public broadcasters submitted price lists for advertising in the election campaign to APC, although the Law on Election of Councillors and Members of Parliament prohibits them from providing these types of services.

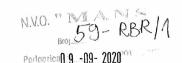
Since APC published those price lists on its website, MANS filed reports to it.

Law on Election of Councillors and Members of Parliament, article 51

During the election campaign, the Radio and Television of Montenegro, regional and local public broadcasters shall ensure free of charge and equal presentation of validated candidate lists submitting entities, and the presentation and explanation of their electoral programmes on a daily basis, of equal duration and as part of the same timeslots within the political information programme, and within the precisely defined political marketing blocks whose audibility and visibility are ensured in the entire territory of Montenegro or local government.

The Agency did not make decision on our initiatives, but only informed us that the Parliamentary Committee on Monitoring the Application of the Law on Election of Councillors and Members of Parliament was competent for that.





Crna Gora Agencija za sprječavanje korupcije Broj: UPI-02-02-171/1/2-2020 Po

Podgorica, 08.09.2020.

MREŽA ZA AFIRMACIJU NEVLADINOG SEKTORA

<u>PODGORICA</u> ul. Dalmatinska 188

Poštovani,

Agencija za sprječavanje korupcije je dana 19.08.2020. godine zaprimila Vašu prijavu, zavedenu u Agenciji pod br. UPI-02-02-171/2-2020 u kojoj se tvrdi da je na sajtu Agencije za sprječavanje korupcije objavljen cjenovnik Radio Bara, iako se radi o oglašivaču koji je Javni emiter, što je suprotno članu 51 Zakona o izboru odbornika i poslanika.

Naime, članom 51 Zakona o izboru odbornika i poslanika je propisano sledeće:

"Radio-televizija Crne Gore, regionalni i lokalni javni emiteri obavezni su da, u vrijeme izborne kampanje, u okviru političko-informativnog programa, kao i u precizno određenim blokovima političkog marketinga, čija je čujnost i vidljivost obezbijeđena na cijeloj teritoriji Crne Gore, odnosno lokalne samouprave, svakodnevno, u jednakom trajanju i u istom terminu, obezbijede besplatno i ravnopravno predstavljanje podnosilaca potvrđenih izbornih lista, kao i iznošenje i obrazlaganje njihovih izbornih programa.

Radio-televiziji Crne Gore, regionalnim i lokalnim javnim emiterima nije dozvoljeno da, pod bilo kojim uslovima, omoguće iznošenje i obrazlaganje izbornog programa podnosilaca izbornih lista ili njihovo reklamiranje van termina iz stava 1 ovog člana".

Imajući u vidu da je članom 64b Zakona o izboru odbornika i poslanika ("Sl. list CG", br. 14/2014) propisano da je Odbor za praćenje primjene Zakona o izboru odbornika i poslanika nadležan da prati i nadgleda primjenu odredaba ovog zakona koje se odnose na obaveze medija u predizbornoj kampanji, navedena prijava sa pratećom dokumentacijom je dostavljena navedenom skupštinskom odboru na dalju nadležnost.

DIREKTORICA Jelena Perović

Kralja Nikole 27/V Podgorica Crna Gora Agencija za sprječavanje korupcije

+382 20 44 77 01 kabinet@antikorupcija.me www.antikorupcija.me

Photo 14: APC's response to one of the MANS' initiatives

3. SPENDING OF PUBLIC FUNDS IN THE PRE-ELECTION PERIOD

The Agency rejected all reports against institutions that did not publish data on spending during the election period or hid certain transactions. Even when the institutions admitted that the data had not been published, APC found that they had not violated the law.

3.1. Non-publishing of data on spending

The Agency rejected all reports against institutions that did not publish data on spending during the election period, and accepted their explanations without any verification of their accuracy. The most common reasons were the epidemiological situation, lack of staff, use of vacations and days off, as well as various technical issues. In many cases, the institutions published the data only after our reports, but even then, APC stated that they had not violated the law.

The law stipulates the obligation of all budgetary spending units to post on their websites weekly analytical statements from all the accounts in their possession, i.e. data on budgetary spending for the previous week, from the day of calling until the day of holding of the elections, as well as one month following the holding of the elections. [27]

In addition, every week, the Ministry of Finance shall publish on its website the statements from the State Treasury as well as the analytical statement on the use of funds from the budgetary reserve. [28]

MANS filed **85 reports** to the Agency for Prevention of Corruption **against over 30 institutions, on the grounds of non-disclosure of spending** in the pre-election period. Most reports were filed against the Montenegrin National Theatre, the University of Montenegro, the Municipality of Gusinje, the Ministry of Economy and the Public Enterprise Radio and Television of Montenegro.

^[27] Article 38 paragraph 5 of the Law on Financing of Political Entities and Election Campaigns[28] Article 41 paragraph 1 of the Law on Financing of Political Entities and Election Campaigns

Name of the institution

Montenegrin National Theatre	10
University of Montenegro	9
Municipality of Gusinje	7
Ministry of Economy	5
Public Enterprise Radio and Television of Montenegro	5
PE Film centre	4
Property Administration	4
Bureau for the Execution of Criminal Sanctions	3
Ministry of Sports and Youth	3
Ministry of Labour and Social Welfare	2
Ministry of Human and Minority Rights	2
Tax Administration of Montenegro	2
Administration for Inspection Affairs	2
Forest Administration	2
Nature and Environment Protection Agency of Montenegro	2
Protector of Property and Legal Interests	2
Agency for Personal Data Protection and Free Access to Information	2
Centre for Training in Judiciary and State Prosecution	2
Ministry of Education	2
Ministry of Finance	1
Ministry of Justice	1
Ministry of Science	1
Ministry of Public Administration	1
Labour Fund	1
Pension and Disability Fund	1
Secretariat for Legislation	1
Judiciary	1
Compensation Fund	1
Tobacco Agency	1
Administration for Games of Chance	1
Health Insurance Fund	1
Railway Directorate	1
Montenegrin Investments Agency	1
Human Resources Management Authority	1
TOTAL	85

Po nalazima Agencije za sprječavanje korupcije predmetne analitičke kartice pružaju potpune informacije o svim troškovima koje Radio televizija Crne Gore ostvari. Na ovaj način se potvrđuje da je svrha i cilj zakona ostvarena jačanje integriteta organa vlasti, odgovorno ponašanje kao i transparentna upotreba javnih resursa u toku izborne kampanje, a da je eventualno kašnjenje od nekoliko dana u objavljivanju podataka zbog situacije sa korona virusom bez uticaja na drugačije odlučivanje u ovoj pravnoj stvari. Agencija za sprječavanje korupcije s toga utvrđuje da je prijava broj OPI 02-02-105/2020 od 03.07.2020.godine neosnovana, odnosno da Javno preduzeće Radio televizija Crne Gore nije

 Kralja Nikole 27/V
 Agencija za sprječavanje korupcije
 +382 20 44 77 02

 Podgorica
 kabinet@antikorupcija.me
 www.antikorupcija.me

Photo 15: Decision of the Agency for Prevention of Corruption, number: UPI 02-02-105/6-2020 from 17.08.2020

Institutions did not publish analytical reports until MANS filed reports against them and APC asked them to make a statement. Only when they realized that they were the subject of monitoring, they would start with regular publishing of data on spending. The Agency found that the institutions had not violated the law in those cases.

According to APC, institutions that do not have costs in a certain period do not have to publish analytical statements.

The law stipulates that institutions shall publish analytical statements, regardless of the amount and existence of payments, every week during the election campaign as well as one month following the holding of the elections, in order to make spending transparent.

Such interpretation by APC allows institutions to evade regulations, especially if they do not have any sanctions in case of delays in publishing data. At the same time, such actions make public oversight of the publishing of spending data extremely difficult, because it is impossible to determine whether a certain institution did not publish the data because it had no costs or because it had violated the law. Uvidom u službenu dokumentaciju utvrđeno je da Fond rada dana 06.07.2020. godine putem elektronske pošte, na email finansiranje@antikorupcija.me, dostavio Agenciji analitičku karticu za period 22.06-28.06.2020.godine. Ovaj e-mail je u Agenciji zaveden pod brojem 02-02-1882/769 od 08.07.2020.godine.

Nakon razmatranja spisa predmeta i ocjene navoda iz podnijete prijave, ovaj organ je našao da Fond rada nije prekršilo odredbe člana 38 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja. Ovo iz sljedećih razloga:

Agencija je navode iz izjašnjenja Fonda rada, da je do neobjavljivanja došlo zbog tehničke prirode, cijenila kao jasne i istinite, jer je pregledom internet stranice utvrđeno da je analitička kartica za period 22.06.-28.06.2020. godine (kao i za period 29.06.2020.-02.06.2020. godine) zaista objavljena 06.07.2020. godine, a da su ananucku karticu uostavim Agenciji retektionskim putem istog uana, kao i sto su naveli u svom izjašnjenju. Potom je Agencija pregledom njihove internet stranice http://www.fondrada.gov.me/biblioteka/Kartice utvrdila i da su sve analitičke kartice za ostale izvještajne periode redovno objavljivane u skladu sa članom 38 stav 5. Zakona o finansiranju političkih subjekata i izbornih kampanja. Cijeneći prednje navode proizilazi da je do neobjavljivanja analitičke kartice došlo zbog problema tehničke prirode, jer u suprotnom, da je organ imao namjeru da ne objavi analitičke karticu i time učini svoje poslovanje netransparentnim, istu ne bi naknadno ni objavio.

Takođe, Agencija smatra i da vremensko prekoračenje u izvršenju odredbe ovog člana nije bilo neprimjereno, pa nije uticao na obezbjeđivanje efikasne kontrole zabrane i ograničenja raspolaganja državnom imovinom i upotrebe državnih sredstava koje je predviđeno članom 1 i članom 38 zakona Zakona o finansiranju političkih subjekata i izbornih kampanja, a takođe nije ni povrijeđeno načelo transparentnosti predviđeno Zakonom o državnoj upravi.

Photo 16: Decision of the Agency for Prevention of Corruption, number: UPI-02-02-104/6-2020 from 12.08.2020

Postupajući po navedenoj prijavi, Agencija je utvrdila da je Ministarstvo za ljudska i manjinska prava dopisom br.01-011-758/20-2 od

Kralja Nikole 27/V	Agencija za sprječavanje korupcije	+382 20 44 77 02
Podgorica		kabinet@antikorupcija.me
Crna Gora		www.antikorupcija.me

20.07.2020.godine, zavedenim kod Agencije pod brojem 02-02-1882/1490 dana 21.07.2020.godine, obavijestilo Agenciju za sprječavanje korupcije da za period 13.07.-19.07.2020.godine nije bilo uplata ni isplata, pa nema ni analitičke kartice za taj period.

Nakon razmatranja spisa predmeta i ocjene navoda iz podnijete prijave, ovaj organ je našao da se neosnovano tvrdi da je Ministarstvo za ljudska i manjinska prava prekršilo odredbe člana 38 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja.

Članom 38 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja je propisano da su sve budžetske potrošačke jedinice, na državnom i lokalnom nivou, dužne da, od dana raspisivanja do dana održavanja izbora, kao i mjesec dana nakon održavanja izbora, sedmodnevno na svojoj internet stranici objavljuju analitičke kartice sa svih računa koje imaju u svom posjedu i dostavljaju ih radnom tijelu Skupštine nadležnom za poslove antikorupcije (u daljem tekstu: Odbor) i Agenciji.

Naime, ukoliko je navedenim zakonom predviđeno da sve budžetske potrošačke jedinice, kako na državnom tako i na lokalnom nivou objavljuju sedmodnevno na svojoj internet stranici objavljuju analitičke kartice, dok u konkretnom slučaju za navedeni period nije bilo uplata i isplata, pa samim tim ni osnova za objavljivanje iste, Agencija je jasno utvrdila da je prijava broj UPI 02-02-161/2020 od 22.07.2020.godine, u cjelosti neosnovana, te da Ministarstvo za ujudska i manjinska prava nije prekrsilo odredou clana 38 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja.

Photo 17: Decision of the Agency for Prevention of Corruption, number: UP1-02-02-161/5-2020 from 11.08.2020 Agencija za sprječavanje korupcije je jasno utvrdila da je Uprava za inspekcijske poslove objavila na svojoj internet stranici informaciju da za period od 22.06.2020. godine do 28.06.2020.godine nije bilo troškova.

Iste informacija se nalazi na web adresi Uprave za inspekcijske poslove:

http://www.uip.gov.me/Impelementacija_ZFPSIK/

Agencija za sprjčavanje korupcije s toga utvrđuje da je prijava broj UPI 02-02-111/2020 od 03.07.2020.godine neosnovana, odnosno da Uprava za inspekcijske poslove nije prekršila odredbu člana 38 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja.

Photo 18: Decision of the Agency for Prevention of Corruption, number: UPI 02-02-111/5-2020 from 12.08.2020

Instead of publishing their transactions during the election period, some institutions posted on their websites links to information of the Ministry of Finance on the spending of all budgetary spending units.

The Agency found this acceptable as well, although the obligation to publish the data of all budget us is specifically prescribed for the Ministry of Finance, while the budgetary spending units themselves are obliged to publish their finances.

In some cases, published data did not contain all information required by the law. [29] Institutions explained this by the fact that payments are made through commercial banks and not the treasury system. navedeni period objavljena i dostavljena Agenciji, čime su ispunili uslov transparentnosti odnosno dostupnosti podataka o potrošenim sredstvima za navedeni period. Takođe, naknadnim pregledom njihove internet stranice je utvrđeno i da su sve analitičke kartice za ostale izvještajne periode redovno objavljivane u skladu sa članom 38 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja, te stoga Agencija za sprječavanje korupcije utvrđuje da je prijava broj UPI 02-02-124/2020 od 08.07.2020. godine neosnovana, odnosno da Ministarstvo ekonomije nije prekršilo odredbu člana 38 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja.

Naime, utvrđeno je da je Ministarstvo ekonomije na svojoj internet stranici umjesto analitičke kartice objavilo link ka izvodu iz državnog trezora koje je objavilo Ministarstvo finansija na kojem se nalaze analitičke kartice Ministarstva ekonomije, te da je u međuvremenu Ministarstvo ekonomije na svojoj internet stranici objavilo analitičku karticu za navedeni period. Međutim, smisao i cilj člana 38 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja, nije tehnički način na koji će se objaviti analitičke kartice sa računa budžetskih potrošačkih jedinica. Naprotiv, smisao i cilj navedene odredbe je obezbjedivanje efikasne kontrole zabrana i ograničenja raspolaganja državnom imovinom i javnim fondovima (član 1 i član 38 ovog zakona), a time su takođe zadovoljena i načela transparentnosti i prava javnosti da zna, koja su definisana Zakonom o državnoj upravi.

