

**The Network for the Affirmation of NGO Sector  
MANS**

# VALDANOS

**case study  
March 2011**



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# VALDANOS

## I. INTRODUCTION

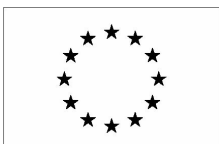
This case study proves that an effective public campaign of the civil society may ensure lawfulness and transparency of the privatisation process despite the lack of political will of individuals who make decisions concerning the sale of Montenegrin assets.

The study points to a number of omissions made in the tender procedure for the long-term lease of over 3.5 million square meters of land in the Valdanos cove, as well as the lack of transparency and willingness of the Government to enable access to information.

The documents making an integral part of the study confirm that for two years the Government conducted negotiations with a company which failed to meet the tender requirements. When this was pointed out by MANS, leading Government officials defended the deal claiming it was done in compliance with the law.

Nevertheless, following the campaign carried out by MANS, the Government Council for Privatisation and Capital Projects was forced to annul the tender for Valdanos.

Furthermore, the Valdanos case is also illustrative of the fact that, instead of determining accountability for illegal deals, some Government officials substitute the thesis by accusing the nongovernmental sector of scaring off the investors. Hence, this study is to show that even the new Government, which highlights the importance of cooperation with the civil society, is still not ready to recognise and sanction individual accountability of some among its members, but rather opts for fight with those of the civil society who dare draw attention to violations and call for greater transparency.



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## II. PLANS FOR TOURISM DEVELOPMENT OF VALDANOS

The 3.5 million square metre large Valdanos cove, with an olive grove with close to 18,000 trees, is one of the most beautiful pearls on the Montenegrin coast, and a site with undisputable tourism potentials. The olive trees are over 350 years old, some even 500, or even one thousand, which is why in 1968 this area was declared a monument of nature, while it enjoys special protection status according to the current Law on Olive Growing.

### Intended Development

In late November 2010, the Government of Montenegro adopted the State Location Study for Valdanos. The study drafter was the National Institute for Urban Planning and Design, in majority ownership of Aco Đukanović, the brother of the then Prime Minister, Milo Đukanović.

The drafters enabled the future developer to construct 100 villas in total, 300 square meters of gross built-up area (GBA) each, with a 45 square metre terrace and a swimming pool<sup>1</sup>. There is also envisaged development of three hotels with close to 700 beds, and allowable GBA of 66,782 square metres. Together with the villas, 1,400 beds in total are allowed.

Ukupni pokazatelji planiranog stanja za zahvat Studije lokacije	
▪ Površina zahvata.....	352 ha
▪ Površina urbanističkih parcela.....	371.162m <sup>2</sup>
▪ Bruto građevinska površina objekata.....	111.284 m <sup>2</sup>
▪ Ukupan broj ležajeva.....	1.400
▪ Indeks zauzetosti u zonama za izgradnju.....	0.13
▪ Indeks izgrađenosti u zonama za izgradnju.....	0.30
▪ Indeks zauzetosti na nivou zahvata plana.....	0.014
▪ Indeks izgrađenosti na nivou zahvata plana.....	0.032

*An excerpt from the State Location Study for Valdanos showing intended development*

The experience to date shows that mixed tourism and residential developments most often ended by developers promising huge investments in tourism before concluding the deal, only to, after entering into contract with the Government, build and sell first the residential units, and then move to another location, without any intention to build tourism amenities.

In the given case, the decision to build as many as 100 villas for the property market in the Valdanos cove indicates that the Government still encourages the construction of residential units for the market notwithstanding the very limited space for tourism development.

### Environment

In addition to residential units for the market, the State Location Study envisages also that the development would have significant environmental impact. The decision to develop the State Location Study was made before the adoption of the Law on Strategic Environmental Assessment, and thus the Government was not obligated to carry out impact assessment and conduct public discussions. Notwithstanding the absence of legal requirements, the Government decision to implement a project with clear environmental impact without clearly stipulating the measures to prevent nature degradation is disconcerting.

