REPORT ON THE IMPLEMENTATION OF THE LAW ON FREE ACCESS TO INFORMATION

IN THE PERIOD JANUARY – APRIL 2011

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1. INTRODUCTION

"It is necessary to establish better balance between the Law on Classified Information, the Law on Protection of Personal Data and the Law on Free Access to Information in order to prevent unjustified restrictions on access to information that must be made public and consolidate oversight role of civil society."

Analytical report of the European Commission to Montenegro, November 2010

Montenegrin Law on Free Access to Information was adopted on 8th November 2005 and it established new practice regarding the relation between the state and citizen. Implementation of this Law is one of key prerequisites for the fight against corruption, which is recognized as the most significant obstacle to the European integration of our country.

As of the date of entry of this Law into force, MANS has been overseeing its implementation by testing political will and readiness of institutions to release delicate information which the public has not had access to so far. We use information obtained through this Law in order to increase availability of data on the work of state bodies to citizens and to investigate cases of corruption in various areas.

Purpose of this report is to provide basic information about the implementation of the Law on Free Access to Information, and to point to specific cases of violation of this Law by state authorities. This report contains statistics on the implementation of the Law, as well as four case studies that show that after long legal proceedings it is possible to obtain certain information, such as translations of the European *Acquis* or the information on Tax Identification Numbers of legal persons, while access to some documents is systemically disabled, which is the case with final decisions of Montenegrin courts related to cases of corruption.

This is the first in a series of reports on the implementation of the Law on Free Access to Information in Montenegro which is realized under the project "You have the right to know" supported by the European Union through its Delegation in Podgorica and refers to the period January - April 2011.

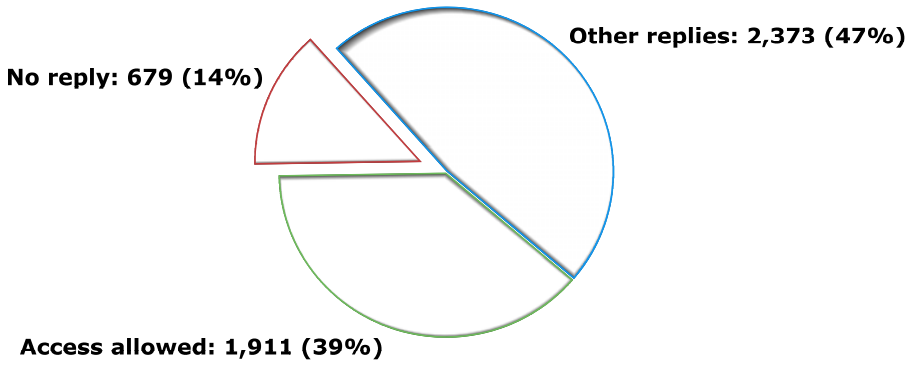
Statistical indicators in this report are from 30th April 2011 do not include actions of state bodies and MANS in the period thereafter.

2. STATISTICAL INDICATORS OF THE IMPLEMENTATION OF THE LAW

2.1. PROCEEDINGS IN THE PERIOD JANUARY – APRIL 2011

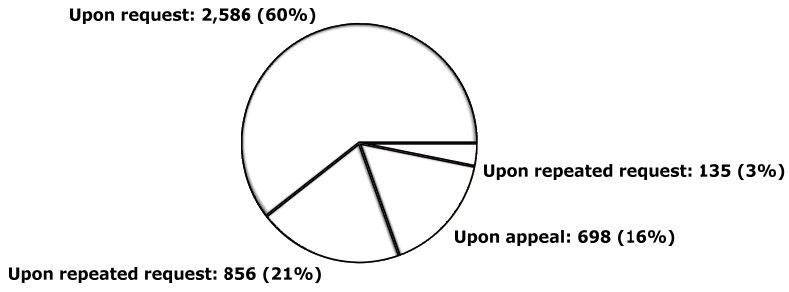
2.1.1. Administrative procedure

In the period from early January to late April 2011 MANS submitted to state institutions and local government bodies over 4,900 requests for free access to information. Institutions allowed access to information for every third submitted request, i.e. in 39% cases, while 5% of the requested information was already published. In 12% of cases institutions declared themselves unauthorized, and they did not have requested information in 25% of cases. Institutions declared information classified in 2% of cases and in 14% of cases institutions did not submit response.



Graph 1: Percent of obtained information in administrative procedure in the period January –April 2011

A significant problem in exercising the right to access to information is the silence of administration by competent institutions as well as violation of the deadline for the submission of information. Although the percentage of requests to which institutions did not respond shows certain decline compared to the previous period, it is obvious that institutions continue to violate the 8 day deadline prescribed by the Law on Free Access to Information.



Graph 2 : Obtained responses per phase of administrative procedure in the period January – April 2011

MANS received only 60% of replies at requests, while in 40% of cases administrative procedure was prolonged and institutions submitted responses only after complaints had been filed and after urgency. This behaviour of institutions is the reason why the period between the submission of request and obtaining response often lasts for several months, which, having in mind the principle of urgency of the procedure on which the Law relies makes a serious impediment to its smooth implementation.

2.1.2. Administrative dispute

Since the beginning of 2011 until the end of April, MANS initiated disputes before the Administrative Court on the basis of more than 550 requests for access to information. The Administrative Court reached verdicts in 58% of cases where in slightly less than a half of cases it was decided in favour of MANS. For more than 40% of the total number of filed claims in this period, the proceedings are still underway.

2.1.3. Other proceedings

In the above mentioned period MANS filed 183 complaints to the Protector of Human Rights and Freedom - Ombudsman, for cases where institutions are not acting upon the decision of the Administrative Court. Protector of Human Rights and Freedom acted in 82 cases, of which 80 were accepted and therefore Ombudsman ordered to institutions to make decision based on the verdict. In two other cases institutions adopted decision before Ombudsman had decided about these specific proposals.

In the same period MANS submitted to the Supreme Court 58 requests for extraordinary review of decisions of the Administrative Court in cases in which we were not satisfied with court decisions. The Supreme Court reached verdict in 49 cases, of which 10 were abolished by the Administrative Court.

In order to exercise the right of access to information MANS submitted 16 initiatives to the Administrative Inspection in cases in which institutions did not act upon the decisions of the second-instance body, that is, appeals passed in favour of MANS. Inspection declared itself unauthorized to take actions in nine cases while the procedure in the remaining seven cases is still underway.