Photo 19: Decision of the Agency for Prevention of Corruption, number: UPI-02-02-124/6-2020 from 18 August 2020

Takođe, konstatujući da JU Filmski centar Crne Gore ne vrši plaćanje obaveza putem SAP informacionog sistema, već navedene poslove obavlja preko poslovne banke, a čiji sistem ne sadrži sve elemente i kategorije koje se evidentiraju u SAP sistemu, kao i da se uvidom u iste utvrđuje da sadrži podatke koji se tiču datuma plaćanja, naziva primaoca, poreskog identifikacionog broja primaoca plaćanja, transakcionog računa, naziva banke primaoca, izvoda broja, iznosa, konta, opisa transakcije i izvora sredstava, koji u dostavljenom dokumentu sadrže naziv analitika izvršenih plaćanja za navedeni period, mora se istaći da smisao i cilj člana 38 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja nije tehnički način na koji će se objaviti analitičke kartice sa računa budžetskih potrošačkih jedinica, već naprotiv, ono što je u konkretnom slučaju i ostvareno objavljivanjem izvršenih plaćanja - jačanje integriteta, odgovorno ponašanje kao i transparentnost budžetskih potrošačkih jedinica u toku izborne kampanje.

U skladu sa prethodno navedenim, Agencija je utvrdila da je prijava broj UPI 02-02-145/2020 od 17.07.2020.godine, u cjelosti neosnovana, te da JU Filmski centar Crne Gore nije prekršio odredbu člana 38 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja.

Photo 20: Decision of the Agency for Prevention of Corruption, number: UPI -02-02-145/4-2020 from 11.08.2020

However, these institutions are required to do their accounting the same way as other budgetary spending units, which contains all items that must be published in accordance with the law. On the other hand, bank statements contain only transactions through one account.

In some cases, institutions claimed that their information system "pulled" aggregate data, which is why transaction data were not published, only total consumption over a specific period of time.

However, the Agency found all these explanations of the institutions acceptable, thus, it rejected all our reports.

^[29] Article 46 paragraph 4 of the Law: The analytical statements from articles 38, 40 and 41 of this Law shall provide accurate and complete information on the following categories at least: budget line, transaction number, recipient/payer, as well as the registration number for the legal entity (tax identification number - TIN), amount and date.

3. 2. Hiding of certain transactions

The Agency rejected reports against institutions that did not publish all transactions in their analytical statements, even when it was confirmed that the information was hidden from the public. Data on payments for temporary service contracts, other benefits, other transfers to individuals and project costs are most often hidden.

According to the Law, all budgetary spending units shall publish their analytical statements, while the Ministry of Finance shall publish analytical statements that contain the spending of all budgetary spending units.

We compared the data published by individual institutions with the information of the Ministry of Finance. Thus, we found that the analytical statements of six institutions do not contain payments that the Ministry published as spending of these budgetary spending units.

We filed a complaint against the **Ministry of Economy** because their analytical statements did not contain transactions on the account "other fees" that were published by the Ministry of Finance within the spending of that budgetary spending unit.

APC rejected our complaint, although the Ministry of Economy admitted that the data were not accurate. Ističu da Ministarstvo ekonomije prilikom objavljivanja analitičke kartice za period naveden u vašem dopisu objavilo analitičku karticu koja se nije slagala sa karticom Ministarstva finansija zbog pogrešno unijetih parametara za izvlačenje podataka iz informacionog sistema SAP. Ističu da su odmah po saznanju za neusklađenost podataka izvršili ispravku i objavili analitičku karticu usklađenu sa potrošnjom i karticom objavljenom na sajtu Ministarstva finansija.

Nakon razmatranja spisa predmeta i ocjene navoda iz podnijete prijave, ovaj organ je našao da se neosnovano tvrdi da je Ministarstvo ekonomije prekršilo odredbe članova 38 stav 5 i 41 stav 1 Zakona o finansiranju političkih subjekata i izbornih kampanja.

Članom 46 stav 6 Zakona o finansiranju političkih subjekata i izbornih kampanja je propisano da analitičke kartice iz čl. 38, 40 i 41 ovog zakona moraju da pruže precizne i potpune informacije najmanje o sljedećim kategorijama: budžetska linija, transakcioni broj, primalac/platilac, kao i registracioni broj kad je u pitanju pravni subjekat (poreski identifikacioni broj - PIB), iznos i datum;

dok je članom 38 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja propisano da su sve budžetske potrošačke jedinice, na državnom i lokalnom nivou, dužne da, od dana raspisivanja do dana održavanja izbora, kao i mjesec dana nakon održavanja izbora, sedmodnevno na svojoj internet stranici objavljuju analitičke kartice sa svih računa koje imaju u svom posjedu i dostavljaju ih radnom tijelu Skupštine nadležnom za poslove antikorupcije (u daljem tekstu: Odbor) i Agenciji;

pa je shodno navedenom, Agencija jasno utvrdila da je Ministartsvo ekonomije u skladu sa Zakonom o finansiranju političkih subjekata i izbornih kampanja objavio tražene podatke za period 27.07.2020.-31.07.2020.godine i da se ista nalazi na sajtu Agencije za sprječavanje

Kralja Nikole 27/V	Agencija za sprječavanje korupcije	+382 20 44 77 02
Podgorica		kabinet@antikorupcija.me
Crna Gora		www.antikorupcija.me

We filed a complaint against the

Administration for

Inspection Affairs because its analytical statements did not contain all transactions related to *temporary service contracts*, that were published as part of the documentation of the Ministry of Finance on the Administration as a budgetary spending unit.

In response to the report, the Administration **confirmed that the data** were missing, but stated that this was due to a technical error, and that the information was subsequently published. APC accepted such explanation and found that the Administration had violated the law. Odlučujući o sadržini prijave, Agencija je dana 08.09.2020.godine uputila dopis Upravi za inspekcijske poslove i tom prilikom zatražila izjašnjenje u odnosu na navode iz prijave.

Uprava za inspekcijske poslove je dopisom br 0801-745/20-7394/2 od 14.09.2020.godine, u Agenciji zaveden pod brojem UPI 02-02-267/5-2020 od 16.09.2020.godine dostavilo izjašnjene ASK-u u kojem je navedeno da je u konkretnoj situaciji došlo do tehničke greške, odnosno da iz SAP sistema za dan 29.06.2020.godine nije objavljen izvještaj i da su to naknadno ispravili i dostavili Agenciji.

Nakon razmatranja spisa predmeta i ocjene navoda iz podnijete prijave, Agencija za sprječavanje korupcije je našla da se neosnovano tvrdi da je Uprava za inspekcijske psolove prekršila članova 38 stav 5 i 41 stav 1 Zakona o finansiranju političkih subjekata i izbornih kampanja za period od 28.06.2020. godine do 04.07.2020.godine.

Članom 38 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja propisana je obaveza budžetske potrošačke jedinice da, od dana raspisivanja do dana održavanja izbora, kao i mjesec dana nakon održavanja izbora, sedmodnevno na svojoj internet stranici objavljuju analitičke kartice sa svih računa koje imaju u svom posjedu i dostavljaju ih radnom tijelu Skupštine nadležnom za poslove antikorupcije i Agenciji.

Članom 46 stav 4 Zakona o finansiranju političkih subjekata i izbornih kampanja je propisano da analitičke kartice iz čl. 38, 40 i 41 ovog zakona moraju da pruže precizne i potpune informacije najmanje o sljedećim kategorijama: budžetska linija, transakcioni broj, primalac/platilac, kao i registracioni broj kad je u pitanju pravni subjekat (poreski identifikacioni broj - PIB), iznos i datum.

Agencija za sprječavanje korupcije je jasno utvrdila da je Uprava za inspekcijske poslove u skladu sa Zakonom o finansiranju političkih subjekata i izbornih kampanja objavilo analitičku karticu za period 28.06.2020. godine do 04.07.2020.godine i da se ista nalazi na sajtu Agencije za sprječavanje korupcije www.antikorupcija.me, na baneru "Parlamentarni i lokalni izbori 2020. godine" i podbaneru "Analitičke kartice" u dokumentu-tabeli u kojoj su posredstvom linkova objavljeni dokumenti svih pojedinačnih zakonskih obveznika koji objavljuju analitičke kartice, te se ista nalazi na sledećoj web adresi:

http://www.uip.gov.me/Impelementacija_ZFPSIK/

Takođe, konstatuje se da su na objavljenoj analitičkoj kartici naknadno prikazana i sredstva za dan 29.06.2020.godine koja nijesu bila prikazana iz SAP što je i navedeno u izjašnjenju Uprave za inspekcijske poslove. Ispravljanjem ove tehničke greške potvrđena je namjera Uprave za inspekcijske poslove da svoje poslovanje u periodu izborne kampanje učini transparentnim. Kako su neprikazani podaci učinjeni vidljivim, i samim tim je otklanjanjena nejasnoća u konkretnom

Kralja Nikole 27/V Podgorica Crna Gora Agencija za sprječavanje korupcije

+382 20 44 77 02 kabinet@antikorupcija.me www.antikorupcija.me

Photo 22: Excerpt from APC's decision, number: UPI -02-02-267/5-2020 from 18.09.2020

Explaining why transactions from the "other fees" and "project development" accounts were missing from their report, the Ministry of Culture and Media as well claimed it was a technical error. APC rejected that report as well.

We filed two reports against **the Ministry of Sports** because they did not publish transactions from the account "other transfers to individuals". Their reasoning, accepted by APC, was that they published these transactions subsequently.

Similar explanations were given by the Nature and Environment Protection Agency of Montenegro and the Maritime Safety Department, which did not publish payments for temporary service contracts.

4. FINANCING OF POLITICAL ENTITIES

APC does not monitor whether persons who give contribution to political entities are connected to companies performing activities of public interest, although this prohibition is prescribed by the law. Even when MANS pointed to these violations of the law, the Agency first delayed the decision-making, and then delayed making that information available to the public, which made it impossible for citizens to find out about illegalities in financing the election campaign in a timely manner.

The law prohibits legal and natural persons which performed activities of public interest from giving contributions to political entities two years after the termination of the business relationship. [30]

MANS found that the owners and directors of companies that manage small hydroelectric power plants gave 13 thousand euros in contributions to the Democratic Party of Socialists. [31] Article 86 of the Law on Energy stipulates that the production of electricity is an activity of public interest.

In these cases, the Law on Financing of Political Entities and Election Campaigns provides for a fine between 500 to 2,000 euros for a natural person who gave a contribution, but does not provide for fines for a political entity.

The Agency initiated proceedings upon our report that certain natural persons were connected with legal entities which, on the basis of a contract with the competent authorities, performed activities of public interest [32], and gave contributions to the campaign of political entities despite that fact.

The Agency found that the persons mentioned in the report had violated the provision of Article 33, paragraph 5 of the Law on Financing of Political Entities and Election Campaigns [33], but it first delayed the decision-making and then delayed making that information available to the public, which prevented citizens from find out about illegalities in the financing of the election campaign.

12] NOO MANS' report number: 111, from August 24, 2020; Available at: https://drive.google.com/file/d/1uelTxzXh0AF-5KZMHFQLOpdxPFqa7uCQ/view.

^[30] Article 33, paragraph 5 stipulates that legal entities, companies and entrepreneurs and related natural persons which, based on a contract with the competent bodies and in accordance with the Law, performed activities of public interest or concluded a contract through the public procurement procedure, in the period of two years preceding the conclusion of the contract, for the duration of the business relationship, as well as two years after the termination of the business relationship, shall not give contributions to the political entities.

^[31] Igor Mašović, Tamara Kokić and Milić Novović are connected with companies that have active concessions for the production of electricity from small hydropower plants, and in the eve of the elections, they gave contributions of 13 thousand euros to DPS on the same day - July 20, 2020. More detailed information is given at: http://www.mans.co.me/en/concessionaires-donated-e-13000-for-dps-campaign/.

^[33] Decision of the Agency for Prevention of Corruption, number: UPI-02-02-250/14-2020 made on November 9, 2020, submitted to MANS on December 7, 2020; Available at: https://drive.google.com/file/d/1q3ULCah2R-IRHU1DHn9NjsAMvbp2fvxp/view .

The documents show that on September 14, APC asked the Ministry of Finance for data, i.e. three weeks after filing of the report.

APC adopted the decision on November 9, and finally submitted it to MANS a month later.



N.V.O. '' INI A INI S ' Broj <u>111</u> Podgorica, <u>0.7</u>, 12, <u>20201</u> god

Crna Gora Agencija za sprječavanje korupcije Broj:UPI-02-02-250/14-2020

AGENCIJA ZA SPRJEČAVANJE KORUPCIJE na osnovu člana 56 Zakona o finansiranju političkih subjekata i izbornih kampanja ("Sl. list CG", br. 3/2020 i 38/2020) u vezi sa članom 18 Zakona o upravnom postupku ("Sl. list CG", br. 56/2014, 20/2015, 40/2016 i 37/2017), odlučujući o prijavi broj UPI 02-02-250/2020 od 24.08.2020. godine, podnijetoj protiv Igora Mašovića, Tamare Kokić i Milića Novovića, zbog kršenja člana 33 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja, dana 09.11.2020. godine, donijela je

RJEŠENJE

UTVRĐUJE SE da je Igor Mašović prekršio član 33 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja na način što je donirao prilog političkom subjektu, a povezano je lice sa privrednim društvom koje je, na osnovu ugovora sa nadležnim organima, u skladu sa zakonom, vršilo poslove od javnog interesa odnosno zaključilo ugovor u postupku javnih nabavki, u periodu za dvije godine nakon prestanka tog poslovnog odnosa.

UTVRĐUJE SE da je Milić Novović prekršio član 33 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja na način što je donirao prilog političkom subjektu, a povezano je lice sa privrednim društvom koje je, na osnovu ugovora sa nadležnim organima, u skladu sa zakonom, vršilo poslove od javnog interesa odnosno zaključilo ugovor u postupku javnih nabavki, u periodu za dvije godine nakon prestanka tog poslovnog odnosa.

UTVRĐUJE SE da je Tamara Kokić prekršila član 33 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja na način što je donirala prilog političkom subjektu, a povezano je lice sa privrednim društvom koje je, na osnovu ugovora sa nadležnim organima, u skladu sa zakonom, vršilo poslove od javnog interesa odnosno zaključilo ugovor u postupku javnih nabavki, u periodu za dvije godine nakon prestanka tog poslovnog odnosa.