The type of development involved here is best illustrated by the fact that the future lease-holder for Valdanos is allowed to “transplant” centennial olive trees in cases where needed for the construction of villas. Thus, no care was taken of this area being designated as a monument of nature and a special protected area.

Pravila za presađnju
U svim zonama u kojima se planira izgradnja turističkih sadržaja, postoji značajan broj starih stabala masline. Obzirom da masline imaju veoma značajnu ulogu u valorizaciji terena, neophodno je obezbijediti njihovo izmještanje (presađivanje) u slučajevima gdje je to zbog izgradnje neophodno. Ovakva (stara) stabla masline mogu se iskoristiti za uređenje parkovskih i drugih zelenih površina unutar turističkog kompleksa, ili izmjestiti u dio zasada (Zona F), te biti korišćena kao rodna stabla.
Za ovaj način presađnje, odnosno očuvanja stabala, potrebne su veće mašine za obradu terena (buldozer, kašikar). Nakon redukcije vegetativne mase krošnje, rezidbom,

*An excerpt from the State Location Study for Valdanos referring to “transplanting” of olive trees*

<sup>1</sup> The terrace and the swimming pool are not included in GBA



The drafters have also envisaged the reclamation of the natural beach in Valdanos by replenishment. Thus, the current 10m wide beach will be extended to the maximum of 60m. The State Location Study states that in majority of cases the reclamation is done by dredging the material from the sea bottom. Although the drafters state that such dredging of the sand and pebbles from the sea bottom has never been done in Montenegro, they do not envisage the method for this operation nor measure the negative impact it would have on the natural environment in the Valdanos area.

Na osnovu prethodnih analiza mogle bi se sumirati preporuke u pogledu uređenja obale i plaže u uvali Valdanos :

- Imajući u vidu veoma ambiciozne planove za izgradnju turističkog kompleksa u uvali Valdanos, sadašnja površina prirodne plaže je sasvim sigurno nedovoljna. Posebno što se radi o ekskluzivnom turističkom lokalitetu. Za povećanje širine plaže trebalo bi primjeniti metodu prihranjivanja plaža. Širina buduće plaže u uvali Valdanos trebalo bi da bude između 50 i 60 metara. Postojeću betonsku stazu i sve betonske objekte na plaži trebalo bi obavezno ukloniti.

*An excerpt from the State Location Study for Valdanos referring to beach reclamation*

### **Expected Economic Impact**

The State Location Study deals also with the economic benefits of tapping the Valdanos cove resources for tourism. Thus, they state that the government may expect from the project a one-off revenue amounting to 21,712,000 EUR as per the collection of the buildable land fee, and regular annual revenues of 2,240,266 EUR as per Corporate Tax, VAT, contributions to salaries of the employees, and Property Tax.

### **Restitution**

For almost two years now several Ulcinj-based NGOs and independent intellectuals have been pointing to the problems related to the Valdanos tender, both environmental, and the ones related to unresolved property issues. More specifically, there are pending cases before the Administrative Court and the Supreme Court in which former land owners ask for restitutions of their property. Some cases are even pending before the European Court of Human Rights in Strasbourg. In May 2007 the Local Council of Ulcinj adopted unanimously the Decision on the Restitution of Land to Former Owners and De-Expropriation, but it never entered into force.<sup>2</sup>

### **III. TENDER PROCEDURE**

In late 2008 the Privatisation Council announced an international tender for long-term lease of Valdanos. According to the tender requirements, Valdanos is leased for 30 years, with the possibility to extend the lease to 90 years for investments exceeding 200 million.

The Privatisation Council extended the deadline for bids twice, with two companies applying in April 2009 – UK-based Cubus Lux, and a Russian-Montenegrin consortium Mos City Group. Five days before the closure of tenders, the Tender Commission dismissed the Mos City Group bid as irregular given that the developer failed to provide bank guarantees in time<sup>3</sup>. At the same time, the Tender Commission invited Cubus Lux for negotiations.