2.2. PROCEEDINGS IN THE PERIOD 2005-2010

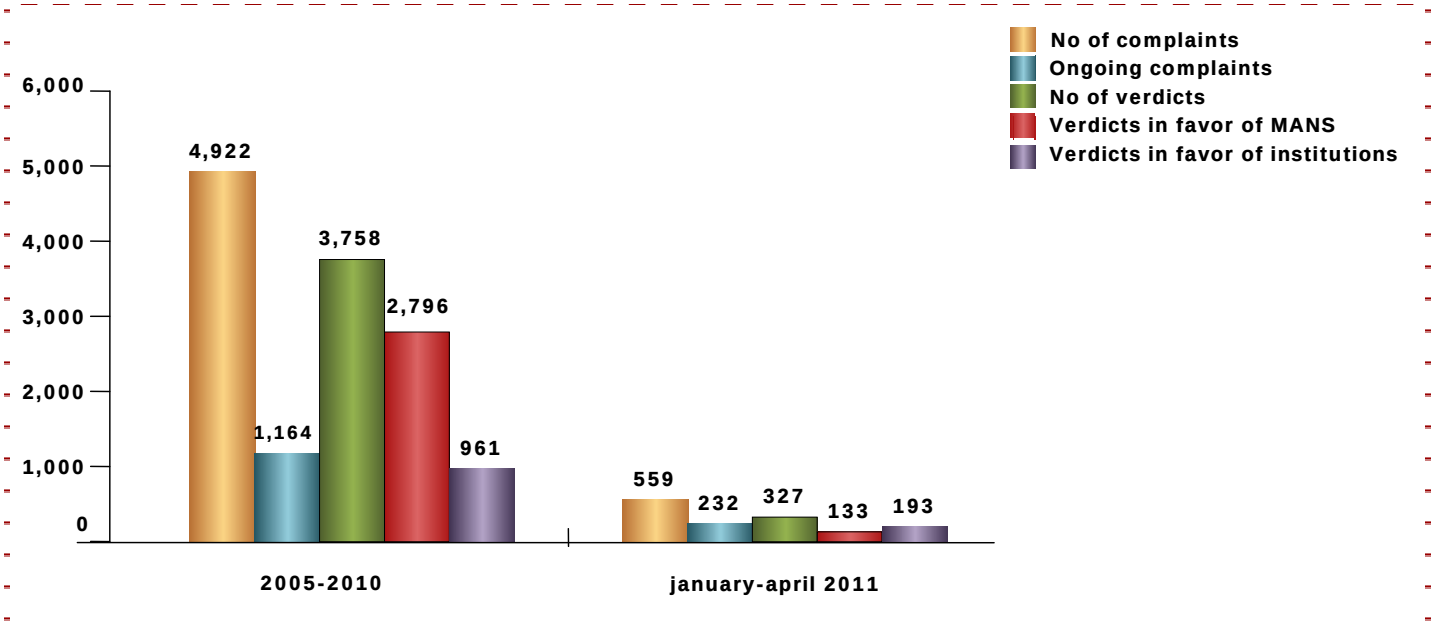
2.2.1. Administrative procedure

MANS monitors the implementation of the Law on Free Access to Information as of the end of 2005 that is as of the beginning of its implementation. Since then until the end of 2010 MANS submitted over 30,000 requests for access to information. During this period more than 6,000 complaints i/e. urgencies were submitted, primarily because the institution violated deadlines for the submission of response.

Institutions delivered the required information in 40% of the total number of filed requests, and these were published pro-actively in only 5% of cases. In 23% of cases institutions claimed that they did not possess the requested information, and in 9% cases they declared themselves unauthorized. In 2% of cases institutions declared information classified, while in 18% of cases they did not deliver any response.

2.2.2. Administrative dispute

In the last five years MANS initiated disputes for more than 4,900 requests for information before the Administrative Court. The Administrative Court reached verdicts for 76% of initiated disputes, where 74% of cases court decisions were in favour of MANS. Verdicts in favour of institutions were somewhat more than 25% of the total number of verdicts.



Graph 3: Claims submitted on the basis of the request for access to information in the period 2005 – 2010 and in the first four months of 2011

2.2.3. Other proceedings

In the period since 2005 to the end of 2010 MANS launched 124 requests for extraordinary review of decisions of the Administrative Court before the Supreme Court. The Supreme Court acted upon all submitted requests and reached verdicts in favour of MANS in over 16% of the total number of cases.

3. INTERESTING CASES IN PRACTICE

3.1. ACCESS TO INFORMATION ON TAX IDENTIFICATION NUMBER

On 16th June 2010, using the Law on Free Access to Information, MANS requested from the Tax Administration Office a copy of electronic database which contains Tax Identification Number (TIN) of all legal entities in Montenegro.

Tax identification number of legal entities and entrepreneurs is a very important data that MANS used to investigate cases of corruption. Namely, we use TIN to investigate property possessed by legal persons, whether it is a real estate property or ownership of other legal entities within the existing public registers - the Central Registry of the Commercial Court and Real Estate Cadastre.

The Tax Administration Office delivered a decision after only two days, on 18th June 2010 and informed us that that institution had prepared a database of TINs for all legal and natural persons in Montenegro, and that the base, after testing, would be published on their website. However, by providing us with this answer the Tax Administration Office has denied our right to access information they posses, since the Law on Free Access does not recognize "promises" that the information will be published.

VLADA CRNE GORE
PORESKA UPRAVA

Broj :03/1 - 10151/1-10
Podgorica, 18.06.2010. godine

MREŽA ZA AFIRMACIJU NEVLADINOG SEKTORA – M A N S
N/r Direktora

P O D G O R I C A
Ul. Dalmatinska br.188
Tel/fax: 266-326

PREDMET: Odgovor

Povodom Vašeg akta broj 10/27808 od 16.06.2010.godine, koji je proslijeđen Poreskoj upravi, kojim na osnovu Zakona o slobodnom pristupu informacija zahtijevate dostavu najnovije elektronske verzije koja sadrži podatke o poreskom identifikacionom broju svih fizičkih i pravnih lica u Crnoj Gori, obavještavamo Vas sljedeće:

Poreska uprava je pripremila bazu podataka koja će sadržati podatke o poreskom identifikacionom broju svih pravnih i fizičkih lica u Crnoj Gori i tako objedinjena sastavni je dio Centralnog registra obveznika osiguranja (CROO). Uskoro, nakon testiranja, ista će biti objavljena na web site-u Poreske uprave, biće dostupna po zahtjevima svim zainteresovanim subjektima u skladu sa odredbama Zakona o slobodnom pristupu informacijama.

S poštovanjem,

D I R E K T O R,
Mirjana Pešalj, dipl.ecc

Reply of the Tax Administration Office as of 18th June 2010

On 5th July 2010 MANS appealed against the aforementioned decision, in which we pointed out that this case it was about the information that was held by this institution, and that the Tax Administration Office was obliged to provide information without delay.

The Ministry of Finance, which is a second-instance body in relation to the Tax Administration Office, acting upon the appeal, annulled the act of the Tax Administration Office on 28th December 2010 and ordered this institution to re-decide on MANS's request.

In the renewed procedure the Tax Administration Office rejects our request once again on 11th January 2011 with a slightly different explanation now. Namely this time the Tax Administration Office proclaimed TINs business secret which is entirely contradictory to the previous decision, when it announced that TINs would be published on the website of the Tax Administration Office.

Ministarstvo finansija je svojim Rješenjem br. 04-736/1-2010 od 13.12.2010. godine poništilo akt Poreske uprave br. 03/1-10151/2-10 i predmet vratilo prvostepenom organu na ponovni postupak.