Agencija za sprječavanje korupcije

Kralja Nikole 27/V Podgorica Crna Gora +382 20 44 77 02 kabinet@antikorupcija.me www.antikorupcija.me Nadalje, radi rasvjetljenja ove pravne stvari Agencija je dana 14.09.2020. godine, uputila dopis Ministarstvu finansija radi dostavljanja podataka o tome da li su pravna lica »Hidroenergija Andrijevica«, »Igma Grand, »Igma Energy«, »Nord Energy«, »Green Solutions«, »Small Hydro Power Plant Mojanska«, »Small Hydro Power Plant Kutska«, »Dekar Energy« i »Igma Product«, na osnovu ugovora sa nadležnim organima, u skladu sa zakonom, vršila poslove od javnog interesa ili zaključila ugovor u postupku javnih nabavki, u proteklom periodu od prethodne dvije godine,

 Kralja Nikole 27/V
 Agencija za sprječavanje korupcije
 +382 20 44 77 02

 Podgorica
 kabinet@antikorupcija.me

 Crna Gora
 www.antikorupcija.me

Nakon razmatranja spisa predmeta i ocjene navoda iz podnijete prijave, cijeneći svaki dokaz pojedinačno te dovodeći ih u međusobnu vezu ovaj organ je iz tabela Ministarstva finansija i Zaključka Vlade Crne Gore broj 07-3711 od 19. jula 2018. godine utvrdio da je Predsjednik Crne Gore izbore za poslanike Skupštine Crne Gore, za odbornike u Skupštini Opštine Andrijevica, Skupštini opštine Budva, Skupštini opštine Gusinje, Skupštini opštine Kotor i Skupštini opštine Tivat raspisao dana 20.06.2020. godine, da su Igor Mašović, Milić Novović i Tamara Kokić donirali prilog političkom subjektu (što i ne spore u pisanim izjašnjenjima), da su povezana lica sa privrednim društvima (Igor Mašović izvršni direktor, osnivač i ovlašćeni zastupnik u d.o.o. »IGMA GRAND« Trešnjevo-Andrijevica; Milić Novović izvršni direktor i osnivač d.o.o. »IGMA PRODUCT« Andrijevica; Tamara Kokić izvršni direktor u privrednim društvima »Small Hydro Power Plant Kutska« d.o.o. Andrijevica i »Small Hydro Power Plant Mojanska« d.o.o. Andrijevica) tokom 2018. odnosno 2019. godine zaključila ugovore sa nadležnim organima u postupcima javnih nabavki odnosno da su vršili

nadležnim organima u postupcima javnih nabavki, odnosno da su vršili poslove od javnog interesa, kojim dokazima je Agencija cijeneći ih pojedinačno te dovodeći u međusobnu vezu poklonila punu vjeru.

Kralja Nikole 27/V	Agencija za sprječavanje korupcije	+382 20 44 77 02
Podgorica		kabinet@antikorupcija.me
Crna Gora		www.antikorupcija.me

Takođe, da su Igor Mašović, Tamara Kokić i Milić Novović dana 18.07.2020. godine uplatili priloge Demokratskoj partiji socijalista i to: Igor Mašović i Milić Novović iznose od po $5.000,00 \in$ a Tamara Kokić iznos od $3.000,00 \in$ utvrđeno je iz njihovih pisanih izjašnjenja 23.09.2020. godine.

Iz svega prethodno navedenog Agencija je utvrdila da je prijava broj UPI 02-02-250/2020 od 24.08.2020. godine u cjelosti osnovana, te da su Igor Mašović, Milić Novović i Tamara Kokić prekršili odredbu člana 33 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja.

Na osnovu izloženog, odlučeno je kao u dispozitivu ovog rješenja.

Uputstvo o pravnoj zaštiti:

Protiv ovoga rješenja stranka može tužbom pokrenuti upravni spor pred Upravnim sudom Crne Gore, u roku od 20 dana od dana dostavljanja rješenja.

Ovlašćeni službenik: Stefan Radunović

DIBEKTORICA Jelena Perović

Photo 23: Excerpts from APC's decision, number: UPI -02-02-250/14-2020 from 09.11.2020

APC did not post this decision on its website until late January 2021. [34]

[34] Available at: https://www.antikorupcija.me/me/kontrola-politickih-subjekata-izbornih-kampanja/odluke-agencije/#page=9 .

5. LIABILITY OF THE AGENCY

The Agency met only a part of the legal obligations that ensure the transparency of data on the spending of public funds. Instead of publishing the extensive documentation that the institutions submitted to it, as prescribed by the law, APC published tables with links to websites of entities subject to the law. This allowed the institutions to subsequently change the published data in order to cover up violations of the law.

The Agency did not publish all reports on the control of entities subject to the law, and thus violated legal provisions, reduced the transparency of election campaign financing, limited the control of its work, but also limited detecting possible abuse of state funds for election campaign purposes.

Instead of making decisions on our initiatives and determining whether APC violated the law, the Council of that institution sent us a letter from the director of APC, without questioning the accuracy and legality of those allegations.

The response stated that the Agency "took a stance" that the legal deadlines for submitting price lists for advertising in the election campaign may be prolonged for three days, that the links on the website were the same as the documents, and that the control minutes were published on the day MANS reported they were missing.

In practice, APC's decisions are final, even when they are obviously unlawful since, according to the court, those who file initiatives have no legal interest in initiating court disputes.

5.1. Non-publishing of data on the use of state funds

The Agency met only a part of the legal obligations that ensure the transparency of data on the spending of public funds. Instead of publishing the extensive documentation that the institutions submitted to it, as prescribed by the law, APC published tables with links to websites of the bodies where those documents should be posted. This allowed the institutions to subsequently change the published data in order to cover up violations of the law.

The Law on Financing of Political Entities and Election Campaigns stipulates [35] that the Agency shall publish on its website within three days from the date of submission:

- Analytical statements Article 38 paragraph 5 stipulates, inter alia, that from the day of calling until the day of holding of the elections, as well as one month following the holding of the elections, all budgetary spending units, at the state and local level, shall submit to the Agency analytical statements from all the accounts in their possession.
- Use of state-owned machinery and equipment Article 39 paragraph 2 prescribes that the business organisations referred to in paragraph 1 of this Article shall submit all their decisions, contracts and orders for the use of machinery and equipment outside their core business activity to the Agency within three days from the day of their adoption.
- Social welfare Article 40 paragraph 7 prescribes the state and local budget spending units shall submit data on social welfare to the APC.
- Statements from the State Treasury and budgetary reserve Article 41 paragraph 4 prescribes that every week, the Ministry shall publish on its website the statements from the State Treasury as well as the analytical statement on the use of funds from the budgetary reserve in the period from the day of calling until the day of holding of the elections.
- Travel orders according to Article 43, paragraph 11, all state bodies, state administration bodies, local self-government bodies, local administration bodies, public enterprises, public institutions and state funds and companies founded and/or owned in major part or partly by the state or local self-government unit shall submit weekly all issued travel orders for official cars to the APC.
- Employment Article 44 paragraph 2 stipulates that bodies and legal entities referred to in paragraph 1 of this Article shall submit all decisions on employment adopted in line with the laws governing labour relations, rights and obligations of civil servants and state employees and contractual relations, with the complete supporting documentation, to the Agency within three days from the day of adoption of the decision.

However, only a part of the documents was published on the Agency's website, i.e. data related to employment and contracts for the use of machinery and equipment. Other data were not published, instead, APC published on its website only a spreadsheet, by groups of data, with links to the websites of individual entities subject to the Law. [36]

^[35] Article 46 paragraph 5 of the Law: All acts, data and documents referred to in Articles 38, 39, 40, 41, 43 and 44 of this Law, submitted by the authorities and legal entities to the Agency, shall be (sc) Article 40 paragraph 5 of the Law. All acts, data and documents referred to in Articles 38, 39, 40, 41, 43 and 44 of this Law, submitted by the Autorities and legal enpublished by the Agency on its website within three days from the date of their submission.
[36] Spreadsheet of analytical statements: http://www.antikorupcija.me/media/documents/analiti%C4%8Dke_kartice__presjek.pdf; spreadsheet of travel orders: http://www.antikorupcija.me/media/documents/Tabelami_prikaz_putnih_noga__paralementarni_i_lokalni_izbori_2020_za_objavu_2.pdf; spreadsheet of social welfare: http://www.antikorupcija.me/media/documents/Socijalna_pom%C4%87i.pdf; spreadsheet of statements from the State Treasury and budgetary reserve: http://www.antikorupcija.me/media/documents/Izvodi_iz_trezora_j_bud%C5%BEetska_rezerva_mAsHL2P.pdf.

Type of data	Article of the Law	Documents on the website	Spreadsheet
Analytical statements	Article 38, paragraph 5		
Use of machinery and equipment	Article 39, paragraph 2		
Social welfare	Article 40, paragraph 7		
Statements from the State Treasury and budgetary reserve	Article 41, paragraph 4		
Travel orders	Article 43, paragraph 11		
Employment	Article 44, paragraph 2		

Table 3: Overview of the levels of availability of different types of data on government spending on the APC's website

In that way, the Agency apparently tried to avoid the extensive work of publishing a large amount of data, but thus violated the Law, reduced the transparency of election campaign financing and limited the monitoring of possible abuse of the state resources.

The legislator prescribed the obligation of APC to publish this information in the form in which it was submitted to it, precisely to overcome the issues with the websites of certain entities subject to the law, which are often out of function. Had the Agency published the documentation on its website, subsequent manipulations with the data published on the websites of institutions would have been prevented. Namely, concrete examples show that the institutions changed the previous data after we reported them for hiding transactions. [37]

The law prescribes a fine for the responsible person of the Agency if "it fails to publish the acts, data and the documents from articles 38,39,40,41,43 and 44 of this law, submitted by authorities and legal entities, on its website within three days from receiving them". [38]

MANS filed an initiative to APC, pointing to the violation of the law by that institution, but it was not acted upon. Therefore, we filed a lawsuit with the Administrative Court, after which the Agency informed us that there were spreadsheets on their website.

We extended the lawsuit to that APC's response as well. The lawsuit was filed on August 11, 2020, its extension was requested on December 2, 2020, while by the end of May 2021, the court still did not issue a judgement. Agencija za sprječavanje korupcije je dana 03.07.2020.godine zaprimila vašu prijavu u kojoj tvrdite da Agencija za sprječavanje korupcije nije u skladu sa članom 46 stav 5 Zakona o finansiranju političkih subjekata i izbornih kampanja objavila analitičke kartice koje su joj dostavili obveznici istog zakona. U vezi predmetnog vas obavještavamo da su iste objavljene na sajtu Agencije za sprječavanje korupcije www.antikorupcija.me, na baneru "Parlamentarni i lokalni izbori 2020. godine" i podbaneru "Analitičke kartice" u dokumentu-tabeli u kojoj su posredstvom linkova objavljeni dokumenti svih pojedinačnih zakonskih obveznika koji objavljuju analitičke kartice..

Qvlašćeni službenik luka Anđelić



Photo 24: Excerpt from the response of the Agency for Prevention of Corruption, number: UPI 02-02-134/3-2020 from 04.08.2020

5. 2. Non-publishing of control reports

The Agency did not publish all reports on the control of entities subject to the law, and thus violated legal provisions, reduced the transparency of election campaign financing, limited the control of its work, but also limited detecting possible abuse of state funds for election campaign purposes.

The Agency shall publish records on the control of entities subject to the law, institutions that spend public funds, public companies, state-owned companies, companies that provide advertising services in the election campaign and political entities. [39] Fines shall also be imposed on the responsible person of the Agency, if he/she does not publish the reports [40], but the law does not prescribe a deadline within which the data must become available to the public.

At the session of the APC's Council held on August 19, it was announced that the institution "initiated and to a certain extent implemented 287 proceedings when it comes to government bodies". [41] It was also stated that "most proceedings were initiated in relation to analytical statements and average monthly spending where there were a total of 135 proceedings, and when it comes to employment, in 98 initiated proceedings, there were suspicions that incomplete documentation had been submitted". [42]

On August 20, 10 days before the elections, MANS submitted a report to the Agency because at that time there was no single control report on its website.



⁹⁾ Article 5, paragraph 2: "The Agency shall create a report on the results of the control which will be delivered to the controlled entity and mandatorily published on the Agency's webpage." 0) Article 67, paragraph 1, item 1. 1) https://www.vijesti.me/vijesti/politika/461629/partijama-podijeljeno-skoro-pola-miliona-od-donacija-prikupili-540000-eura.

In the meantime, APC published some reports and made a decision on our report on August 28, and submitted the response to us the day after the elections, on September 1. In that document, it states that the reports were published.

A total of 15 reports related to the parliamentary elections [43], and the following entities subject to the law were published on the APC's website:

- 1 state institution [44],
- 4 municipalities [45],
- 2 public companies [46],
- 4 majority government-owned companies [47],
- 4 political entities. [48]

APC published 15 reports on the control related to the elections held in the entire state, while for the elections held in the municipalities of Nikšić and Herceg Novi, they published 16 reports each. [49]

5.		O Nama	Biblioteka	Javni registri Pretrogo	Korisnički servisi	Kontakt
ASK Agencija	za anje korupcije					
♠ Sukob interesa <u>Politički subjekti</u> Integ	ritet Lobiranje Zviždači Analiza propisa Međunarodna sa	aradnja SPI	Savjet Agen	cije	≡ Prikaži	sve stavke
početna > politički subjekti						
zapisnici	Zapisnici					
pretraga	Euplomer					
Pretraži sadržaj strane Događaj v	Zapisnik o izvršenoj kontroli - Zavod za zapošljavanje					
	Zapisnik o izvršenoj kontroli-JP Nacionalni parkovi Crne Gor	e			latum: 26.08.2020. objariljen:	26.08.3020.
					latzm: 25.08.2020. objavljen:	25.08.2020
	Zapisnik o izvršenoj kontroli - Koalicija Za budućnost Crne G	iore			terum: 24.08.2020. objertijet:	24.00 2020
	Zapisnik o izvršenoj kontroli - AD Pošta Crne Gore					
				4	latum: 24.08.2020. objavljan:	24.08.2020.
	Zapisnik o izvršenoj kontroli -Željeznička infrastruktura Crne	Gore AD Poo	Igorica			
				3	latum: 24.08.2020. objavljen:	24.06.2020.
	Zapisnik o izvršenoj kontroli - Crnogorski elektroprenosni sist	tem AD				
				2	latum: 24.08.2020, objavljen:	24.08.2020.
	Zapisnik o izvršenoj kontroli - Demokratska partija socijalista					
					latum: 24.06.2020. objavljet:	24.06.2020.
	Zapisnik o izvršenoj kontroli - Koalicija Mir je naša nacija					
				3	latum: 24.00.2020. objavljen:	24.08.2020.
	Zapisnik o izvršenoj kontroli - Socijaldemokrate Crne Gore					
				3	latum: 24.08.2020, objavljan:	24.08.2020.
	Zapisnik o izvršenoj kontroli - HG Budvanska rivijera Budva					
	Ukupno: 15 - #-datum dokumenta				latim: 13.08.2020. objanijet. + 1	13.08.2020. 2 •



11 BAR 1 301 S " NV.O. 106 2020 01.09.

Agencija za sprječavanje korupcije

Datum: 28.08.2020.godine

MREŽA ZA AFIRMACIJU NEVLADINOG SEKTORA

Dalmatinska 188 81000 Podgorica

Poštovani,

Broj: UPI-02-02-240/2-2020

Agencija za sprječavanje korupcije je dana 20.08.2020.godine zaprimila vašu prijavu u kojoj tvrdite da Agencija za sprječavanje korupcije nije u skladu sa članom 5 stav 2 Zakona o finansiranju političkih subjekata i izbornih kampanja jer Agencija nije objavila zapisnike o izvršenoj kontroli na svojoj na internet stranici.