After over a year, on 24 November 2010 the Council for Privatisation and Capital Projects approved the Draft Agreement on Long-Term Lease of Valdanos with Cubus Lux for the period of 30 years, with the obligation to develop an exclusive 4+ and 5 star resort, with the total investment value of 222,517,379 EUR. Only a day later, on 25 November, the Government adopted the State Location Study for Valdanos and the Decision on the Long-Term Lease of Valdanos authorising Vujica Lazović, Deputy Prime Minister, to sign the Lease Agreement.

Vujica Lazović was also the chair of the Privatisation Council, and the chair of the Tender Commission in charge of the tender procedure which passed the decision to award the contract to the UK company Cubus Lux. Incidentally, the Government established the Valdanos Tender Commission twice, in 2007 and 2009, respectively, both times chaired by Vujica Lazović.

The Commission members among others included now the former Minister of Tourism, Predrag Nenezić, Boro Vučinić, Minister of Defence, Vladimir Kavarić, Minister of Economy, Branko Vujović, former Minister of Economy, Gzim Hajdinaga, Mayor of Ulcinj, Mićo Orlandić, director of the Real Estate Agency, Rajko Barović, director of the Public Enterprise for Coastal Zone Management, and Damir Šehović, Member of Parliament.

<sup>2</sup> Article in daily Vijesti "Cakuli: authorities offer the property of others to Russians and English" as of 21 April 2009

<sup>3</sup> Article in daily Vijesti "Valdanos is not really intended for Russians" as of 22 April 2009

## Tender Requirements

The Call for Bids for leasing Valdanos stipulates that a bidder must **cumulatively** meet the requirements under A or B as eligibility criteria for participation to the procedure.

### B.

- Ponudáč mora imati vrijednost kapitala pod upravljanjem od najmanje 100 miliona eura.
- Ponudáč mora dokazati da je najmanje u tri poslovne godine u posljednjih 5 kalendarskih godina ostvario pozitivan finansijski rezultat
- Ponudáč morad okazati da je u toku posljednje poslovne godine ostvario ukupan promet od najmanje 200 miliona eura
- Ponudáč mora imati Pismo o namjerama ili sklopljen Ugovor o upravljanju sa renomiranom kompanijom koja upravlja sa najmanje dva hotelska resorta međunarodnih standarda od najmanje četiri plus zvjezdice.

Kvalifikacioni uslovi B. moraju biti ispunjeni kumulativno. Ispunjenost Kvalifikacionih uslova ocjenjivaće se nakon prijema i otvaranja paketa sa ponudama.

*An excerpts from the Call for Bids for long-term lease of Valdanos*

The tender requirement under B implied that Cubus Lux had to have capital under its control of at least 100 million EUR, that it had to prove positive business performance for previous three business years over the last five calendar years, as well as to have the total turnover of at least 200 million EUR over the last business year.

According to British laws, Cubus Lux is registered as a PLC (Public Limited Company) which, among other things, implies its requirement to publicise financial statements. Financial statements are available at the company website, but also the foreign financial portals monitoring the operation of companies<sup>4</sup>.

### Positive Financial Performance over the Last Three Business Years

Cubus Lux had to comply with the tender requirement of three years with positive performance over the last five. Given the date of the call for bids, the reference years for the Tender Commission were 2004, 2005, 2006, 2007 and 2008.

According to the data from financial statements, Cubus Lux ended the business year 2004 with the loss of £453,000. The subsequent year, 2005 also ended with a loss of £497,000.

In 2006, Cubus Lux adopted the International Standards for Financial Reporting<sup>5</sup>, which, according to EU directives, imply different reporting period, with the 15 month as the accounting period. Thus, the 2006 financial statement was done for the period of 15 months, ending with 31 March 2007, as stated in the statement proper. Over this period, Cubus Lux again operated with a loss, this time amounting to £130,000.

The 2007 financial statement, done in line with the new system for the period up to 31 March 2008 show positive performance with the profit of £4.8 million. It is at the same time the only year over the 2004-2010 period in which Cubus Lux had a positive performance.

The subsequent statement shows that Cubus Lux again performed with a loss of £2.1 million.