Rješavajući u ponovnom postupku ovaj organ je donio Rješenje kojim se odbija zahtjev Mreže za afirmaciju nevladinog sektora MANS, br. 10/27808, iz razloga što bi davanje takve informacije predstavljalo kršenje poreske tajne prema članu 16 stav 1 Zakona o poreskoj administraciji ("Sl.list RCG", br.65/01,80/04 i 29/05).
Takodje, riječ je o informacijama čije objelodanjivanje podliježe ograničenju propisanom članom 9 stav 1 tačka 3 alineja 2 Zakona o slobodnom pristupu informacijama, to se istoj ne može dozvoliti pristup.

Odredbama čl. 16 Zakona o poreskoj administraciji jasno su propisani podaci koji se smatraju poreskom tajnom, i isti se mogu učiniti dostupnim jedino drugom državnom organu, ili drugom licu uz pisanu izjavu poreskog obveznika.
Podaci o registraciji poreskog obveznika, PIB-u, nazivu (ime) i glavnom mjestu poslovanja, u skladu sa čl. 16 stav 1 tačka 4, ne predstavljaju poslovnu tajnu kada se odnose i traže za konkretno fizičko ili pravno lice - poreskog obveznika. Medjutim, kako je Mreža za afirmaciju nevladinog sektora tražila podatke koji se odnose na sve poreske obveznike to je odlučeno kao u dispozitivu rješenja.

S obzirom na prirodu tražene informacije, organ nalazi da bi objelodanjivanje ove informacije bilo suprotno odredbama čl. 16 Zakona o poreskoj administraciji.

Na osnovu izloženog, a u smislu člana 18 stav 3 Zakona o slobodnom pristupu informacijama, odlučeno je kao u dispozitivu rješenja.

PRAVNA POUKA: Protiv ovog rješenja može se izjaviti žalba Ministarstvu finansija, preko ovog Organa u roku od 15 dana od dana prijema istog.

VD DIREKTORA,
Novo Radović, dipl. ecc

Decision of the Tax Administration Office as of 11th January 2011

MANS appealed against this decision and on 28th March 2011 the Ministry of Finance annulled the decision of the Tax Administration Office again and ordered it to pass new decision. In the new procedure, the Tax Administration Office produced a positive decision to our request on 19th April 2011 and provided us with the CD containing required data. However, these TINs have not been published on the Tax Administration Office's web site yet.

3.2. WHO IS COMPLAINT FILED TO?!

On 16th July 2010 MANS requested from the Central Registry of the Commercial Court in Podgorica, on the basis of the Law on Free Access to Information submission of copies of financial statements of AD "Duvanski kombinat" ("Tobacco Factory"), Podgorica, for the last five years of operation. As the Central Registry did not respond to our request within legally prescribed period of time we filed complaint against the "silence of administration" to the Ministry of Justice.

According to the Law on General Administrative Procedure complaint shall be filed directly to the first instance body, which is obliged to forward the complaint to the second instance body to reach decision[1]. In this case, the second instance body is the Ministry of Justice.

As no response to our complaint was delivered, we re-filed this complaint, and after that we submitted a claim to the Administrative Court on 24th December 2010. A month later, the Administrative Court sent us decision rejecting our claim. The Court stated that it had rejected this claim because the complaint had not been submitted to the Ministry of Justice for deciding, and that there were no grounds to prosecute this case in the court, until administrative procedure was competed before that, that is, that claim was premature.

Although obliged to do so the Central Registry did not submit our complaint to the Ministry of Justice for deciding. The Administrative Court dismissed our claim, although we as the applicant, that is the complainant, in any case cannot suffer consequences for illegal actions of the Central Registry of the Commercial Court.

Therefore if the first instance body did not act in accordance with law, this in no case can be to the detriment of the complainant, and the Administrative Court could not dismiss complaint as premature on any grounds.

UPRAVNI SUD CRNE GORE
U.broj 3490/10

BROJ 11/28163
PODGORICA 31. 01. 2011

Upravni sud Crne Gore, u vijeću sastavljenom od sudija Svetlana Budisavljević, kao predsjednika vijeća, Branislava Radulovića i Vojina Lazovića, kao članova vijeća, uz učešće službenika suda Marine Nedović, kao zapisničara, rješavajući po tužbi Mreže za afirmaciju nevladinog sektora MANS – Podgorica, protiv Ministarstva pravde – Podgorica, zbog ćutanja administracije, u nejavnoj sjednici održanoj dana 18.01.2011. godine, donio je

R J E Š E N J E

Tužba se odbacuje.

O b r a z l o ž e n j e

Tužilac je podnio tužbu protiv Ministarstva pravde, zbog neodlučivanja po njegovoj žalbi od 06.08.2010. godine. U tužbi navodi da je od Centralnog registra Privrednog suda u Podgorici, tražio dostavljanje odredjene informacije. Obzirom na ćutanje tog organa, tužilac se obratio žalbom i urgencijom Ministarstvu pravde, koje u zakonskom roku nije donijelo odluku po žalbi. Predlaže da sud tužbu uvaži i naloži tuženom da obezbijedi pristup informaciji.

Iz pisanog odgovora na tužbu proizilazi, da predmetna žalba nije dostavljana Ministarstvu pravde.

U postupku prethodnog ispitivanja tužbe, sud je našao da istu valja odbaciti.

Odredbom člana 18. stav 3. Zakona o upravnom sporu („Sl.list RCG", br.60/03), bliže su predvidjeni uslovi pod kojima se može pokrenuti upravni spor kada prvostepeni organ nije donio rješenje po zahtjevu stranke.

U tom slučaju, stranka mora da podnese zahtjev drugostepenom organu, a ako taj organ o zahtjevu ne odluči u predvidjenom roku, a ni u daljem roku od sedam dana od ponovnog traženja, tek tada se stiču uslovi za pokretanje upravnog spora.

Obzirom da tužilac nije dostavio dokaz da je postupio na prednji način, predmetna tužba je preuranjena, zbog čega je sud na osnovu člana 22. stav 1. tačka 1. Zakona o upravnom sporu, odlučio kao u dispozitivu.

UPRAVNI SUD CRNE GORE
Podgorica, 18.01.2011 godine

Zapisničar,
Marina Nedović,s.r.

PREDSJEDNIK VIJEĆA
Svetlana Budisavljević,s.r.

Tačnost prepisa potvrđuje
Ovlašćeni službenik suda

Decision of the Administrative Court 3490/10 as of 18th January 2011

[1] According to the Law on General Administrative Procedure (Article 233, Paragraph 1), when the body which reached the first instance decision finds that filed appeal is allowed, timely and submitted by the authorized person, and that the new decision did not replace the decision annulled by the appeal, is obliged, without delay and within 15 days as of the date of the receipt of the complaint, to submit appeal to the body authorized to act upon the filed appeal. In this case, the Central Registry of the Commercial Court was obliged to submit to the Ministry of Justice our complaint not later than within 15 days as of the date of its filing.