U vezi predmetnog vas obavještavamo da su iste objavljene na sajtu Agencije za sprječavanje korupcije www.antikorupcija.me , na baneru "Parlamentarni i lokalni izbori 2020. godine" i podbaneru "Zapisnici", link: http://www.antikorupcija.me/me/kontrola-politickih-subjekata-izbornihkampanja/2008201047-zapisnici/



Photo 26: APC's response number: UPI-02-02-240/2-2020 from 28 August 2020

		ni registri Korisnički servisi Kontal
	Prema	1893
	ja za vanje korupcije	
Contraction of the second s	egritet Lobiranje Zviždači Analiza propisa Međunarodna saradnja SPI Savjet Agencije	Prikaži sve stav
početna > politički subjekti		
zapisnici	Zapisnici	
pretraga	F	
Pretraži sadržaj strane	Zapisnik o izvršenoj kontroli - Opština Kotor	
Događaj 💌		datum: 13.08.2020. objavljen: 13.08.2020.
	Zapisnik o izvršenoj kontroli - JP Za upravljanje morskim dobrom CG	SELEC. 2010/2010 00/01/951 2010/2010
		datum: 13.08.2020. objavljen: 13.08.2020
	Zapisnik o izvršenoj kontroli - Opština Budva	
		datum: 13.08.2020. objavljen: 13.08.2020
	Zapisnik o izvršenoj kontroli - Opština Šavnik	
		datum: 13.08.2020. objavljen: 13.08.2020
	Zapisnik o izvršenoj kontroli - Opština Žabljak	
		datum: 13.08.2020 objavljen: 13.08.2020.
	Ukupno: 15 4 datum dokumenta	+ 1 2 -

Reports published on the APC's website related to the 2020 parliamentary elections

[43] https://www.antikorupcija.me/me/kontrola-politickih-subjekata-izbornih-kampanja/2008201047-zapisnici/.
 [44] Employment Agency of Montenegro.
 [45] Municipality of Budva, Municipality of Žabljak, Municipality of Kotor, Municipality of Šavnik.
 [46] PE National Parks of Montenegro and Public Enterprise for Coastal Zone Management of Montenegro.
 [47] Railway Infrastructure of Montenegro. JSC Podgorica, Montenegro Post JSC, Electric Transmission System of Montenegro JSC, HG Budva Riviera Budva.
 [48] Democratic Party of Socialists, Coalition for the Future of Montenegro, Coalition Peace is Our Nation, Social Democrats of Montenegro.
 [49] https://www.antikorupcija.me/kontrola-politickih-subjekata-izbornih-kampanja/2102170710-zapisnici/; https://www.antikorupcija.me/me/kontrola-politickih-subjekata-izbornih-kampanja/2104090643-zapisnici/.

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However, according to the Report on the Supervision of the Election Campaign for the elections held on August 30 Elections. APC conducted a total of **21 controls**. [50]

APC did not publish all control reports on its **website**. [51]

According to the Control and Supervision Plan adopted by APC for these elections [52], it was planned to perform three times more field controls. The plan stated that 36 field controls would be conducted from July 20 to August 20. Those controls were supposed to include

- 3 Ministries.
- 7 municipalities,
- 9 educational institutions.
- 7 local authorities.
- 10 largest political entities.

Izvještaj o sprovedenom nadzoru u toku izborne kampanje za izbore održane 30. avgusta 2020.

IX. ANEX 2: Izvršene kontrole

r.br.	Naziv kontrolisanog subjekta	Opština	Organ	Poliitički subjekat	datum kontrole
1	<u>Opština Žabljak</u>	1			10.08.2020.
2	Opština Šavnik	1			10.08.2020.
3	Opština Budva	1			10.08.2020.
4	JP Za upravljanje morskim dobrom CG	10	1		10.08.2020.
5	Opština Kotor	1			10.08.2020.
6	HG Budvanska rivijera Budva	Sec.	1	all and all	10.08.2020.
7	Socijaldemokrate Crne Gore		1.1.2	1	20.08.2020.
8	Koalicija Mir je naša nacija	THE C		1	21.08.2020.
9	Demokratska partija socijalista		Weight -	1	21.08.2020.
10	Crnogorski elektroprenosni sistem AD		1		21.08.2020.
11	Željeznička infrastruktura Crne Gore AD		1		21.08.2020.
12	AD Pošta Crne Gore		1		21.08.2020.
13	Koalicija Za budućnost Crne Gore			1	21.08.2020.
14	JP Nacionalni parkovi Crne Gore		1		24.08.2020.
15	Zavod za zapošljavanje		1	States of	18.08.2020.
16	Albanska lista	N. Hostin		1	18.08.2020.
17	Bošnjačka stranka	all the	all second	1	18.08.2020.
18	Koalicija "Crno na bijelo"			1	18.08.2020.
19	Hrvatska reformska stranka	1990	82.53	1	18.08.2020.
20	Koalicija "Za budućnost Kotora"	1982-201		1	18.08.2020.
21	Socijaldemokratska partija			1	18.08.2020.
	Ukupno	4	7	10	Contraction of the second

Photo 27: Excerpt from the Report on the conducted supervision during the election campaign for the elections held on August 30, APC

- odluka i dokumentacije koja se odnosi na zapošljavanje u izbornoj kampanji

(uključujući i analizu zapošljavanja u obrazovnim ustanovama od 1.1.2020),

- poštovanja dozvoljene visine mjesečne potrošnje za mjesec u kojem se vrši kontrola (jul i avgust iskontrolisano po 50% institucija), i dr.

Terenska kontrola će omogućiti uvid u dokumentaciju obveznika kako bi se utvrdilo poštovanje zakona i kontrola dostavljenih podataka. Izrađen je plan terenske kontrole (Plan kontrole na terenu dostupan Savjetu Agencije), gdje su definisani datumi kontrola, subjekti, službenici koji će kontrolisati i predmet kontrole. Terenske kontrole će biti izvršene u periodu 20. jul - 20. avgust. Planom je planirano ukupno 36 kontrola i to: tri Ministarstva, 7 Opština (u okviru kojih će biti iskontrolisano 140 budžetskih potrošačkih jedinica, kao i 9 obrazovnih ustanova i sedam organa vlasti na lokalnom i državnom nivou. Biće iskontrolisani 10 najvećih političkih subjekata, uključujući 7 najvećih na državnom nivou 13 na lokalnom.

> Photo 28: Excerpt from Control and Supervision Plan for the election campaign, APC

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^[50] www.antikorupcija.me/media/documents/lzvjestaj_o_sprovedenom_nadzoru_u_toku_izborne_kampanje_2020._god_1.pdf. [51] A comparison of the data shows that no reports on the control of 6 entities subject to the law were published on APC's website: Coalition "Black on White", Social Democratic Party, Croatian Reform Party, Bosniak Party, Coalition "For the Future of Kotor", Albanian List. [52] Control and Supervision Plan for the election campaign for the elections to be held on August 30, 2020, https://www.antikorupcija.me/media/documents/Plan_kontrole_i_nadzora-2020.pdf.

Contrary to its plan, APC did not conduct control of the ministries and educational institutions.

Subject of control	Planned	Controls conducted	Published reports
Ministries	3	-	-
Government institutions	-	1	1
Educational institutions	9	-	-
Public enterprises	-	2	2
State-owned companies	-	4	4
Municipalities	7	5	5
Local authorities	7	-	-
Political entities	10	9	4
Total	36	21	16

Table 4: Comparative data on planned and conducted controls, and published reports

5. 3. Acting of the Council upon initiatives

Instead of deciding on our initiatives and determining whether APC violated the law, the Council of that institution sent us a letter from the director of APC, without questioning the accuracy and legality of those allegations.

The response stated that the Agency "took a stance" that legal deadlines for submitting price lists for advertising in the election campaign may be prolonged for three days, that the links on the website were the same as the documents, and that the control minutes were published on the day MANS reported they were missing.

MANS filed two reports with the APC's Council for illegal conduct of that institution. The first initiative related to the non-publishing of documentation on state spending prescribed by the law and the reports on field control. [53] Focus of the second initiative was publishing the price lists of advertisers in the election campaign, which were submitted after the legally prescribed deadline. [54]

We received one response from the Council to both initiatives, and got forwarded a letter from the Director of APC, to whose actions the initiative refers.

The Council informed us that the members of the Council <u>agreed over the phone that it was necessary</u> to act urgently on the initiatives, not wait for the <u>convening of the session</u>, bearing in mind that the election campaign was underway, and that it was necessary to remove any suspicions regarding the actions of the Director and authorized officials of the Agency in the specific case.

Therefore, the Director informed them that she had prepared a response to the allegations from the initiatives that the Council decided to submit to MANS.

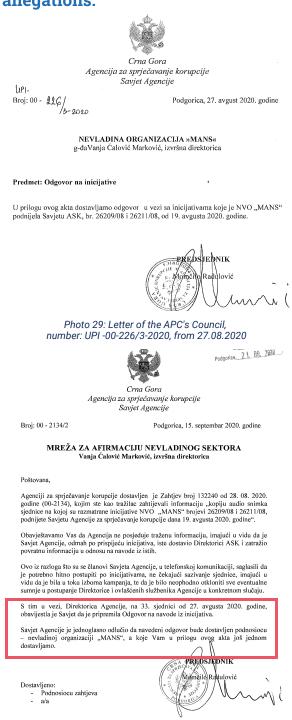


Photo 30: Response of APC to the request for free access to information filed by MANS, from 15.09.2020 [55]

Non-publishing data on spending

The Agency's response states that the institution provided a "tabular overview which shows meeting its prescribed obligations, basic details from the submitted reports", as well as that "a simple click on the name of the authority in the tables opens all relevant documents and reports of that authority directly, or a separate page on which they are posted." In the end, she concludes that the Agency "met its prescribed obligations to publish the acts, documents and data submitted to the Agency <u>on its website</u>".

However, APC **did not publish** on its website **concrete documents** submitted to it by the institutions, but links to their websites, which may or may not contain the same or different versions of these documents.

Non-publishing of reports

The director of APC states in her response: "banner 'reports' was made as a new banner on August 19 and on the same day, the reports that were published in the earlier period were systematized within it".

Thus, she claims that the reports were published on their website, but she does not state the date. In the response, she states that they were unified within a special banner only on August 19, the same day when MANS submitted the initiative to the Council because the reports could not be found on the APC's website.

Publishing of price lists for advertising after the legal deadline

The Agency director states that after the expiration of the legal deadline, the institution sent an invitation to media outlets to submit price lists, due to the COVID pandemic, and that they "took the stance" that all those who had submitted price lists three days after the legal deadline "met their legal obligation on time". They also state that they published those price lists for which it is indisputable that they were submitted after the deadline in order to increase transparency. However, they do not explain why they marked these price lists as "after the deadline" only after MANS had submitted the initiative. kod svih pokrenutih postupaka, Agencija je redovno obavještavala javnost o svim pokrenutim i rezultatima okončanih postupaka. Kad je u pitanju <u>kontrola na terenu</u>, do sada je izvršena kontrola kod ukupno 11 organa vlasti i četiri politička subjekta, sačinjeno je ukupno 15 zapisnika o izvršenoj kontroli koji su objavljeni na internet stranici Agencije 13, 21 i 24. avgusta. Naime, baner "zapisnici" je kao novi baner izrađen 19. avgusta i istog dana su u okviru njega sistematizovani zapisnici koji su bili objavljeni u ranijem periodu, a u cilju veće transparentnosti i lakše dostupnosti javnosti.

U cilju pune primjene člana 46 stav 5 Zakona, u skladu sa dobrom praksom rada Agencije u ranijem periodu i bolje preglednosti i dostupnosti svih izvještaja i podataka iz izvještaja u okviru stranice "Parlamentarni i lokalni izbori - 2020" za svaku izvještajnu obavezu propisanu za organe vlasti otvorila poseban baner koji sadrži tabelarni prikaz ispunjavanja propisanih obaveza, osnovne detalje iz dostavljenih izvještaja i na kojem su linkovani isvještaji, analitičke kartice, putni nalozi i druga dokumenta koja su organi vlasti dužni da objavljuju i dostavljaju Agenciji i Skupštini. Jednostavnim klikom na naziv organa vlasti u tabelama otvaraju se sva predmetna dokumenta i izvještaji tog organa direktno ili posebna stranica na kojoj se ona nalaze. Tako je Agencija na jedan sveobuhvatan, upotrebljiv i efikasan način ispunila propisane obaveze da na svojoj internet stranici objavi akte, dokumenta i podatke koji su dostavljene Agenciji i učini ih dostupnim široj i zainteresovanoj javnosti.

Kad je u pitanju Inicijativa br UPI-00-234-2020 od 19.08.2020:

član 16 Zakona o finansiranju političkih subjekata i izbornih kampanja propisuje obavezu subjektima koji pružaju usluge <u>medijskog oglašavanja</u> izborne kampanje da Agenciji dostave cjenovnik usluga medijskog oglašavanja u izbornoj kampanji u roku od deset dana od dana raspisivanja izbora, odnosno do 30. juna kada je u pitanju izborna kampanja za izbore koji će biti održani 30. avgusta 2020. godine. U tom roku, samo je 13 subjekata dostavilo cjenovnika izbornog oglašavanja Agenciji za sprječavanje korupcije. Nalazeći da je zbog epidemije kovid-19 i mjere NKT-a kojom se ograničava okupljanje na otvorenom i zatvorenom prostoru, medijski prostor od ključnog značaja za predstavljanje političkih subjekata i njihovih predizbornih programa, Agencija je 1. jula 2020. godine, a nakon isteka zakonskog roka, na osnovu čl.8 Zakona o upravnom postupku, uputila poziv medijskim subjektima da dostave cjenovnike medijskog oglašavanja, kako bi se omogućila što kvalitetnija izborna kampanja i ravnopravno predstavljanje svih političkih subjekata. Nakon poziva Agencije, u roku od tri dana, još 14 medijskih subjekata je

Kralja Nikole 27/V	Agencija za sprječavanje korupcije	+382 20 44 77 01
Podgorica		kabinet@antikorupcija.me
Crna Gora		www.antikorupcija.me

dostavilo cjenovike, koje je Agencija prihvatila. Agencija je zauzela stav da su svi zakonski obveznici koji su dostavili cjenovnike u roku od 3 dana nakon upućenog poziva za dostavljanje cjenovinka, na vrijeme izvršili zakonsku obavezu.