<sup>4</sup> MANS published all financial statements of Cubus Lux for the period 2004-2010 at its website <http://www.mans.co.me/arhiva/2011/02/finansijski-izvjestaji-cubux-lux/>

<sup>5</sup> International Financial Reporting Standards

	Note	2005 £'000	2004 £'000
<b>TURNOVER</b>	1,2	571	484
Cost of sales		(70)	(58)
<b>GROSS PROFIT</b>		501	426
Administrative expenses		(981)	(886)
<b>OPERATING LOSS</b>	3	(480)	(460)
Interest payable and similar charges	6	(18)	(7)
Interest receivable and other income	7	1	14
<b>LOSS ON ORDINARY ACTIVITIES BEFORE TAXATION</b>		(497)	(453)
Tax on loss on ordinary activities	8	-	-
<b>RETAINED LOSS</b>		(497)	(453)
<b>LOSS PER SHARE</b>			
Basic and diluted	21	(2.15p)	(2.41p)

All activities arose from continuing activities.

CUBUS LUX PLC		Period ended 31 March 2007 £'000	Year ended 31 December 2005 £'000
<b>CONSOLIDATED PROFIT AND LOSS ACCOUNT</b>			
FOR THE 15 MONTHS ENDED 31 MARCH 2007			
	Notes		
<b>TURNOVER</b>	1,2	1,017	571
Cost of sales	3	(150)	(70)
<b>GROSS PROFIT</b>		867	501
Administrative expenses		(1,957)	(981)
Other income	8	1,451	-
<b>OPERATING PROFIT/(LOSS)</b>	4	361	(480)
Finance expenditure	5	(201)	(17)
<b>PROFIT/(LOSS) ON ORDINARY ACTIVITIES BEFORE TAXATION</b>		160	(497)
Tax on loss on ordinary activities	6	(290)	-
<b>LOSS FOR THE PERIOD</b>		(130)	(497)

	Notes	Year ended 31 March 2008 £'000	15 months ended 31 March 2007 £'000
<b>REVENUE</b>	1,2	3,078	1,017
Cost of sales	3	(202)	(150)
<b>GROSS PROFIT</b>		2,876	867
Administrative expenses		(2,399)	(1,957)
Other income	8	4,693	1,451
<b>OPERATING PROFIT</b>	4	5,170	361
Finance expenditure	5	(290)	(201)
<b>PROFIT ON ORDINARY ACTIVITIES BEFORE TAXATION</b>		4,880	160
Tax on ordinary activities	6	(9)	(290)
<b>PROFIT/(LOSS) FOR THE PERIOD</b>		4,871	(130)

Excerpts from financial statements of Cubus Lux

### At least 200 million EUR turnover in 2008

The financial statements show that the overall turnover of Cubus Lux in 2008 was far below the tender requirements, and amounted to £3.1 million for the given year.

KEY HIGHLIGHTS	
→ Turnover of (£3.1 million (2007, 15 months: £1.0 million) up 203%	
→ Pre-tax profit of £4.9 million* (2007, 15 months: £160,000)	
→ Earnings per share of 4.78p** (2007, 15 months: loss of 0.19p per share)	

Excerpts from financial statements of Cubus Lux

### Value of capital under its control to be at least 100 million EUR

The statements show that the company disposes of assets of the total value of some 50 million British pounds, instead of at least 100 million euro as stipulated in the tender requirements.