Dissatisfied with the decision of the Administrative Court on 24th February 2010 we sent to the Supreme Court of Montenegro a request for extraordinary review of court decision. In this document we stated that in the procedure for adoption of the aforementioned decision the Administrative Court violated the law.

"... Article 233, Paragraph 1 states that when the body which reached the first instance decision finds that filed appeal is allowed, timely and submitted by the authorized person, and that new decision did not replace the decision annulled by the appeal, is obliged, without delay, within 15 days as of that of the date of the receipt of the appeal, to submit appeal to the body authorized to act upon the filed appeal.

Therefore if the first instance body did not act in accordance with law, this in no case can be to the detriment of the complainant, and the Administrative Court could not dismiss complaint as premature on any grounds.

Furthermore, the Administrative Court believes that MANS should have acted in accordance with provision of Article 18 Paragraph 3 of the Law on Administrative Procedure, but I must emphasise here that this provision is not imperative, that is, the prosecutor is not obliged to apply it, particularly because introduction of this part of the procedure would make the principle of urgency on which the Law on Free Access to Information is based, senseless and authorities do not observe it anyway.

Namely, the said provision provides that if the first instance body against whose act appeal is allowed did not reach decision upon request within 60 days or within a shorter period of time as specified by the law, party has the right to submit request to the second instance body. Against the decision of the second instance body party may initiate administrative procedure, and the party may, under conditions from Paragraph 1 of this Article, initiate procedure even if this body does not reach decision ..."

Extract from the Request for extraordinary review of the Decision of the Administrative Court filed on 24th February 2010

During the procedure before the Supreme Court, the Central Registry of the Commercial Court finally reaches decision upon our request, and on 29th March 2011 submits copies of the requested documents. A few days later, on 4th April 2011 the Supreme Court decides positively about our the request for extraordinary review of court decisions and abolishes the decision of the Administrative Court as of 18th January 2011, which confirmed our statement that users of the Law on Free Access to Information may not suffer damages if a state body does not do its job in accordance with the Law.

3.3. ACQUIS COMMUNAUTAIRE

On 25th March 2010 we filed the request for free access to information and requested from the Ministry of European Integration a copy of electronic version of the European *Acquis Communautaire* in the Croatian language that the Prime Minister of Montenegro obtained from the Croatian Prime Minister in March 2010 on CD.

A few days later on 4th May 2010 we were delivered the decision of the Ministry of European Integration, which denies the request of MANS as unfounded on the grounds that electronic version of the Croatian translation of *Acquis Communautaire* is intellectual property of the Government of the Republic of Croatia and that it is a draft translation, not an official document whose disclosure can be allowed only by the Croatian Government.

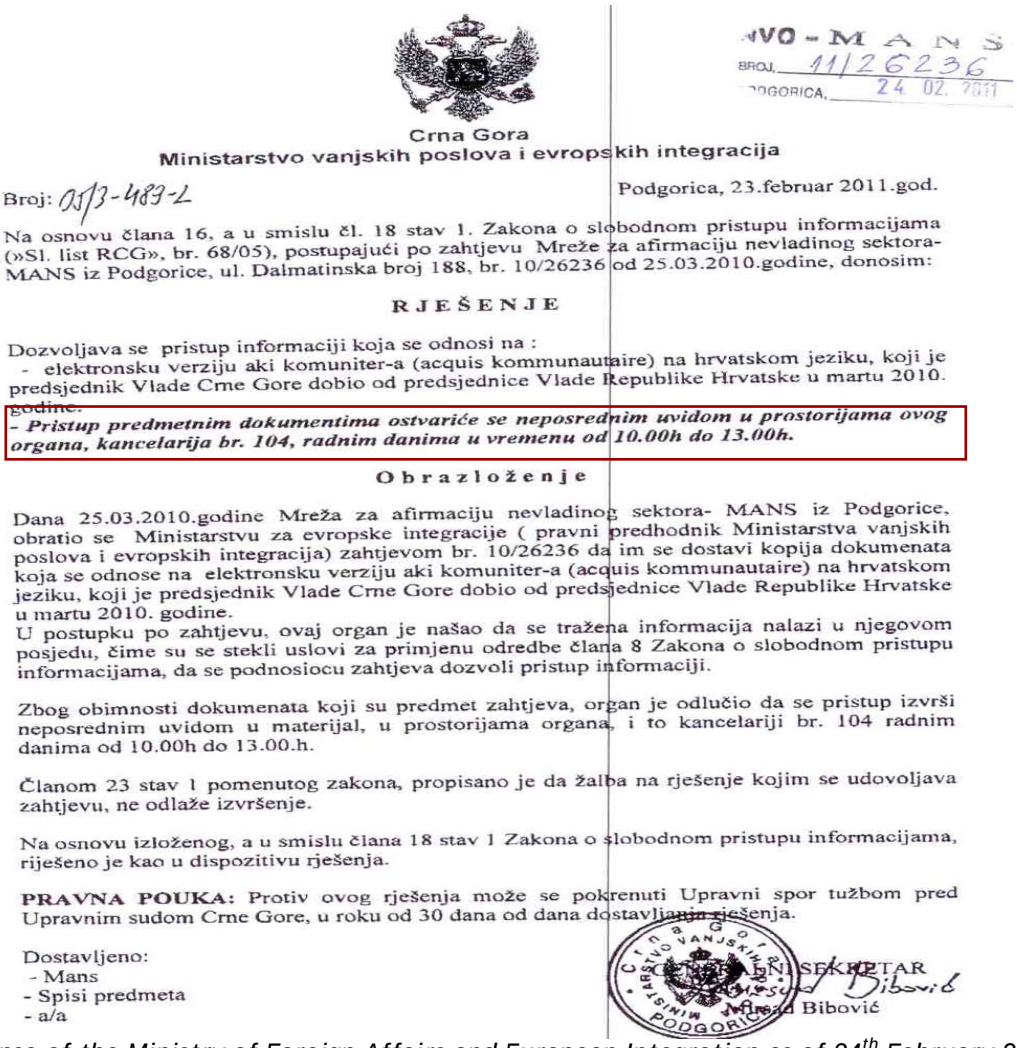
Our Ministry, explaining the nature of the requested information and estimating that it is intellectual property of the Croatian Government did not mention any legislation that confirms that while, on the other hand, the Law on Copyright and Related Rights of the Republic of Croatia stipulates that "subject to copyright are not discoveries, official texts in the domain of legislation, administration, judiciary (laws, decrees, decisions, reports, minutes, court decisions, standards, etc..) and other official papers and their collections, which are published in order to provide official information to the public." Since even by the Croatian laws the information requested by MANS cannot be classified, i.e., they cannot be the subject to intellectual property, it is logical then that this cannot be the case in Montenegro.

On 10th May 2010 MANS filed a claim to the Administrative Court by which we challenged the decision of the Ministry of European Integration.