Dakle, ukupno je 27 subjekata dostavilo cjenovnike, a Agencija je u cilju potpune transparentnosti sve cjenovnike koji su joj dostavljeni u roku objavila na svojoj internet stranici. Ti subjekti, sa stanovišta zakona iz nadležnosti Agencije, mogu nesmetano da političkim subjektima pružaju usluge medijskog oglašavanja tokom izborne kampanje.

U cilju potpune transparentnosti izbornog procesa, na svojoj internet stranci objavila dokumenta koja su joj tokom kampanje dostavili obveznici zakona, odnosno organi vlasti, politički subjekti i mediji. Punom transparentnošću, Agencija doprinosi daljem jačanju integriteta izbornog procesa i povjerenja javnosti u rad ovog organa. S tim u vezi, Agencija je objavila sve cjenovnike medijskog oglašavanja

pristigle u zakonskom roku, kao i one koji su pristili nakon zakonskog roka, kako bi zainteresovana javnost, a prije svega politički subjekti, imali potpuni uvid u tu dokumentaciju.

Photo 31: Excerpt from the APC's response, No. UPI-00-226/2-2020 of 20 August 2020

APC refers to Article 8 of the Law on Administrative Procedure, which defines the principle of active assistance to a party, but also states that they were addressed only after the expiration of the legal deadline. This is especially because this article is applied in cases when the exercise of their rights and legal interests is not to the detriment of the rights and legal interests of other persons. In this case, the damage was suffered by legal entities that had submitted price lists within the legal deadline.

5. 4. Acting of the court upon lawsuits

The court ruled that the report applicants had no legal interest in initiating lawsuits against the decisions of APC, thus, there is essentially no judicial control over the work of that institution. This means that, in practice, APC's decisions are final, although they are clearly unlawful.

The Administrative Court ruled that MANS had no legal interest in filing the lawsuit against the unlawful decision of APC, only persons who have a legal interest, i.e. whose subjective circumstances have been changed by deciding on the right and obligation of the party.

The mere fact that someone controls the work of state bodies in the public interest is not a sufficient basis for conducting court proceedings. In practice, this means that only the entities subject to the law can file a lawsuit against the decisions of the APC on initiatives related to violations of the law, and not the report applicants, except in the case of procedural omissions. Navodi podnijetog zahtjeva da je tužilja nevladina organizacija koja se bavi ispitivanjem poštovanja zakona od strane organa vlasti bez značaja su za drugačiju odluku. Ovo sa razloga što takav interes nije "pravni interes" iz člana 22 stav 1 tač. 3 ZUS-a. Pravni interes iz navedene zakonske odredbe znači da je osporeni akt doveo do promjene subjektivne situacije tužioca do koje je došlo posredno rješavanjem o pravu i obavezi stranke iz upravnog postupka. U konkretnoj situaciji očigledno da do takve promjene za tužilju nije došlo, a ni tužilja to ne tvrdi.

Kontrola rada državnih organa jeste javni interes, ali to nije interes iz navedene zakonske odredbe.

Odredba člana 10 stav 2 ZUS-a na koju se poziva tužilja bez značaja je za drugačiju odluku. Tom odredbom je propisano da pored fizičkog ili pravnog lica stranke u postupku mogu biti i oni koji nemaju svojstvo pravnog lica, ali moraju biti nosioci prava i obaveza o kojima se rješavalo upravnim aktom. Tužilja ima svojstvo pravnog lica (član 6 Zakona o nevladinim organizacijama), a osporenim rješenjem se nije odlučivalo o njenim pravima i obavezama.

Saglasno članu 56 stav 2 Zakona o finansiranju političkih subjekata i izbornih kampanja postupak o kome se odlučuje da li postoji povreda istog pokreće se po službenoj dužnosti na osnovu sopstvenih saznanja ili prijave fizičkog ili pravnog lica.

Neosnovano iz navedene zakonske odredbe tužilja izvodi zaključak da je podnošenjem prijave stekla svojstvo stranke u tom postupku. Stranka u tom postupku je kontrolisano lice, a ne podnosilac prijave. U odnosu na podnosioca prijave Agencija ima samo obaveze iz člana 56 stav 4 i 5 Zakona o finansiranju političkih subjekata i izbornih kampanja.

Bez značaja za drugačiju odluku su i navodi podnijetog zahtjeva da je tužilji dostavljeno osporeno rješenje, jer time ista nije stekla aktivnu legitimaciju.

Podnijetim zahtjevom se navodi da se označeno rješenje pobija i zbog povrede materijalnog prava, ali se taj osnov ne obrazlaže. Uz to, pobijanim rješenjem tužba je odbijena iz procesnih razloga, pa se sud prilikom donošenja istog nije ni upuštao u pravilnost primjene materijalnog prava.

Nalazeći sa iznijetih razloga da je podnijeti zahtjev neosnovan ovaj sud je s pozivom na član 47 stav 1 ZUS-a, odlučio kao u izreci.

> VRHOVNI SUD CRNE GORE Podgorica, 05. 11. 2020. godine

Zapisničar, Radojka Djordjević,s.r



Photo 32: Excerpt from one of the judgments of the Supreme Court on the request for review of the decision of the Administrative Court regarding the lawsuit of MANS, number: Uvp. no. 699/20, from 05. November 2020

6. TRANSPARENCY OF THE AGENCY

By unjustifiably restricting access to data, the Agency partially or completely prevented civil society and the public from monitoring the application of some provisions of the law during the election campaign.

Seven months after the elections, APC published data on average spending of the institutions which they were not allowed to exceed during the election campaign. With the same delay, the Agency published the documentation submitted to it by political entities and advertisers in the election campaign, which it had previously declared a secret.

By withholding information, the Agency also limited public control over the legality of the work of that institution. APC deleted the entire content of the request for initiating misdemeanour proceedings for violating the legal provisions related to the financing of the election campaign, claiming that it thus protected personal data.

The Agency hid the warnings it had submitted to the entities subject to the law, with the explanation that they were given exclusively verbally. APC stated that it would not publish opinions on the application of the law given to the entities subject to the law, because the collection of these documents represents a compilation of new information. The decisions of that institution to initiate proceedings to determine whether there were violations of the law were published only eight months after the elections.

Part of the published data indicate that APC could not monitor compliance with certain legal restrictions because it received data from the relevant institutions only in the second part of the election campaign.

6.1. Monitoring of the overspending of public resources disabled

APC made it impossible to monitor the spending of public funds, because seven months after the elections it published data on the average spending of institutions which they were not allowed to exceed during the election campaign. Published data show that the institutions submitted data on spending to APC only during August, so it is not clear on what basis the Agency monitored whether the legal restrictions were met.

The law stipulates that state and local spending units shall be prohibited from monthly spending higher than the average monthly spending in the previous six months. [56]

Bearing in mind that APC is obliged to monitor whether the institutions comply with these provisions, we requested that the institution publish data on average monthly spending on the basis of which it determines whether there was a violation of the law. [57]

However, ten days before the elections, APC informed us that **it did not have** that information. In the same note, APC states that it controlled the application of that legal provision and initiated numerous proceedings.

MANS filed a complaint with the second instance body, which annulled the Agency's act due to procedural reasons.

After that, APC issued a new decision stating that **it prohibits access to the requested information because it is in the interest of performing the official duty of supervision**.

Namely, APC claims that it supervises the application of a specific legal provision, and that all entities subject to the law can potentially be parties in misdemeanour proceedings.





Agencija za sprječavanje korupcije

Datum: 20.08.2020.godine

MREŽA ZA AFIRMACIJU NEVLADINOG SEKTORA Gđi Vanji Ćalović Marković

PODGORICA Dalmatinska, 188

Poštovana,

Broj: 03-04-2046/2.

Agenciji za sprječavanje korupcije je dostavljen zahtjev broj 131 907 od 12.08.2020. godine (03-04-2046 od 12.08.2020. godine), kojim ste kao tražilac zahtijevali informacije "kopiju podataka o prosječnoj mjesečnoj potrošnji u prethodnih šest mjeseci svih državnih i lokalnih budžetskih potrošačkih jedinica (u vezi sa članom 38 stav 1 Zakona o finansiranju političkih subjekata i izbornih kampanja)".

U skladu sa stavom 1 predmetne zakonske odredbe, državnim i lokalnim budžetskim potrošačkim jedinicama, osim Državnoj izbornoj komisiji i opštinskim izbornim komisijama, zabranjena je (od dana raspisivanja do dana održavanja izbora) mjesečna potrošnja veća od prosječne mjesečne potrošnje u prethodnih šest mjeseci, osim u slučajevima vanrednog stanja, u skladu sa zakonom.

Vršeći nadzor nad primjenom navedene zakonske odredbe, Agencije je pokrenula 123 postupka i zatražila dostavljanje podataka od 25 lokalnih i 95 državnih potrošačkih jedinica o iznosu potrošnje za mjesec jul 2020. godine u odnosu na prosječnu mjesečnu potrošnju za period decembar 2019 – maj 2020. godine, o čemu je obavijestila Savjet Agencije i javnost.

Shodno navedenom Vas obavještavamo da Agencija ne posjeduje, niti je u periodu prijema Vašeg zahtjeva i postupanja po istome bila dužna da posjeduje podatke o prosječnoj mjesečnoj potrošnji u prethodnih šest mjeseci svih državnih i lokalnih budžetskih potrošačkih jedinica

Srdačno,



Photo 33: APC's act, no.03-04-2046/2 from 20.08.2020

[56] Article 38, paragraph 1:"State and local budgetary spending units, except for the State Election Commission and the municipal election commissions, shall be prohibited from monthly spending higher than the average monthly spending in the previous six months from the day of calling of the elections until the day of holding of the elections, except in cases of emergency, in accordance with the Law." [57] MANS' request number: 131907, submitted on 12.08.2020 The Agency explains that "disclosure of data may cause damage to the rights of parties prescribed by the laws on administrative, misdemeanour etc. procedure, violation of the presumption of innocence, the right to examine the case file, etc."

That decision was made on November 2, two month after the parliamentary elections.

The second instance body rejected our appeal, on which it made decision in the end of January 2021.

MANS also filed a lawsuit with the Administrative Court, but no judgement was issued by the end of May 2021.

Analiza tražene informacije je u toku u trenutku dostavljanja Agenciji predmetnog zahtjeva za slobodan pristup informacijama. Član 14 stav 1 tačka 4 alineja 1 Zakona o slobodnom pristupu informacijama propisuje da organ može ograničiti pristup informaciji ako je to u interesu vršenja službene dužnosti radi zaštite od objelodanjivanja podataka koji se odnose na planiranja inspekcijske kontrole i nadzora od strane organa vlasti, pa imajući u vidu da Agencija vrši nadzor, kako je to prethodno objašnjeno, odbijen je zahtjev za pristup informaciji kopiji podataka o prosječnoj mjesečnoj potrošnji u prethodnih šest mjeseci svih državnih i lokalnih budžetskih potrošačkih jedinica (u vezi sa članom 38 stav 1 Zakona o finansiranju političkih subjekata i izbornih kampanja).

Takođe, u skladu sa članom 16 Zakona o slobodnom pristupu informacijama, Agencija je izvršila test štetnosti objelodanjivanja navedenih dokumenata i utvrdila: Nezavisno od predmetne upravne stvari, u trenutku podnošenja predmetnog zahtjeva je postignut značajan nivo transparentnosti podataka o finansiranju troškova izborne kampanje izbora 2020. godine (vidjeti www.antikorupcija.me, baner Parlamentarni i lokalni izbori 2020). Stoga je pretežniji interes subjekata nadzora da se prethodno okonča postupak nadzora traženih podataka, u kojem je svaki subjekat nadzora potencijalna stranka u prekršajnom ili drugom postupku, kao i interes organa koji vode postupke da se sa prikupljenim podacima i činjenicama postupa po pravilima zakona kojima se uređuje postupak (koja su takođe javni interes). Objelodanjem podataka može nastati šteta po prava stranaka propisana zakonima o upravnom, prekršajnom itd. postupku, kršenje prepostavke nevinosti, prava na razgledanje spisa predmeta i sl. To je istovremeno šteta za integritet organa koji vrši kontrolu i nadzor, jer je javni interes da ista bude doslijedna, detaljna, objektivna, neselektivna, stručna i metodološki ujednačena, od strane organa ovlašćenog za kontrolu i nadzor, uz uvažavanje svih pravnih aspekata koji se odnose na prava, obaveze i odgovornosti svih subjekata u postupku kontrole i nadzora, kao i interesa javnosti.

U odnosu na navedene interese ne postoji preovlađujući interes iz člana 17 Zakona o slobodnom pristupu, posebno imajući u vidu da je u toku postupak kontrole i nadzora finansiranja izborne kampanje pred nadležnim organom i da je visok nivo transparentnostu postupka finansiranja i kontrole izborne kampanje obezbijeđen objavljivanjem u skladu sa zakonom dokumenata na internet stranici Agencije.

Kralja Nikole 27/V Podgorica Crna Gora Agencija za sprječavanje korupcije

+382 20 44 77 02 kabinet@antikorupcija.me www.antikorupcija.me

Photo 34: APC's decision, number: 03-04-2046/9 from 02.11.2020

APC claimed, among other things, that it could not publish data on the six-month average spending of the institutions until it published its report on monitoring during the election campaign.

Therefore, after the publication of that document in early December 2020, MANS again requested that the Agency publish data on the average spending of entities subject to the law. [58]

The Agency again refused to disclose the requested data, this time with the explanation that an administrative procedure was already initiated on the same issue.

Second instance body annulled that decision upon our appeal.

Finally, at the end of March 2021, seven months after the elections, APC published data on the average six-month spending of entities subject to the law, based on which it was possible to monitor whether they complied with legal provisions during the election campaign.

Crna Gora Agencija za sprječavanje korupcije

Broj: 03-04-2689/7

Na osnovu člana 30 i 27 Zakona o slobodnom pristupu informacijama ("Službeni list CG", broj 44/12 i 30/17) i člana 99 Zakona o upravnom postupku ("Službeni list Crne Gore" broj 37/17), odlučujući o zahtjevu Mreže za afirmaciju nevladinog sektora Agencija za sprječavanje korupcije dana 10.12.2020. donijela je:

RJEŠENJE

Odbija se zahtjev Mreže za afirmaciju nevladinog sektora za pristup informaciji: »kopiji podataka o mjesećnoj potrošnji u prethodnih šest mjeseci svih državnih i lokalnih budžetskih potrošačkih jedinica (u vezi sa članom 38 stav 1 Zakona o finansiranju političkih subjekata i izbornih kampanja«.