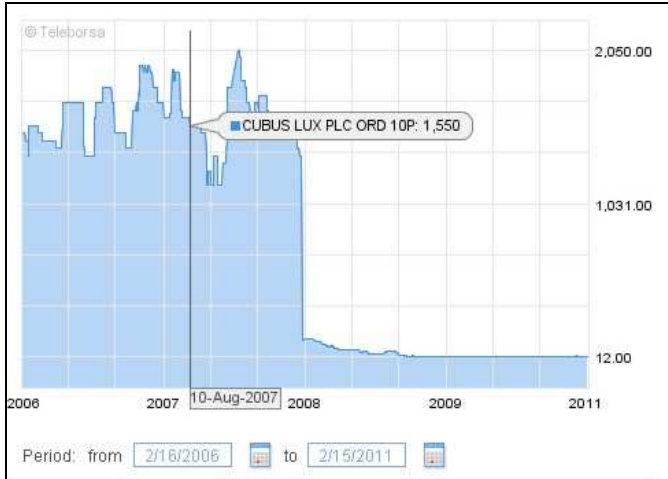
<b>ASSETS</b>		
<b>NON-CURRENT ASSETS</b>		
Intangible assets	8	35,902
Goodwill	8	940
Property, plant and equipment	9	4,702
		41,544
<b>CURRENT ASSETS</b>		
Inventories	11	3,172
Trade and other receivables	12	2,384
Cash at bank	13	2,372
		7,928
<b>TOTAL ASSETS</b>		49,472

Excerpts from financial statements of Cubus Lux

The only tender requirement met by Cubus Lux is the Letter of Intent signed with the Spanish tourism company *Sol Melia*.

**Hence, all the above indicates that Cubus Lux has not met the tender requirements so that the Government could have concluded Lease Agreement for Valdanos with them.**

MANS indicated to the Council for Privatisation and Capital Projects the fact that Cubus Lux continued to perform with losses even after the tender conclusion, and that the shares of this company listed at the Frankfurt and London stock exchanges continue to drop.



*London Stock Exchange Report*



*Frankfurt Stock Exchange Report*

In addition, in its financial statements, Cubus Lux admits not having enough money needed for intended investments and expresses hopes to receive support for the project from local banks in Montenegro.

concluding negotiations.

**Valdanos**  
 After having won the tender to develop the Valdanos land, near Ulcinj in Montenegro, we have started negotiations of the purchase contract with the Montenegro Government. The next step will be to complete a detailed business plan before the project commences. We will need to secure financing to fund the development project and hope to be able to obtain this from local banks in Montenegro.

IAS 36 Impairment of Assets Review  
 Typically, for a project-rich company, which has obtained some projects through acquisition, the Company, having