On 6th October 2010 the Administrative Court rejected the claim of MANS, arguing that "*the requested information is not of public importance, because it did not arise from work or in relation to work of the defendant, but instead, which is not disputable, it was provided by another state as a form of technical assistance and will serve as the basis for drafting legal acts within the planned reform of legal system for its harmonization with the legal system of the European Union*."

After receiving the verdict, MANS filed the request for a review of the decision of the Administrative Court to the Supreme Court on 10th November 2011 and in less than two months the Supreme Court reached verdict in our favour and abolished the decision of the Administrative Court. In the repeated proceedings, on 14th February 2011 the Administrative Court reached verdict which annulled the decision of the Ministry of European Integration and it ordered reaching of a new, lawful decision that is the delivery of the Croatian translation of the European *Acquis*.

Acting upon the decision of the Administrative Court the Ministry of Foreign Affairs and European Integration, as legal successor of the defendant, the Ministry of European Integration, reaches a new decision on 23rd February 2011 allowing access to the requested documents via direct physical insight to be performed every working day for three hours a day, instead of submitting a copy, which was actually what MANS requested.



NVO - MANS
BROJ 11/26236
PODGORICA 24. 02. 2011

Crna Gora
Ministarstvo vanjskih poslova i evropskih integracija

Broj: 05/3-483-2

Podgorica, 23.februar 2011.god.

Na osnovu člana 16, a u smislu čl. 18 stav 1. Zakona o slobodnom pristupu informacijama (»Sl. list RCG», br. 68/05), postupajući po zahtjevu Mreže za afirmaciju nevladinog sektora- MANS iz Podgorice, ul. Dalmatinska broj 188, br. 10/26236 od 25.03.2010.godine, donosim:

R J E Š E N J E

Dozvoljava se pristup informaciji koja se odnosi na :
- elektronsku verziju aki komuniter-a (acquis kommunautaire) na hrvatskom jeziku, koji je predsjednik Vlade Crne Gore dobio od predsjednice Vlade Republike Hrvatske u martu 2010. godine.
- ***Pristup predmetnim dokumentima ostvariće se neposrednim uvidom u prostorijama ovog organa, kancelarija br. 104, radnim danima u vremenu od 10.00h do 13.00h.***

O b r a z l o ž e n j e

Dana 25.03.2010.godine Mreža za afirmaciju nevladinog sektora- MANS iz Podgorice, obratio se Ministarstvu za evropske integracije (pravni predhodnik Ministarstva vanjskih poslova i evropskih integracija) zahtjevom br. 10/26236 da im se dostavi kopija dokumenata koja se odnose na elektronsku verziju aki komuniter-a (acquis kommunautaire) na hrvatskom jeziku, koji je predsjednik Vlade Crne Gore dobio od predsjednice Vlade Republike Hrvatske u martu 2010. godine.
U postupku po zahtjevu, ovaj organ je našao da se tražena informacija nalazi u njegovom posjedu, čime su se stekli uslovi za primjenu odredbe člana 8 Zakona o slobodnom pristupu informacijama, da se podnosiocu zahtjeva dozvoli pristup informaciji.

Zbog obimnosti dokumenata koji su predmet zahtjeva, organ je odlučio da se pristup izvrši neposrednim uvidom u materijal, u prostorijama organa, i to kancelariji br. 104 radnim danima od 10.00h do 13.00.h.

Članom 23 stav 1 pomenutog zakona, propisano je da žalba na rješenje kojim se udovoljava zahtjevu, ne odlaže izvršenje.

Na osnovu izloženog, a u smislu člana 18 stav 1 Zakona o slobodnom pristupu informacijama, riješeno je kao u dispozitivu rješenja.

PRAVNA POUKA: Protiv ovog rješenja može se pokrenuti Upravni spor tužbom pred Upravnim sudom Crne Gore, u roku od 30 dana od dana dostavljanja rješenja.

Dostavljeno:
- Mans
- Spisi predmeta
- a/a

GENERALNI SEKRETAR
Milorad Bibović

Response of the Ministry of Foreign Affairs and European Integration as of 24th February 2011

The Ministry decided to allow direct access to documents instead of delivering a copy because of, as they said, "the amount of the required documentation," even though they did not have it in hardcopy but in electronic form i.e. on CD.

Although the delivery of the copy of *Acquis Communautaire* that would be delivered to MANS required copying from the original CD to several blank CDs as well as the program that is available on the Internet in the free version where the process of copying would not last for more than a few minutes, the Ministry decided to allow us to have direct access to documents of more than 120,000 pages. To examine such documents, if they are available only three hours a day, it would take more than 550 working days or more than two calendar years.

Due to the obvious intention of the Ministry to obstruct access to the Croatian translation of *Acquis* by allowing direct access to the required materials on 3rd March 2011 MANS re-filed a claim to the Administrative Court against the Ministry of Foreign Affairs and European integration.

Shortly after MANS's filing the last claim, on 11th March 2011 the Ministry of Foreign Affairs and European Integration published the Croatian translation of the European *Acquis* on its website www.prevodi.gov.me thus making them finally available to all citizens of Montenegro.

Website of the Ministry of Foreign Affairs and European Integration where the aforementioned documents can be found

3.4. VERDICT AGAINST CRIMINAL OFFENCES

MANS filed three sets of requests for information to all Basic Courts in Montenegro in which we requested final verdicts against criminal offences that these courts reached as of early 2006 till the end of 2010.

First requests for information related to verdicts reached in the period as of the beginning of 2006 until the end of September 2009; in other requests we asked for verdicts reached as of October 2009 until the end of September 2010 while in the third set of requests we asked for the verdicts as of October until end of 2010.

While the Supreme Court, the Higher Court in Podgorica, the Higher Court in Bijelo Polje, and the Appeal and Administrative Courts publish their verdicts on their websites[2], most Basic Courts did not allow us to have access to their verdicts, either by proclaiming them secret or by restricting access to them in another way.

3.4.1. Secret verdicts

Several Basic Courts proclaimed their final verdicts secret arguing that their disclosure would violate privacy of the parties in procedure, because verdicts contain personal information about the accused. These courts estimated that access to verdicts can be approved only by the President of the Court and primarily to the persons who have a legitimate interest. Such decisions are confirmed by the Ministry of Justice which acts upon appeals as well as the Administrative and Supreme Courts.

Basic Court in Bar

The Basic Court in Bar banned access to verdicts when first request for information was submitted calling upon provision of the Law on Free Access to Information that protects privacy and personal interests of persons, stating that disclosure of verdicts would compromise privacy of parties in the procedure, because verdict contains personal information about the accused.

Acting upon the appeal of MANS, the Ministry of Justice[3] estimated that the Basic Court in Bar correctly applied the law and called upon the protection of privacy of persons involved in court proceedings. The Ministry states that the Law on Courts provides that the court is obliged to provide access to court files only to clients. The Ministry also states that the Criminal Procedure Code stipulates that anyone who has legitimate interest shall be provided access to court files, based on the approval of the President of the Court and states that:

> "*Access to specific court files, which is determined by the procedural law, is subject to strict procedure, which particularly refers to criminal files, and access to information referring to those files gives the right of way to the Criminal Procedure Code over the Law on Free Access to Information*."