Obrazloženje

Podnosilac zahtjeva Mreža za afirmaciju nevladinog sektora predala je Agenciji zahtjev za slobodan pristup informacijama broj 03-04-2689 za slobodan pristup informacijama dana 4.12.2020. godine kojim se traži pristup kopiji podataka o mjesečnoj potrošnji u prethodnih šest mjeseci svih državnih i lokalnih budžetskih potrošačkih jedinica (u vezi sa članom 38 stav 1 Zakona o finansiranju političkih subjekata i izbornih kampanja.

Postupajući po predmetnom zahtjevu Agencija je odlučila kao u dispozitivu, a ovo iz sledećih razloga:

Članom 30 Zakona o slobodnom pristupu informacijama o zahtjevu organ odlučuje rješenjem, kojim dozvoljava pristup traženoj informaciji ili njenom dijelu ili zahtjev odbija, članom 13 propisano je da je organ dužan da omogući pristup informaciji koju posjeduje osim u slučajevima predviđenim ovim zakonom, članom 29 stav 1 predviđa da će organ odbiti zahtjev ako pristup informaciji zahtijeva sačinjavanje nove informacije, ako je podnosiocu zahtjeva bio omogućen pristup informaciji u prethodnih šest mjeseci ili ako postoji razlog iz člana 14 ovog zakona. Nadalje, članom 27 istog zakona propisano je da ako ovim zakonom nije drukčije uređeno, organ rješava po pravilima opšteg upravnog postupka, dok je članom 99 stav 1 tačka 4 Zakona o upravnom postupku propisano da će nadležni javnopravni organ odbiti zahtjev za pokretanje upravnog postupka rješenjem ako je u istoj upravnoj stvari već pokrenut drugi upravni postupak ili sudski postupak ili je u toj upravnoj stvari već bilo odlučeno pravosnažnim rješenjem kojim je stranci bilo priznatno pravo ili određena neka obaveza.

Kako je podnosilac zahjeva o traženoj informaciji već podnio zahtjev br. 03-04-2046 ovom organu dana 12.08.2020. godine, po kom zahtjevu je odlučeno

 Kralja Nikole 27/V
 Agencija za sprječavanje korupcije
 +382 20 44 77 02

 Podgorica
 kabinet@antikorupcija.me
 www.antikorupcija.me

Photo 35: APC's decision, no. 03-04-2689/2 of 10.12.2020

N.V.O. " NANS" Broj. 132817 Pedgerica. 29.05. 2071.201_god

Crna Gora Agencija za sprječavanje korupcije

Broi: 03-04-2689/1

Na osnovu čl. 30 Zakona o slobodnom pristupu informacijama (Sl. list CG, br. 44/12 i 30/17) i čl. 18 Zakona o upravnom postupku (Sl. list CG br. 37/17), odlučujući o zahtjevu MANS-a za slobodan pristup informacijama, Agencija za sprječavanje korupcije dana 24.3.2021. godine, donijela je

RJEŠENJE

Dozvoljava se pristup informaciji kopiji podataka o prosječnoj mjesečnoj potrošnji u prethodnih šest mjeseci svih državnih i lokalnih budžetskih potrošačkih jedinica (u vezi sa članom 38 stav 1 Zakona o finansiranju političkih subjekata i izbornih kampanja).

Pristup informaciji može se ostvariti dostavom kopije informacije putem pošte, preporučenom pošiljkom na adresu podnosioca zahtjeva Dalmatinska 188. Podnosilac može u roku od pet radnih dana od prijema rješenja uplatiti troškove postupka u iznosu 20.6 eura u korist Budžeta Crne Gore na žiro račun 907-000000083001-19 i o tome dostaviti prvostepenom organu odgovarajući dokaz. Pristup informaciji ostvariće se u roku od pet dana od dana kada je podnosilac zahtjeva dostavio dokaz o uplati troškova postupka.

Žalba protiv ovog rješenja ne odlaže njegovo izvršenje.

Photo 36: APC's decision, no. 03-04-2689/7 of 24.03.2021

Submitted documents show that APC obtained data on average monthly spending by collecting them from the very entities subject to the law. Thus, these entities themselves defined the legal limit for spending funds during the election campaign.

Instead, the Agency was supposed to request data on the spending of budget users from the Ministry of Finance, which would facilitate the process of data collection, but also increase their accuracy.

Aleksandra Golubovic				Cma Gora Sekretarijat za zakonodavstvo	Adresa/ Vuka Karadžića br. 81000 Podgorica, Crna Gore tel: +382 20 231-535 fax: +382 20 231-592 www.szz.gov.me
From: Sent: To: Cc:	gordana.g <gordana.g@t-coi Thursday, August 6, 2020 2:44 Finansiranje Ljiljana Lakic; Maja Milosevic</gordana.g@t-coi 		Br: 01-40	0/20-836/2	7. avgust 2020 godine
Subject:	Odgovor na dopis br.02-02/1	882/1926 od 04.08.2020.god.	Za:	- Agencija za sprječavanje korupcije-	AG HARTS SPELLOVASTE KORV
Categories: Postovana,	Yellow category	Crim Gora AGENCIA VA SPECCIANE ROLLPCUS PERCENSIE ROLLPCUS COLUMN 7-108-2020 (2-02- 4882) /2430	Predmet	: Dostava podataka	107, 108-2020 109 - 29- 1882/ 12466
 Prosjecna mjesecna potro maj 2020.god., iznosi 42.948.98 eura; 		dostavljamo trazene podatke: zavnom tuzilastvu, za period decembar 2019.god irzavnom tuzilastvu, za mjesec jul 2020.god., iznosi	godine, a u cilj vas sledeće: - U d - Z 2 2	upajući po vašem aktu broj 02-02/1882/1928 u transparentnosti upotrebe javnih resursa u J Sekretarijatu za zakonodavstvo prosječna m lecembar 2019. – maj 2020. godine iznosi 28. Ia period januar 2020 jun 2020. godine pros 56.415,00 eura, J julu mjesecu 2020. godine potrošnja u Sekr 24.976,19 eura .	i izbornoj kampanji , obavještavamo Njesečna potrošnja za period . 710,00 eura , sječna mjesečna potrošnja iznosi
Gordana Gagovic CENTAR ZA OBUKU U SUDS ul.serdara Jola Piletica bb, F 067 604 202	TVÜ I DRZAVNOM TUZILASTVÜ PC Palada, I sprat				POMOCNICA SEKRETARKE
finansiranje@antikorupciji	a.me		tel: 067-8	sóba:Željka Pejović 58-815 jka.pejovic@szz.gov.me	

Photos 37 and 38: Examples of data on average spending published by APC upon our request for information

It is particularly interesting that all entities subject to the law submitted data on their average monthly spending only in August 2020, although the election campaign started at the end of June. Therefore, it is unclear based on what the Agency monitored the spending of state bodies in the first part of the election campaign.

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6. 2.Limiting the monitoring of funding of political entities

The documents submitted by the parties to APC were declared secret by the institution, and disclosed only seven months after the elections, limiting the monitoring of the funding of political parties by civil society and the public.

APC declared secret the contracts and invoices submitted to it by political parties, claiming that the information was secret because there was an ongoing control by that institution. [59] However, even after the election day, and the publication of APC's report, that documentation was not published. Therefore, as in the previous example, MANS filed new requests [60] which were rejected by APC because there were ongoing appeal proceedings on the same issue. Finally, in May 2021, these data were published.



Agencija za sprječavanje korupcije

Broj: 03-04-2321/2

Na osnovu člana 18 Zakona o upravnom postupku ("Službeni list Crne Gore" broj 37/17) i člana 29 Zakona o slobodnom pristupu informacijama ("Službeni list Crne Gore", broj 44/12 i 30/17), Agencija za sprječavanje korupcije dana 15.10.2020. donijela je:

RJEŠENJE

Odbija se zahtjev za pristup informaciji kopiji svih ugovora i faktura pojedinačno za sve troškove, dostavljenih od strane Demokratske partije socijalista nakon održanih parlamentarnih izbora 2020. godine.

Obrazloženje

Podnosilac zahtjeva Vanja Ćalović Marković izvršni direktor nevladine organizacije Mreža za afirmaciju nevladinog sektora predala je Agenciji zahtjev za slobodan pristup informacijama zahtjev broj 132 400 od 2.10.2020. godine (03-04-2321 od 5.10.2020. godine) kojim se traži pristup kopiji svih ugovora i faktura pojedinačno za sve troškove, dostavljenih od strane Demokratske partije socijalista nakon održanih parlamentarnih izbora 2020. godine.

Agencija je postupila po predmetnom zahtjevu i utvrdila: U cilju sprovođenja kontrole u toku izborne kampanje je Agencija dužna da prikuplja podatke o svim aktivnostima političkih subjekata u toku trajanja izborne kampanje vezano za utrošena sredstva za finansiranje troškova izborne kampanje (član 58 stav 2 Zakona o finansiranju političkih subjekata i izbornih kampanja, Službeni list Crne Gore broj 3/20 i 30/20). Politički subjekat je dužan da sačini izvještaj o porijeklu, visini i strukturi prikupljenih i utrošenih sredstava iz javnih i privatnih izvora za izbornu kampanju i podnese Agenciji sa pratećom dokumentacijom u roku od 30 dana od zavanja izbora (član 50 stav 1).

Agencija vrši kontrolu finansiranja političkih subjekata i izbornih kampanja (član 5), odnosno vrši suštinsku provjeru podataka iz dostavljenih izvještaja političkih subjekata njihovim upoređivanjem sa prikupljenim podacima Agencije koji se odnose na aktivnosti političkih subjekata, koje je Agencija prikupila tokom i nakon izborne kampanje u skladu sa zakonom.

Nadalje, Agencija mora izvršiti nadzor nad sprovođenjem ovog zakona u okviru nadležnosti utvrđenih ovim zakonom (član 55), što podrazumijeva provjeru poštovanja od strane imenovanog političkog subjekta ukupno 16 zabrana i ograničenja u protekloj izbornoj kampanji koji su ovim zakonom propisani za političke subjekte.

Kralja Nikole 27/V	Agencija za sprječavanje korupcije	+382 20 44 77 02
Podgorica		kabinet@antikorupcija.me
Crna Gora		www.antikorupcija.me

Photo 39: Excerpt from APC's decision, no. 03-04-2321/2 from 15.10.2020



N.V.O. " IVE A IV S " Boj 13276C Pedgorica 1 03 2021201 god.

Agencija za sprječavanje korupcije

Broj: 03-04-2626/8-2020

Na osnovu člana 30 u vezi člana 13 Zakona o slobodnom pristupu informacijama ("Službeni list Crne Gore", broj 44/12 i 30/17) i člana 18 Zakona o upravnom postupku ("Službeni list Crne Gore" broj 37/17), odlučujući o zahtjevu MANS-a za slobodan pristup informacijama, Agencija za sprječavanje korupcije dana 24.2.2021. godine, donijela je

RJEŠENJE

Usvaja se zahtjev i dozvoljava se pristup informaciji kopiji svih ugovora i faktura pojedinačno za sve troškove, dostavljenih od strane Demokratske partije socijalista nakon održanih lokalnih izbora 2020. godine.

Pristup informaciji ostvariće se dostavom kopije informacije putem pošte, preporučenom pošiljkom na adresu podnosioca zahtjeva Dalmatinska 188, nakon izvršenog brisanja dijela informacije kojem je pristup ograničen.

Podnosilac zahtjeva može u roku od pet radnih dana od prijema rješenja uplatiti troškove postupka u iznosu 6,35 eura (šest eura i tridesetpet centi) u korist Budžeta Crne Gore na žiro račun 907-000000083001-19 i o tome dostaviti prvostepenom organu odgovarajući dokaz. Pristup informaciji ostvariće se u roku od pet dana od dana kada je podnosilac zahtjeva dostavio dokaz o uplati troškova postupka.

Žalba protiv ovog rješenja ne odlaže njegovo izvršenje.

Obrazioženje

Mreža za afirmaciju nevladinog sektora – MANS je na osnovu Zakona o slobodnom pristupu informacijama ovoj Agenciji podnijela zahtjev broj 03-04-2626 od 24.11.2020. godine, za dostavljanje kopija svih ugovora i faktura pojedinačno za sve troškove, dostavljenih od strane Demokratske partije socijalista nakon održanih lokalnih izbora 2020. godine.

Postupajući po navedenom zahtjevu Agencija je donijela rješenje broj 03-04-2626/2 od 7.12.2020. godine, kojim je odbila zahtjev za slobodan pristup informacijama, koje je rješenjem Agencije za zaštitu ličnih podataka i slobodan pristup informacijama br. UPII 07-250-2/21 od 29.1.2021. godine poništeno i predmet vraćen na ponovni postupak i odlučivanje.

Kralja Nikole 27/V	Agencija za sprječavanje korupcije	+382 20 44 77 02
Podgorica		kabinet@antikorupcija.me
Crna Gora		www.antikorupcija.me

Photo 40: Excerpt from APC's decision, no.03-04-2626/8-2020 from 24.02.2021

[59] MANS' requests no: 132400, 132401, 132402, 132403, 132404, 132405, 132406, 132407, 132408, 132409 i 132410, from 02.10.2020.
[60] MANS' requests no: 132755, 132756, 132757, 132758, 132759, 132760, 132761, 132762, 132763, 132764, 132765, from 23.11.2020,

MANS also requested that APC publish all reports submitted to it by political entities, which are not available on the institution's website. [61] APC acted in the same way as in the previous example, thus, the information saw the light of day only several months after the elections.



N.V.O. " MAAN S" Broj 132399 Podgorica, 21, 10, 2020 and

sprječavanje korupcije

Broj: 03-04-2318/2

Na osnovu člana 18 Zakona o upravnom postupku ("Službeni list Crne Gore" broj 37/17) i člana 29 Zakona o slobodnom pristupu informacijama ("Službeni list Crne Gore", broj 44/12 i 30/17), Agencija za sprječavanje korupcije dana 19.10.2020. donijela je:

RJEŠENJE

Odbija se zahtjev za pristup informaciji kopiji svih obrazaca izvještaja koje su shodno obavezi sprovođenja Zakona o finansiranju političkih subjekata i izbornih kampanja dostavile sve političke partije i koalicije, a nakon održanih lokalnih i parlamentarnih izbora 2020. godine.

Obrazloženje

Podnosilac zahtjeva Vanja Ćalović Marković izvršni direktor nevladine organizacije Mreža za afirmaciju nevladinog sektora predala je Agenciji zahtjev za slobodan pristup informacijama broj 132 399 od 5.10.2020. godine (03-04-2318 od 6.10.2020. godine) kojim se traži pristup kopiji svih obrazaca izvještaja koje su shodno obavezi sprovođenja Zakona o finansiranju političkih subjekata i izbornih kampanja dostavile sve političke partije i koalicije, a nakon održanih lokalnih i parlamentarnih izbora 2020. godine.