*Excerpts from a financial statement of Cubus Lux*



#### IV. INITIATIVES TOWARDS AUTHORITIES

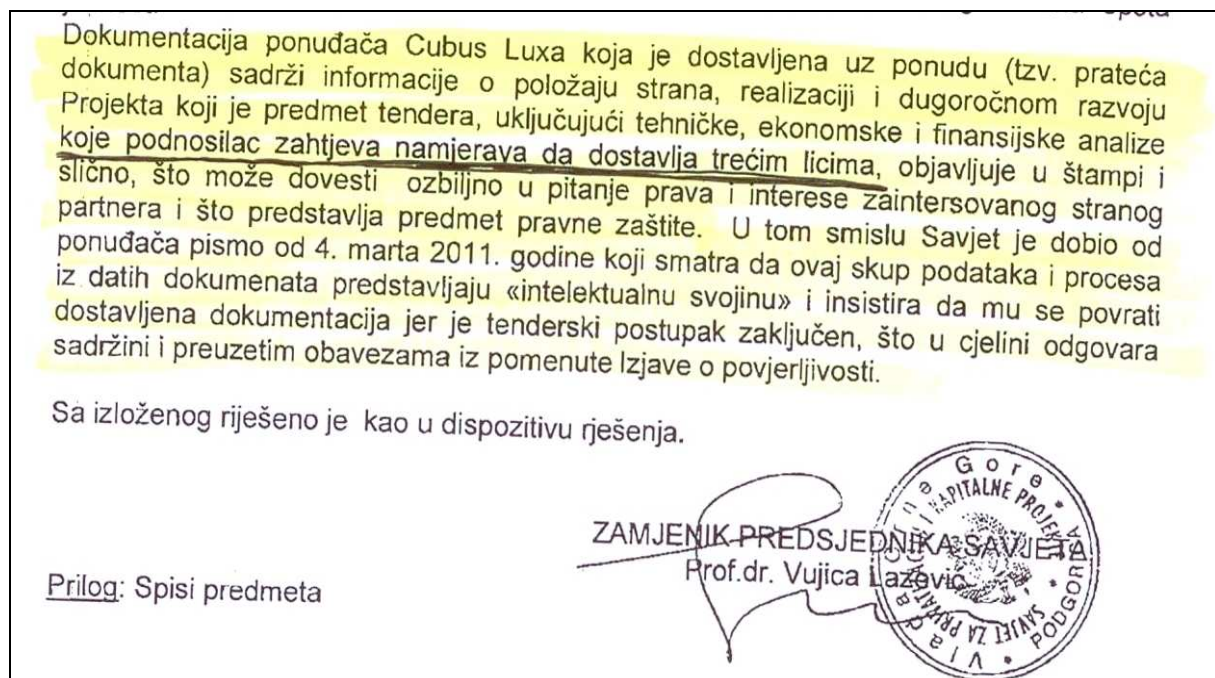
##### Access to Information

Invoking the Free Access to Information Law, MANS requested from the Privatisation Council to inspect full documents reviewed by the Valdanos Tender Commission, including the decision of granting lease to Cubus Lux, the Tender Report given by the Commission, the Investment Plan, and Bank Guarantees, as well as the evidence of positive performance of Cubus Lux and the availability of capital, as eligibility criteria. The request was sent in early February 2011, but the Privatisation Council ignored it why in early March, MANS lodged a complaint with the Administrative Court.

Finally, on 15 March the Council replied to MANS's request and prohibited access to information concerning the evidence that Cubus Lux, as the first-ranking and the winning bidder applying to the tender for tourism development of Valdanos, met the tender requirements, as well as the information on the Investment Plan and the bank guarantees.

The response states that "the documents accompanying the Cubus Lux bid contain information on the standing of parties, the implementation and long-term project development subject of the tender, including the technical, economic and financial due diligence which the applicant intends to make available to third parties, publicise etc, that may seriously jeopardise the rights and interests of the foreign partner and which is subject to legal protection".

According to both the Montenegrin and British applicable law, financial statements of companies are publicly available documents which anyone can examine, and thus it is beyond comprehension how the Council could have prohibited access to the part of requested information referring to the evidence of eligibility of Cubus Lux for the Valdanos tender.



*Response provided by Council for Privatisation*

##### Criminal Report

Based on the evidence gathered, in mid February MANS submitted a criminal report with the Supreme State Prosecutor against the Deputy Prime Minister Vujica Lazović because of suspicion of the abuse of office and negligent performance of official capacity in the tender procedure for long/term lease, thus enabling Cubus Lux to be chosen as the best bidder although it did not meet the eligibility criteria. At the time of the decision on Valdanos, Vujica Lazović was the chair of the Council for Privatisation and Capital Projects, and the chair to the Tender Commission for tourism development of Valdanos.

Along with the report, we submitted to the Supreme State Prosecutor all financial statements of Cubus Lux proving grave violation of the tender procedure, and that this company did not even meet the eligibility criteria, let alone be the best bidder.

## Other Initiatives

We also submitted the financial reports to the current Prime Minister and the chair of the Council for Privatisation and Capital Projects, Igor Lukšić, and the Speaker of the Parliament, Ranko Krivokapić, and asked them to respond within their competences. On 11 February the Government disclosed the Draft Agreement with Cubus Lux which, however, does not contain the annexes with the Investment Plan and Bank Guarantees.

MANS furnished the Parliamentary Commission for Monitoring and Oversight over the Privatisation Process the initiative with the proposal for the Committee to stage control hearings for Lazović and Lukšić, as well as to request from the Privatisation Council the full tender dossier and post it on the Parliament's website. The Commission announced the debate on Valdanos, but it has not been held yet.

Finally, MANS requested from the Council for Privatisation and Capital Projects to annul the tender and the decision of granting long-term lease of Valdanos to Cubus Lux at its next session. Instead, at its next session, the Government, without further investigation, reconfirmed that the tender was conducted transparently and lawfully.