Finally, the Ministry concludes:

[2] www.vrhsudcg.gov.me, www.visisudpg.gov.me, www.visisudbp.gov.me, www.apelacionisudcg.gov.me, www.upravnisudcg.org

[3] Decision No. 01-4886/10 as of 28th August 2010

"*President of the court is free to estimate whether person has a legitimate interest regarding the acts of copying by writing, copying or recording of individual criminal records*."

Even though the Law on Courts provides for the right of the President of the court to estimate the interest for access to court files on a case-to-case basis, this cannot apply to cases that have been completed as legally binding. In this way public access to case law would be disabled which is in all countries subject to study and comment, and is used in other legal proceedings.

Verdicts are made in the name of people, court sessions are public, and the public is excluded only on the exclusive decision of the court. Verdicts are pronounced publicly, their content is released by the media whose representatives attend trials.

When it comes to protecting privacy of persons involved in court proceedings, the Law on Free Access to Information under Article 13, Paragraph 2, 3, 4, and 5 reads as follows:

> "*If access is restricted to a piece of information, the authority shall enable access to information after the deletion of a piece of information to which access was restricted.*
>
> *A piece of information to which access was restricted shall be marked as "erased" and information on the extent of such deletion shall be provided.*
>
> *When deleting information text of the information must not be either destroyed or damaged.*
>
> *Access to the information whose part was erased shall be carried out in the manner provided for in Paragraph 1, Item 3 of this Article*."

This means that the courts, if they believed it is necessary to protect privacy of persons involved in proceedings, were obliged to delete personal data, but also to release the rest of the verdict. As stated earlier in this chapter, the Supreme, High, Court of Appeal and Administrative Courts have published their decisions on the Internet, and they contain initials of persons involved in proceedings.

Statement of the Ministry that access to some court files, particularly criminal files, is regulated by strict procedure specified by the Criminal Procedure Code, not the Law on Free Access to Information indicates a completely erroneous application of substantive law. Namely, first paragraph of the first Article of the Law on Free Access to Information reads as follows:

> "*Access to information held by public authorities is free and is exercised in the manner prescribed by this Law*."

Article 8 the same Law prescribes:

> *"Public authority is obliged to allow the person submitting the request access to information or a part thereof, except in cases stipulated by this Law*."

Therefore, access to information is not regulated by other laws, in this case the Criminal Procedure Code, but instead the Law on Free Access to Information is *lex specialis*, which

defines the procedures based on which authorities allow access to information in their possession. Moreover, all authorities are obliged to provide access to information except in cases stipulated by the Law on Free Access to Information and not by any other law.

Authorities undoubtedly involve the courts, and the public must have access to final court verdicts that is any other information to which access is not banned under Article 9 of the Law on Free Access to Information.

Provision of Article 509 Paragraph 1 of the Criminal Procedure Code provides that data on pre-trial and investigation procedure for the acts of organized crime are official secret. However, this provision does not prescribe nor could it prescribe that information and evidence used in court proceedings can be kept secret, as understood by the Ministry.

The Basic Court in Bar at the second request for information banned access to verdicts on the same ground. In the appeal, MANS pointed to uneven practice and the fact that some courts allow access to verdicts while others proclaim them secrets.

Deciding on the appeal, the Ministry of Justice[4] points out that:

"*... it is the exclusive competence of the President of the court to decide whether a request for information is justified i.e. the President has the exclusive right to make independent and autonomous judgement about whether the person who submitted the request has a legitimate interest in obtaining the required information. Therefore the fact that all the courts in Montenegro have acted upon the request to search for the same information, and according to this Ministry and in accordance with the above mentioned provisions of the Law, does not represent legal obligation for the President of the Basic Court in Bar to act in the same way*."

According to Article 2 of the Law on Free Access to Information, access to information held by public authorities is based on the principles of:

"*1) freedom of information;*
2) Equal conditions for exercising the right;
3) The openness and transparency of work of state bodies;
4) Emergency procedure."

Thus, all courts are required to provide equal conditions for exercising the right to access information and to work in accordance with the principle of openness and transparency. Therefore, it is unclear how some Presidents of the courts may have a discretionary right to decide whether the information in their possession is public, especially having in mind the fact that higher judicial instances have already published this information, as well as some Basic Courts.

MANS submitted a claim to the Administrative Court, which has not acted yet.

The Basic Court in Bar banned in the same way access to verdicts at the third request for information.

[4] Decision no.01-7578/10 as of 17th December 2010

Basic Court in Kotor

The Basic Court in Kotor, just like the Basic Court in Bar, estimated that disclosure of verdicts would violate the right to privacy of the parties.

In addition, the Court of Kotor banned access to its verdicts arguing that we did not prove a justified interest in getting this information. Namely, the Court in Kotor estimated that the procedure for access to verdicts is regulated by the Criminal Procedure Code, the Law on Courts and not by the Law on Free Access to Information, and believes that MANS was obliged to prove a legal interest in obtaining final verdicts.

The Ministry rejected appeal of MANS, confirming all the allegations of the Basic Court in Kotor, with the same reasoning as in the case of the Court in Bar.

MANS submitted a claim to the Administrative Court which rejected it. This Court found that the Basic Court in Kotor did not violate the law because privacy of the parties in the proceedings would be violated by publicizing the verdict and it stated the following[5]:

> *"After a public hearing, court decisions are presented to the public orally and disclosed to persons who have legal interest in it."*

At the same time, the Administrative Court confirms that the verdict should be secret, because in this way privacy of the parties is protected, but it also confirms that verdicts are public as they are presented to the public orally. So the question is how is it possible that publicizing of verdicts that have already been publicly presented would violate a person's right to privacy.

The Administrative Court also points out that court decisions are publicly presented to persons having legal interest in it, which is not the case because verdicts, as a rule, are presented publicly, that is in front of the accused, but also before others who follow the trial, such as media representatives.

Article 3 of the Law on Free Access to Information reads as follows:

> *"Disclosure of information held by public authorities is in public interest"*.

The explanation of the Government that followed the Proposal for the Law, in connection with Article 3 states as follows:

> *"Public interest when it comes to the disclosure of information includes all equivalent individual or other direct interests, which, in the process of exercising the right to access information, excludes any possibility and the need to justify the existence of interest by the person requesting access to information."*

The Law, therefore, specifies the obligation of authorities to provide information, without obligation of person who submits the request to explain his/her interest in seeking information. That view has since been confirmed through case law.

[5] Verdict no. 1901/10 as of 8 December 2010

MANS has filed a request for extraordinary review of the court decision to the Supreme Court, which rejected it as ungrounded.

The Supreme Court in its Verdict[6] states that only persons who prove a legitimate interest in accordance with the procedures of the Criminal Procedure Code, not the Law on Free Access to Information, may inspect final verdicts of the court.

Moreover, the Supreme Court confirms that final court verdicts have the character of secret documents to which access is restricted, confirming allegations of the Basic Court in Kotor that publicizing verdicts would violate the parties' right to privacy.