Agencija je postupila po predmetnom zahtjevu i utvrdila: Predmetnim zahtjevom je tražilac zahtijevao dozvolu pristupa i dostavu izvještaja političkih subjekata o porijeklu, visini i strukturi prikupljenih i utrošenih sredstava iz javnih i privatnih izvora za izbornu kampanju parlamentarnih izbora 2020. godine, koje ti subjekti dostavljaju Agenciji u roku od 30 dana od dana održavanja izbora, na obrascu koji utvrđuje Agencija u skladu sa članom 50 stav 2 Zakona o finansiranju političkih subjekata i izbornih kampanja, (Službeni list Crne Gore broj 3/20 i 30/20).

Izvještaje o prikupljenim i utrošenim sredstvima iz javnih i privatnih izvora za izbornu kampanju Agencija objavljuje na svojoj internet stranici (u skladu sa članom 51) u roku od sedam dana od dana prijema, na obrascima rubrike Javni registri - Izvještaji o troškovima izborne kampanje, u kojoj su isti dostupni stručnoj i zainteresovanoj javnosti.

Izvještaje o prikupljenim i utrošenim sredstvima iz javnih i privatnih izvora za izbornu kampanju (bez obzira da li su na obrascu koji dostavlja politički subjekat ili na obrascu rubrike Javni registri) sadrže lične podatke o uplatama priloga fizičkih lica za izbornu kampanju, koji su takođe javno dostupni

Kralja Nikole 27/V	Agencija za sprječavanje korupcije	+382 20 44 77 02
Podgorica		kabinet@antikorupcija.me
Crna Gora		www.antikorupcija.me

Photo 41: Excerpt from APC's decision, no. 03-04-2318/2 from 19.10.2020 Crna Gora

Agencija za sprječavanje korupcije

Broj: 03-04-2318/4 _ 2020

N.V.O. " IVI A N S " Broj 132399 Podgerica, 12 (13. 2021 , ____god.

Na osnovu člana 30 u vezi člana 13 i 14 Zakona o slobodnom pristupu informacijama ("Službeni list Crne Gore", broj 44/12 i 30/17) i člana 18 Zakona o upravnom postupku ("Službeni list Crne Gore" broj 37/17), odlučujući o zahtjevu MANS-a za slobodan pristup informacijama, Agencija za sprječavanje korupcije dana 4.3.2021. godine, donijela je

RJEŠENJE

Usvaja se zahtjev i dozvoljava se pristup informaciji kopiji svih obrazaca izvještaja koje su shodno obavezi sprovođenja Zakona o finansiranju političih subjekata i izbornih kampanja dostavile sve političke partije i koalicije, a nakon održanih lokalnih i parlamentarnih izbora 2020. godine. Ograničava se pristup u dijelu informacije koji se odnosi na lične podatke fizičkih lica.

Pristup informaciji ostvariće se dostavom kopije informacije putem pošte, preporučenom pošiljkom na adresu podnosioca zahtjeva Dalmatinska 188, nakon izvršenog brisanja dijela informacije kojem je pristup ograničen.

Podnosilac zahtjeva može u roku od pet radnih dana od prijema rješenja uplatiti troškove postupka u iznosu 23,9 eura (dvadesettri eura i devedeset centi) u korist Budžeta Crne Gore na žiro račun 907-000000083001-19 i o tome dostaviti prvostepenom organu odgovarajući dokaz. Pristup informaciji ostvariće se u roku od pet dana od dana kada je podnosilac zahtjeva dostavio dokaz o uplati troškova postupka.

Žalba protiv ovog rješenja ne odlaže njegovo izvršenje.

Obrazloženje

Mreža za afirmaciju nevladinog sektora – MANS je na osnovu Zakona o slobodnom pristupu informacijama ovoj Agenciji podnijela zahtjev broj 03-04-2318 od 5.10.2020. godine, za dostavljanje kopija svih svih obrazaca izvještaja koje su shodno obavezi sprovođenja Zakona o finansiranju političih subjekata i izbornih kampanja dostavile sve političke partije i koalicije, a nakon održanih lokalnih i parlamentarnih izbora 2020. godine.

Postupajući po navedenom zahtjevu Agencija je donijela rješenje broj 03-04-2318/2 od 19.10.2020. godine, kojim je odbila zahtjev za slobodan pristup informacijama, koje je rješenjem Agencije za zaštitu ličnih podataka i slobodan pristup informacijama br. UPII 07-30-2850-2/21 od 12.2.2021. godine poništeno i predmet vraćen na ponovni postupak i odlučivanje.

Kralja Nikole 27/V	Agencija za sprječavanje korupcije	+382 20 44 77 02
Podgorica		kabinet@antikorupcija.me
Crna Gora		www.antikorupcija.me

Photo 42: Excerpt from APC's decision, no. 03-04-2318/9-2020 from 04.03.2021

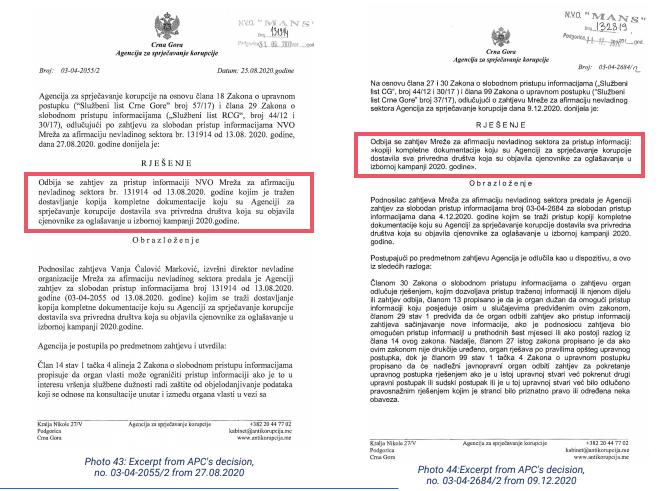
6. 3. Limiting the monitoring of advertising in the election campaign

More detailed information that APC received from advertisers in the election campaign was also published only seven months after the elections.

During the election campaign in 2020, MANS also requested a copy of the entire documentation submitted to the Agency for Prevention of Corruption by all companies that published price lists for advertising in the election campaign. [62]

The Agency refused to publish that information, explaining that it was subject to their control. That decision was confirmed by the second-instance body, which rejected our appeal, therefore, we filed a lawsuit upon which no verdict was passed until the completion of this analysis.

Similar to other proceedings, we filed a new request [63] after APC released a monitoring report of the election campaign, which was allegedly an obstacle to the publishing of data. This request was rejected by the Agency because the procedure on the request of the same content was in progress. However, that decision was overturned on our appeal.



Finally, at the end of March this year, seven months after the elections, APC disclosed the requested information.

Broj: 03-04-2684/ 10 - 2020

Crna Gora

Agencija za sprječavanje korupcije

Na osnovu čl. 30 i na osnovu čl. 26 Zakona o slobodnom pristupu informacijama (Sl. list CG, br. 44/12 i 30/17) i čl. 18 Zakona o upravnom postupku (Sl. list CG br. 37/17), odlučujući o zahtjevu MANS-a za slobodan pristup informacijama,

RJEŠENJE

Dozvoljava se pristup dijelu informacije kopiji kompletne dokumentacije koju su Agenciji za sprječavanje korupcije dostavila sva privredna društva koja su

Pristup istom može se ostvariti dostavom kopije informacije putem pošte, preporučenom pošiljkom na adresu podnosioca zahtjeva Dalmatinska 188.

Podnosilac može u roku od pet radnih dana od prijema rješenja uplatiti troškove

postupka u iznosu 16,7 eura u korist Budžeta Crne Gore na žiro račun 907-

000000083001-19 i o tome dostaviti prvostepenom organu odgovarajući dokaz. Pristup informaciji ostvariće se u roku od pet dana od dana kada je podnosilac

Agencija nije dužna da omogući putem emaila pristup dijelu tražene informacije koji se tiče dostavljenih ugovora koji su javno objavljeni na internet stranici <u>www.antikorupcija.me</u> i dostupni su slijeđenjem linkova Politički subjekti,

Praćenje izbora, Parlamentarni i lokalni izbori 2020. na baneru Odluke ASK, koji

su ugovori zaključeni između političkih subjekata i privrednih društava koja su

objavila cjenovnike za oglašavanje u izbornoj kampanji 2020. godine.

Agencija za sprječavanje korupcije dana 10.3.2021. godine, donijela je

objavila cjenovnike za oglašavanje u izbornoj kampanji 2020. godine.

zahtjeva dostavio dokaz o uplati troškova postupka.

N.V.O. " NIA IS S' 132819 Podgorica, 12 03. 20261_90

Broj: 03-04-2684/7 -2020



N.V.O. " INT A IN S " Rigi <u>132819</u> Pedgorica, <u>31</u> 03. 202101 god.

Agencija za sprječavanje korupcije

Datum: 26.3.2021.godine

MREŽA ZA AFIRMACIJU NEVLADINOG SEKTORA

PODGORICA Dalmatinska, 188

Agencija za sprječavanje korupcije je primila dokaz NVO Mreža za afirmaciju nevladinog sektora, o uplati troškova postupka za pristup informaciji kojoj je dozvoljen pristup rješenjem 03-04-2684/7 od 10.3.2021. godine.

Tražiocu se dostavlja tražena informacija, u skladu sa članom 21 stav 1 tačka 3 i članom 32 Zakona o slobodnom pristupu informacijama (Službeni list Crne Gore broj 44/12 i 30/17).



Photo 45: Excerpt from APC's decision, no. 03-04-2684/7-2020 from 10.03.2021

Photo 46: APC's act, no. 03-04-2684/10-2020 from 26.03.2021

6.4.

Data on proceedings for determining violations of the law became public after eight months

Eight months after the elections, APC finally announced its decisions to initiate proceedings to determine whether there were any violations of the law.

MANS requested that APC publish decisions on initiating proceedings to establish violations of the law during the election campaign for the parliamentary elections. [64]

The Agency refused to submit them under the pretext that collecting the requested data into one whole implies compiling new information, which, as they claim, they are not obliged to do.

MANS filed complaints with the second instance body, claiming that access to information was unlawfully denied.

Namely, since compiling new information is not the same as searching for existing information, it is clear that the Agency unlawfully restricted access to the requested information. In addition, in its decisions, APC does not dispute at any time that it has the required documentation, but that the collection of all required information on the subject requests represents compilation of new information, so it is clear that the restriction of access is unfounded. By this logic of the Agency, any request for free access to information would be rejected because it involves searching of documents.

Our appeal was upheld and the Agency was ordered to make another decision on our request. The decision on the appeal states that the allegations of the first instance body are a blanket statement because such interpretation would undermine the essence of the Law on Free Access to Information, "because any request that requires the collection of documentation could be considered compiling new information, which is a sort of legal nonsense."

N.V.O. " MANS" Pedgerina, 14, 09, 20201_acc Crna Gora Agencija za sprječavanje korupcije

N32235

Broj: 03-04-2128/9

Na osnovu člana 18 Zakona o upravnom postupku ("Službeni list Crne Gore" broj 37/17) i člana 29 Zakona o slobodnom pristupu informacijama ("Službeni list RCG", broj 44/12 i 30/17), Agencija za sprječavanje korupcije dana 11.08.2020. donijela je:

RJEŠENJE

Odbija se zahtjev za pristup informaciji: kopiji svih akata kojima su pokrenuti postupci koji se odnose na upotrebu javnih resursa u izbornoj kampanji 2020. godine.

Obrazloženje

Podnosilac zahtjeva Vanja Ćalovi Marković izvršni direktor nevladine organizacije Mreža za afirmaciju nevladinog sektora predala je Agenciji zahtjev za slobodan pristup informacijama broj 132 235 od 27.08.2020. godine (03-04-2128 od 27.08.2020. godine) kojim se traži pristup kopiji svih akata kojima su pokrenuti postupci koji se odnose na upotrebu javnih resursa u izbornoj kampanji 2020. godine.

Agencija je postupila po predmetnom zahtjevu i utvrdila:

Članom 29 stav 1 tačka 1 Zakona o slobodnom pristupu informacijama je propisano da će organ vlasti odbiti zahtjev za pristup informaciji ako pristup informaciji zahtijeva ili podrazumijeva sačinjavanje nove informacije.

Kako prikupljanje u jednu cjelinu svih akata kojima su pokrenuti postupci koji se odnose na upotrebu javnih resursa u predmetnoj izbornoj kampanji podrazumijeva i predstavlja sačinjavanje nove informacije, to se odbija zahtjev tražioca u skladu sa navedenom odredbom člana 29 stav 1 tačka 1 Zakona o slobodnom pristupu informacijama. Svakako, u slučaju svakog eventualnog zahtjeva za konkretnim aktom o pokretanju postupka pred Agencijom za sprječavanje korupcije, Agencija će dozvoliti i omogućiti pristup istom u slučaju ispunjenja zakonskih uslova za dozvolu i omogućavanje pristupa takvoj informaciji.

Na osnovu navedenog je odlučeno kao u izreci rješenja.

UPUTSTVO O PRAVNOJ ZAŠTITI: Na ovo rješenje može se izjaviti žalba Agenciji za sprječavanje korupcije, ili neposredno drugostepenom organu Agenciji za zaštitu ličnih podataka i slobodan pristup informacijama, u roku od 15 dana-od-dana prijema stranci.



Photo 47: APC's decision, no. 03-04-2128/2 from 11.08.2020



N.V.O. " IVI A IVI S " Broj_<u>432235</u> Podgorica, <u>22.04.702</u>00__gcd.

Broj: 03-04-2128/G-2020

Eight months after the elections, APC provided us with a new decision stating that the data on the initiated proceedings related to the misuse of public resources were published on its website.

Na osnovu člana 30 u vezi člana 26 Zakona o slobodnom pristupu informacijama (Službeni list CG, br. 44/12 i 30/17) i člana 18 Zakona o upravnom postupku (Službeni list CG br. 37/17), odlučujući o zahtjevu Mreže za afirmaciju nevladinog sektora, Agencija za sprječavanje korupcije dana 19.4.2021. donijela je:

RJEŠENJE

Odbija se zahtjev, budući da je informacija objavljena na internet stranici Agencije za sprječavanje korupcije, odnosno da je javno dostupna podnosiocu zahtjeva i svim zainteresovanim licima.

U slučaju kada je tražena informacija objavljena na internetu, a što je slučaj u predmetnom, organ vlasti nije dužan da omogući pristup traženim informacijama već je dužan da obavijesti podnosioca zahtjeva gdje je tražena informacija javno objavljena, shodno članu 26 Zakona o slobodnom pristupu informacijama.

Shodno tome, Agencija obavještava podnosioca zahtjeva da su traženi akti kojima su pokrenuti postupci koji se odnose na upotrebu javnih resursa u predmetnoj izbornoj kampanji objavljeni na internet stranici www.antikorupcija.me, i dostupni su unosom ključnih riječi "informacija 2128" u polje Pretraga.