## VI. DEFENDING THE DEAL WITH CUBUS LUX

After the publication of all evidence and the submission of criminal report, Vujica Lazović reiterated publicly on several occasions that the Valdanos tender procedure was conducted transparently and lawfully, but did not present any evidence to refute the allegations made by MANS.

MANS published the excerpts from financial statements in daily papers, which caused strong reaction of the members of the Government, Vujica Lazović in particular, who indirectly accused MANS of scaring off investors and creating a hostile environment aimed at deterring foreign investors from investing in Montenegro.

According to Lazović, the particularly problematic aspect is that Cubus Lux is an EU-based company, and thus he believes that it may send a bad message to other investors from EU wishing to invest in Montenegro.

The Prime Minister himself, Igor Lukšić, speaking of the Valdanos tender said that "the general sentiment goes in the direction that no one suits us, either from Russia, or EU".



Ad in the daily "Vijesti", 22 February 2011

However, Cubus Lux is a UK company only by registration, and most of its investments are targeting the Croatian coast. This company manages two gambling houses in tourism resorts in Pula and Selce, while in the vicinity of Zadar it manages a 200 berth marina on the island of Ugljan. Its Executive Manager, Gerhard Huber is at the same time the largest shareholder (16.5 % of the company), followed by Christian Kaiser (10.9 %), and one of the prominent shareholders include a Croatian citizen Milan Kotur (5.4 %)<sup>6</sup>.

On 24 February MANS sent an open letter to the members of the international community and expressed special concerns about the Government persistence, particularly some of its high-ranking officials, to lead the negotiations with Cubus Lux to its closure at all costs despite blatant evidence indicative of the deal's illegality. The letter also drew attention to the unacceptable attitude of the Government towards the nongovernmental sector, reflected in the attempt of the Government to present the NGO actions as being directed against the state and damaging to the investment environment in Montenegro.

Cubus Lux representatives who arrived to Podgorica in the meantime said they felt undesirable in Montenegro and asked the British embassy and the Delegation of the European Union to Podgorica for help and requested of them, as donors, to "direct the actions of MANS to other more pressing problems in the country", accusing MANS of favouring Russian and Chinese investors.

<sup>6</sup> Upravo su Kotur i Huber bili ključne figure u skandalu oko izgradnje turističko-stambenog naselja na ostrvu Ugljan u Hrvatskoj, projektu koji je trebalo da bude realizovan preko kompanije „Duboko plavetnilo“ d.o.o. koja posluje u sastavu Cubus Lux-a. Ovaj projekat koji je započet još 2006. godine, a nikada dovršen, po svojoj namjeni veoma sličan onome što je Cubus Lux namjeravao da realizuje u Valdanosu. Kompanija „Duboko plavetnilo“ d.o.o. je navodno čak i nakon zabrane državnog tužilaštva u Zadru zbog sumnje da je zemljište tok kompaniji prodato nezakonito, nastavila da prodaje još neizgrađene stanove i vile. (<http://www.poslovni.hr/vijesti/zadarski-deep-blue-zeli-kupiti-hotel-u-ulcinju-24282.aspx>)

## **VII. TENDER ANNULMENT**

Under the public pressure, after almost two years of negotiations, the Privatisation Council gave to Cubus Lux the ten day deadline, until the end of February 2011 to provide guarantees for Valdanos investment.

Before the deadline expiry, the Government announced that Cubus Lux asked the Agreement to contain the so-called "Swiss arbitration" clause because it was unacceptable for the investor to have the disputes handled by Montenegrin courts.

Finally, on 28 February 2011, the Tender Commission for Valdanos decided to annul the tender, stating as the official reason that Cubus Lux failed to secure the requested guarantees. The Privatisation Council announced the new call for tenders is due by the end of April 2011.

The representatives of Cubus Lux gave conflicting statements, one saying that they will reapply for the tender since they have already invested too much money in the bid preparation, while their representative, Milan Kotur said that the company would not take part in the new tender procedure.

MANS continued with the appeals on the Supreme State Prosecutor to consider the criminal report submitted as soon as possible in order to establish liability for violations in the Valdanos case.