At the second request we received identical response of the Basic Court in Kotor, the same decision of the Ministry of Justice on appeal, and verdict has not been reached yet.

And at the third request for information this court answered in the same way.

Basic Court in Herceg Novi

This Basic Court, responding to all three requests, prohibited access to verdicts in the same way as the Basic Court in Kotor. These decisions of the Basic Court in Herceg Novi are confirmed by the Ministry, Administrative and Supreme Courts.

However, the Court in Herceg Novi, contrary to its own decision and the decision of the Supreme Court delivered verdicts to us that were reached in the first and second period.

Basic Court in Ulcinj

Basic Court in Ulcinj did not submit a response to the first request of MANS for the delivery of final verdicts for offences referring to corruption since early 2006 until the end of September 2009. MANS filed a complaint and re-filed that complaint and did not receive a response from the Ministry of Justice as a second-instance body in administrative procedure, and then we filed a claim to the Administrative Court against silence of administration.

In the course of these proceedings, we filed a new request asking for final verdicts pertaining to the period after September 2009. The Basic Court in Ulcinj did not reply to that request as well so we filed a complaint against silence of administration.

Only after the submission of appeal, the Basic Court reached a decision with which it responded to both requests of MANS by forbidding access to final verdicts on the grounds that their publication would violate the right of the parties to privacy. MANS filed appeal to the Ministry stating that verdicts must be public, and that personal information about parties in the proceedings can be deleted.

After that, the Ministry of Justice rejected first appeals against silence of administration, because the Basic Court in Ulcinj had meanwhile reached a decision while it did not reach any decision for the appeal against that decision. Then the Basic Court in Ulcinj delivers us the

[6] UVP no. 47/11 as of 14 February 2011

decision of the Ministry which refers to first appeals against silence of administration, stating that it refers to the procedure relating to proclaiming verdicts secret.

Since the Ministry has never reached decisions for the appeals in which we questioned the decision of the Basic Court in Ulcinj stating that all final verdicts are secret, we filed appeal to the Administrative Court. Verdict has not been reached yet.

The Basic Court did not answer to the third request of MANS for the submission of verdicts reached in the period from October to December 2010.

3.4.2. Other restrictions on access to court verdicts

Basic Court in Niksic

This Court replied to our first request for information by the act did that did not satisfy even the obligatory form prescribed by the law, informing us that the procedure for access to final verdicts is prescribed by the Criminal Procedure Code, not by the Law on Free Access to Information.

After we had filed a complaint, the Basic Court in Niksic passes a new act, in the prescribed form by which it provides access to information, but only in a form of physical insight in verdicts, not by delivering a copy as it was requested in the request.

According to Article 4, Paragraph 1, Item 1 of the Law on Free Access , the right of access to information includes the right to seek, receive, use and disseminate information held by public authorities, while information obtained by examining cannot be shared with other interested persons, or spread, which significantly restricts the right to free access to information.

According to Article 1, Paragraph 3 of the Law on Free Access to Information access to information is guaranteed by the principles and standards contained in international documents on human rights and freedoms.

Universal Declaration of Human Rights in Article 19 guarantees the right to everyone to "seek, receive and impart information." International Covenant on Civil and Political Rights in Article 19 guarantees everyone freedom to "seek, receive and impart information" and the European Convention on Human Rights and Fundamental Freedoms in Article 10 guarantees freedom to "receive and impart information."

The Supreme Court of Montenegro in its Verdict[7] states:

> *"Primary duty of authority is to consider the possibility of exercising the right to access information in a manner as required in the request. This is especially because the right of access to information includes the right to receive, use and disseminate information pursuant to Article 4 Paragraph 1 Item 1 of the Law on Free Access to Information."*
> MANS filed a complaint to the Ministry pointing to violation of the right of access to information and citing the verdict of the Supreme Court.

[7] Verdict of the Supreme Court Uvp.no. 83/2006 as of 8th December 2006

Ministry did not respond to the complaint, so we filed a claim for which the decision has not been reached yet.

The Court in Niksic did not provide answer at the second request, nor has the Ministry responded to the complaint so we filed a claim to the Administrative Court which has not reached a decision yet.

In the response to the third request this Court allowed us again to have only physical insight into the court verdicts.

Basic Court in Podgorica

The Basic Court in Podgorica which acts in most cases and has greater capacity than other courts, did not allow access to its verdicts on the grounds that it is not able to make a report on particular crime offence or type of dispute for a specific period of time.

Although the Basic Court in Podgorica undoubtedly has most capacity, both technical and human resources compared to other courts in Montenegro, only that court asked from MANS to make correction of requests for information and required fro us to submit data on business act or names of the parties in the proceedings in order to allow us access to verdicts.

Mans stated that it cannot dispose of more detailed data on verdicts as they have never been made public, and the court rejected request for information stating that correction has not been conducted in a way in which it was requested. This attitude of the court was supported by the Ministry which acted upon our complaint.

We would like to point out that the Basic Court in Podgorica is the only court in Montenegro, which states that:

> *"In the PRIS programme used by the Basic Court in Podgorica it is still not possible to do a report on a particular criminal offence or type of dispute for a specific period of time."*

It is interesting to mention that no other court had trouble to find verdicts, although smaller, poorly equipped and have started later to apply PRIS than the Basic Court in Podgorica.

Namely, in the Strategy for Judicial Reform it is stated:

> *"During the first phase of the Project PRIS in the first half of 2002 part of the computer equipment was purchased, as well as building networks and training of personnel for the needs of the project. This was the beginning of a direct implementation of the project. At this stage computer equipment, network and users training were provided to the following institutions: … the Basic Court in Podgorica ..."*

This document which was adopted in 2007 states that: "implementation of software application for PRIS is conducted as a pilot project in the Basic Court in Podgorica."

The Ministry of Justice in late 2010 in the "Information on the implementation of judicial reform" states:

"Judicial Information System (PRIS) was implemented in all the sites of users of Justice Information System (Ministry of Justice, courts, the Public Prosecutorr's Office and Department for Execution of Criminal Sanctions), with centralized and unique database and centrally installed software applications are available to users 24 hours a day seven days a week in accordance with institutional organization and competence of users' institutions."

Moreover, the Basic Court in Podgorica had to be able to determine which verdicts refer to criminal acts of corruption, because it is obliged to submit statistical data about it to the Supreme Court which prepares report for all courts in Montenegro, while the Government submits those data to the European Commission.

Therefore, it is obvious that the Podgorica Basic Court was not ready to allow access to its verdicts and it abused legal possibility to ask for more detailed information about the submitted request, even though it had known exactly what was sought by the request and the person requesting for information could not have provided more detailed information that the one already listed in the request.

The Basic Court in Podgorica required correction of the second requests for information, and after MANS's explanation that we cannot provide more detailed information, the court did not provide any answer. The Ministry did not decide on appeal and no verdict was reached on the claim submitted by MANS to the Administrative Court.