Obrazloženje

Podnosilac zahtjeva, Mreža za afirmaciju nevladinog sektora, predala je Agenciji zahtjev broj 03-04-2128 za slobodan pristup informacijama dana 27.08.2020. godine, kojim se traži pristup kopiji svih akata kojim su pokrenuti postupci koji se odnose na upotrebu javnih resursa u izbornoj kampanji 2020. godine.

Photo 48: Excerpt from APC's decision, no. 03-04-2128/6-2020, from 19.04.2021

6.5. Entire content of misdemeanour proceedings initiated due to protection of the privacy

The Agency hid the entire content of the requests for initiating misdemeanour proceedings for violating the legal provisions related to the financing of the election campaign, claiming that it thus protected personal data.

MANS requested that the Agency publish data on initiated misdemeanour proceedings related to violations of the law regarding the misuse of public resources. [65]

As in the previous example, APC refused to provide the requested data, under the pretext that their collecting implies the compilation of new information. That decision was overturned after MANS' appeal.

With the new decision, APC allowed us access to information related to legal entities, but not to proceedings against natural persons.

of individuals deleted

However, the Agency deleted 112 out of 116 pages, claiming that access to them was restricted because they contained personal data, such as ID numbers, addresses, but also "the status of a natural person in a legal entity". Therefore, they stated that only two of the 44 acts on initiating misdemeanour proceedings do not contain personal data, so they did not censor them.

Only two requests for initiating misdemeanour proceedings for violating the law during the election campaign were disclosed, while entire content was deleted from all the others, with the explanation that in that way personal data were protected.

Crna Gora Agencija za sprječavanje korupcije

Broj: 03-04-2157/6-2020

N.V.O. "MANS" Broj 132261

Podgorica, 29 04. 20261 god.

Na osnovu člana 30 stav 1 u vezi člana 13 i člana 14 Zakona o slobodnom pristupu informacijama (Službeni list Crne Gore, broj 44/12 i 30/17) i člana 18 Zakona o upravnom postupku (Službeni list Crne Gore broj 37/17), odlučujući o zahtjevu MANS-a za slobodan pristup informacijama, Agencija za sprječavanje korupcije dana 20.04.2021. godine, donijela je

RJEŠENJE

Dozvoljava se pristup dijelu informacije kopiji svih akata kojim su pokrenuti prekršajni postupci koji se odnose na kršenje Zakona o finansiranju političkih subjekata i izbornih kampanja u izbornoj kampanji 2020. godine. Dio informacije kojem je odobren pristup su akti kojima su pokrenuti prekršajni postupci isključivo protiv pravnih lica od strane Agencije za sprječavanje korupcije.

Ograničava se pristup informacijama u dijelu akata za pokretanje prekršajnog postupka koji sadrže lične podatke fizičkih lica.

Pristup informaciji ostvariće se dostavom kopije informacije putem pošte, preporučenom pošilikom na adresu podnosioca zahtieva Dalmatinska 188. Shodno članu 24 Zakona o slobodnom pristupu informacijama, pristup informacijama se omogućava nakon izvršenog brisanja dijela informacije kojem je pristup ograničen, u obimu od obrisanih 112 od 116 stranica, uz napomenu »izvršeno brisnje« u dijelu podataka kojem se ograničava pristup.

Podnosilac zahtjeva može u roku od pet radnih dana od prijema rješenja uplatiti troškove postupka u iznosu 6,8 eura u korist Budžeta Crne Gore na žiro račun 907-000000083001-19 i o tome dostaviti prvostepenom organu odgovarajući dokaz. Pristup informaciji ostvariće se u roku od pet dana od dana kada je podnosilac zahtjeva dostavio dokaz o uplati troškova postupka.

Žalba protiv ovog rješenja ne odlaže njegovo izvršenje.

Photo 49: Excerpt from APC's decision, no. 03-04-2157/6-2020, from 20.04.2021



Broj: 02-03- 2261

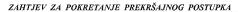


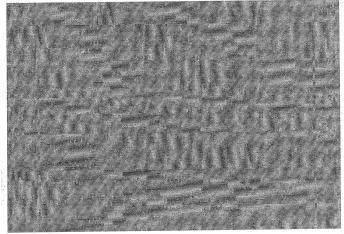
Agencija za sprječavanje korupcije

Podgorica, 24. 09. 2020. godine

SUD ZA PREKRŠAJE PODGORICA

PODGORICA Na osnovu člana 111 stav 1 Zakona o prekršajima ("Službeni list CG" br. 01/11, 06/11, 39/11, 32/14, 43/17 i 51/17), člana 78 stav 1 i člana 4 stav 3 Zakona o sprječavanju korupcije ("Službeni list CG" br. 53/14) i člana 4 Zakona o finansiranju političkih subjekata i izbornih kampanja ("Službeni list CG" br. 52/14, 76/15, 83/16, 92/17, 3/20 i 38/20) podnosimo





Agencija za sprječavanje korupcije

Kralja Nikole 27/V Podgorica Crna Gora

+382 20 44 77 01 kabinet@antikorupcija.me www.antikorupcija.me Agencija za sprječavanje korupcije

Kralja Nikole 27/V Podgorica Crna Gora

+382 20 44 77 01 kabinet@antikorupcija.me www.antikorupcija.me

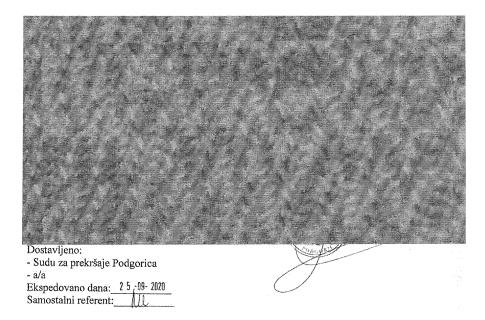


Photo 50: An example of one of the censored documents submitted by APC upon a request for access to information

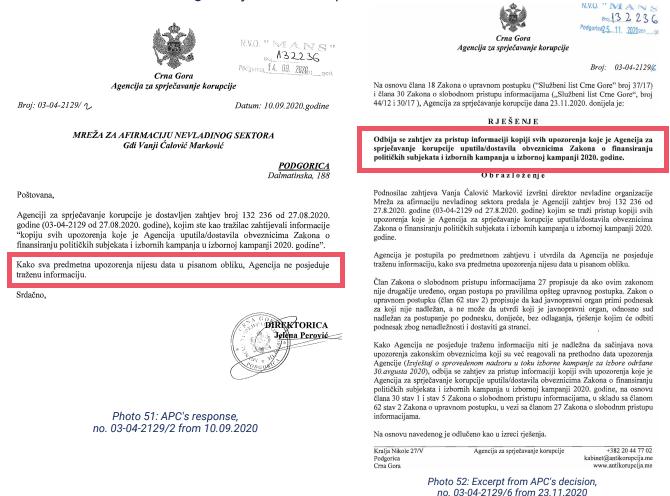
Interestingly, APC demanded 6.8 euros for the costs of copying censored, completely useless information.

6. 6. Warnings and opinions sent only by phone

The Agency hid the warnings it had submitted to the entities subject to the law, with the explanation that they were given exclusively verbally. If this is indeed true, then APC does not use all legal mechanisms for law enforcement. APC stated that it would not publish opinions on the application of the law given to the entities subject to the law, because the collection of these documents would imply the compilation of new information.

In one of the statements [66] during the election campaign, the Agency stated that it sent a number of warnings, clarifications and opinions to the entities subject to the law, so we requested copies of those documents. [67]

The Agency refused to submit the warnings, claiming that it did not have them because they were not all given in writing. That act was annulled on appeal due to procedural reasons, so APC issued a new decision and again rejected the request.



APC's responses state that not **all** warnings were given in writing, not that none of the warnings were given in writing. In addition, in the Report on the conducted supervision during the election campaign for the elections held on August 30, 2020 [68], APC stated that it sent <u>888 warnings</u> to the entities subject to the law, mostly for non-submitting or non-publishing of the report within the prescribed deadline or in the prescribed manner.

Izvještaj o sprovedenom nadzoru u toku izborne kampanje za izbore održane 30. avgusta 2020.

Agencija je uputila **888 upozorenja** obveznicima zakona, većinom iz razloga nedostavljanja ili neobjavljivanja izvještaja u propisanom roku ili na propisani način. Takođe, sprovedeno je ukupno **477 postupaka** od strane Agencije po službenoj dužnosti.

Photo 53: Excerpt from the Report on the conducted supervision during the election campaign for the elections held on August 30, APC

Therefore, it is incredible that the Agency has accurate data on the number of warnings sent, without any of them being issued in writing so that it could be submitted upon request for information.

The Agency acted in a similar way in the case of clarifications of the law, for which it stated were given over the phone and therefore did not exist in writing.

In its report, APC also stated a precise number of <u>719 legal</u> <u>advice and clarifications</u>, all of which were allegedly given verbally or over the phone.

Since it is obvious that the Agency did not wish to publish the requested information, of which at least those submitted by e-mail must be in its possession, MANS filed an appeal. The appeal was not accepted, so we filed lawsuits upon which no verdicts were passed until the completion of this analysis. Agencija je postupila po predmetnom zahtjevu i utvrdila da Agencija ne posjeduje traženu informaciju, kako se predmetni savjeti i pojašnjenja odnose na dodatne informacije za koje obveznici kontaktiraju Agenciju na odgovarajući broj telefona ovog organa koji je na raspolaganju obveznicima u toku izborne kampanje.

Član 20 Zakona o slobodnom pristupu informacijama predviđa da ukoliko organ nije u posjedu ionformacije uputi zahtjev nadležnom organu ako zna koji je nadležni organ. Član 27 propisuje da ako ovim zakonom nije drugačije uređeno, organ postupa po pravililma opšteg upravnog postupka. Zakon o upravnom postupku (član 62 stav 2) propisuje da kad javnopravni organ primi podnesak za koji nije nadležan, a ne može da utvrdi koji je javnopravni organ, odnosno sud nadležan za postupanje po podnesku, donijeće, bez odlaganja, rješenje kojim će odbiti podnesak zbog nenadležnosti i dostaviti ga stranci.

Kako Agencija ne posjeduje traženu informaciju niti je nadležna da sačinjava nove pravne savjete zakonskim obveznicima kojima su već dati pravni savjeti u izbornoj kampanji, odbija se zahtjev za pristup informaciji kopiji svih pravnih savjeta i pojašnjenja koje je Agencija uputila/dostavila obveznicima Zakona o finansiranju političkih subjekata i izbornih kampanja u izbornoj kampanji 2020. godine, na osnovu člana 30 stav 1 i stav 5 Zakona o slobodnom pristupu informacijama, u skladu sa članom 62 stav 2 Zakona o upravnom postupku, u vezi sa članom 27 Zakona o slobodnom pristupu informacijama.

Photo 54: Excerpt from APC's Decision no. 03-04-2131/6 from 30.11.2020

političkih subjekata i novinarima. Dato je 25 saopštenja za medije, 49 mišljenja na zahtjeve organa vlasti, koji su se u većini slučajeva odnosili na primjenu čl. 40 i 44 Zakona u izbornoj kampanji, kao i 719 pravnih savjeta i pojašnjenja. Data su dva opšta mišljenja na primjenu čl. 16 i 40 Zakona u kampanji. Urađen je Infografik koji je postavljen na internet stranici; urađen i distribuiran liflet "Transparentnost i kontrola izbornog procesa", kao i dva animirana spota o obavezama propisanim Zakonom koja su dostupna na internet stranici. Sve navedeno je urađeno i planirano kroz poseban Plan PR aktivnosti koji je razvijen za ovu izbornu kampanju. O svim sprovedenim aktivnostima, redovno je obavještavana zainteresovana i druga javnost.

Photo 55: Excerpt from the Report on the conducted supervision during the election campaign for the elections held on August 30, APC APC refused to publish the opinions issued by that institution at the request of the authorities in the election campaign.

They explained that the "collection and compiling of all opinions" adopted by APC "implies and represents the compilation of new information".

MANS filed an appeal against this decision in October, but until the end of May 2021, no decision was made upon it.



BROJ,_____

8 V V V

Crnú Gora Agencija za sprječavanje korupcije

Broj: 03-04-2130/9

Na osnovu člana 18 Zakona o upravnom postupku ("Službeni list Crne Gore" broj 37/17) i člana 29 Zakona o slobodnom prístupu informacijama ("Službeni list RCG", broj 44/12 i 30/17), Agencija za sprječavanje korupcije dana 10.08.2020. donijela je:

R J E Š E NJ E

Odbija se zahtjev za pristup informaciji: kopiji svih mišljenja koje je Agencija za sprječavanje korupcije donijela na zahtjeve organa vlasti u izbornoj kampanji.

Obrazloženje

Podnosilac zahtjeva Vanja Čalovi Marković izvršni direktor nevladine organizacije Mreža za afirmaciju nevladinog sektora predala je Agenciji zahtjev za slobodan pristup informacijama broj 132 237 od 27.08.2020. godine (03-04-2130 od 27.08.2020. godine) kojim se traži pristup kopiji svih mišljenja koje je Agencija za sprječavanje korupcije donijela na zahtjeve organa vlasti u izbornoj kampanji.

Agencija je postupila po predmetnom zahtjevu i utvrdila:

Članom 29 stav i tačka i Zakona o slobodnom pristupu laformacijama je propisuno da će organ vlasti odbiti zahtjev za pristup informaciji ako pristup informaciji zahtijeva ili podrazumijeva sačinjavanje nove informacije.

Kako prikupljanje i spajanje u cjelinu svih mišljenja koje je Agencija za sprječavnje korupcije donijela na zahtjeve organa vlasti u izbornoj kampanji podrazumijeva i predstavlja sačinjavanje nove informacije, to se odbija zahtjev tražioca u skladu sa navedenom odredbom člana 29 stav 1 tačka 1 Zakona o slobodnom pristupu informacijama. Svakako, u slučaju svakog eventualnog zahtjeva za konkretnim mišljenjem datim nekom od obveznika Zakona o finansiranju političkih subjekata i izbornih kampanja, Agencija će donijeti dozvoljavajuće rješenje za pristup informaciji u slučaju da takvo mišljenje posjeduje.

Na osnovu navedenog je odlučeno kao u izreci rješenja.

UPUTSTVO O PRAVNOJ ZAŠTITI: Na ovo rješenje može se izjaviti žalba Agenciji za sprječavanje korupcije, ili neposredno drugostepenom organu Agenciji za zaštitu ličnih podataka i slobodan pristup informacijama, u roku od 15 dana od dana prijema stranci.

Kralja Nikole 27/V Podgorica Crna Gora Agencija za sprjećavanje korupcije



Photo 56: APC's decision, no. 03-04-2130/2 from 10.08.2020



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