However, in the end, the Court changed its practice. The Basic Court in Podgorica banned access to information at the third request, explaining that access to those data is prescribed by the Criminal Procedure Code and the Law on Courts.

Also it is interesting to mention that some courts ban access to information on the grounds that disclosure would compromise privacy of the parties, while the Basic Court in Podgorica requested the names of parties i.e. data which refer to private life, in order to be able to deliver verdicts, and then it changed practice and "explained" prohibition of access to information with other reasons. Therefore, it is obvious that courts which prohibit access to information resist only to making their own work more public.

3.4.3. Changing practice in the period between two requests for information

The Basic Court in Cetinje banned access to verdicts in the first period, which was confirmed by the Ministry of Justice acting on the appeal.

The same court allowed us access to verdicts at second request, but only through direct physical insight. The Ministry of Justice accepted the appeal of MANS and abolished the decision of the Basic Court in Cetinje. Thereafter, that Court provided us with copies of verdicts.

The court delivered verdicts for the third period as well.

The Basic Court in Bijelo Polje delivered copies of parts of verdicts, i.e. only introduction and pronunciation of verdict without explanation.

Deciding at the second request, this court proclaimed final verdicts secrets due to the reasons of protection of privacy of persons in the proceedings. However, in the documents delivered to us by that court at the first request for information, there were data on individuals involved in the proceedings. The Ministry of Justice confirmed the decision of this Court and the Administrative Court has not reached the decision about our complaint yet.

The Court of Bijelo Polje banned access to the third request for information.

Basic Court in Berane

Acting upon his first request for information, the Basic Court in Berane provided us with copies of final verdicts.

In response to the second request, this court first allowed access to verdicts informing us that they will provide us with copies of these documents after we have paid costs of the proceedings stating that the decision on the costs of the proceedings will be delivered later. That decision has never been delivered, but instead this court provided us with new decision which allows insight in court decisions. MANS filed a complaint to which the Ministry did not respond.

This court did not respond to the third request for information.

4. OTHER RELEVANT INFORMATION

In 2011 the representatives of MANS have taken part in the work of the Inter-Sectoral Working Group which has been working on the amendments to the Law on Free Access to Information. In accordance with recommendations of the European Commission, the Group has worked on amendments to the existing Law and its harmonization with the Law on Personal Data Protection and the Law on Classified Information.

MANS, as an organization with undoubtedly most profound knowledge and experience in implementation of the Law on Free Access to Information in Montenegro, has received an invitation from the Government, together with representatives of ministries and other state bodies to propose amendments to the existing Law and to point to the provisions of the Law that have turned out to be problematic so far in its implementation.

Although the mandate of the Inter-Sectoral Working Group was about the work on specific and direct amendments to the Law, during the work of the Group mandate was changed by the Government, which ordered this Working Group to make analysis of the existing Law first and proposals for its amendments, and only after the Government has adopted this analysis, it should start amending the law.

MANS has given a number of proposals for the improvement of the existing legal framework, which were generally supported by the Inter-Sectoral Working Group, and will be used as a material in drafting the new Law on Free Access to Information.

The most significant proposal of MANS refer to sanctions which must be applied in cases of violation of provisions of the Law, as well as the determination of the body which will run the

infringement procedure. In addition, MANS has proposed the establishment of a common second-instance authority, e.g. Information Commissioner who would oversee whether the institutions comply with provisions of the Law.

Other changes that we have suggested refer to the regulation of the procedure of access to information that would simplify communication of the person who submits the request for information and the institution from which the information is requested which would accelerate the process of delivering information to the person who has requested information.

At the last meeting of the Working Group held on 19th April 2011 final version of the Analysis with the proposal for conclusions was established, and it is expected that by the end of 2011 the new Law on Free Access to Information would be adopted, and that it will be harmonized with the Law on Classified Information and the Law on Protection of Personal Data.

ANNEX 1 - STATISTICAL DATA ON THE ENFORCEMENT OF THE LAW

1. Submitted requests and responses in the period January-April 2011

Response/Procedure	Request		Amended request		Re-filed request		Complaint(appeal)		Re-filed complaint (appeal)		Total	
	No	%	No	%	No	%	No	%	No	%	No	%
Allowed	1,079	42.15%	6	11%	307	24%	406	56%	43	12%	1,841	38%
Partly	49	1.91%	0	0%	6	0%	8	1%	7	2%	70	1%
Amended request	6	0.23%	33	61%	61	5%	0	0%	1	0%	101	2%
Already published	176	6.88%	0	0%	64	5%	23	3%	0	0%	263	5%
Not authorized	330	12.89%	1	2%	138	11%	80	11%	41	11%	590	12%
No information	838	32.73%	13	24%	249	20%	161	22%	11	3%	1,272	25%
Rejected - producing underway	36	1.41%	0	0%	11	1%	5	1%	8	2%	60	1%
Banned - exception	28	1.09%	0	0%	20	2%	15	2%	24	7%	87	2%
Silence of administration	18	0.70%	1	2%	407	32%	23	3%	230	63%	679	14%
TOTAL	2,560		54		1,263		721		365		4,963	
	51.58%		1.09%		25.45%		14.53%		7.35%			

2. Filed claims for requests for access to information in the period January-April 2011

Tužbe	BR.	%	
Number of claims to the Administrative Court	559	100.00%	of cases in which information was not delivered
Number of claims underway	232	41.50%	of filed claims in which verdict has not been reached yet
Number of reached verdicts	327	58.50%	of filed claims - the Administrative Court has reached verdict
Number of reached verdicts in favour of MANS	133	40.67%	verdict of the Administrative Court are no0w in favour of MANS
Number of reached verdicts in favour of institutions	193	59.02%	verdict of the Administrative Court are now in favour of public institutions

3. Submitted requests and responses in the period as of 2005 to 31st December 2010

Response/Procedure	Request		Amended request		Re-filed request		Complaint(appeal)		Re-filed complaint (appeal)		Total	
	No	%	No	%	No	%	No	%	No	%	No	%
Allowed	8,671	44.02%	80	39%	1,185	25%	1,612	37%	389	21%	11,937	39%
Partly	310	1.57%	1	0%	50	1%	70	2%	12	1%	443	1%
Amended request	81	0.41%	96	47%	51	1%	48	1%	9	0%	285	1%
Already published	1,166	5.92%	1	0%	172	4%	165	4%	12	1%	1,516	5%
Not authorized	1,932	9.81%	1	0%	278	6%	296	7%	285	15%	2,792	9%
No information	5,161	26.20%	20	10%	745	16%	1,195	28%	41	2%	7,162	23%
Rejected - producing underway	233	1.18%	0	0%	67	1%	55	1%	35	2%	390	1%
Banned - exception	255	1.29%	2	1%	60	1%	353	8%	36	2%	706	2%
Silence of administration	1,891	9.60%	3	1%	2,138	45%	510	12%	1,030	56%	5,572	18%
TOTAL	19,700		204		4,746		4,304		1,849		30,803	
	63.95%		0.66%		15.41%		13.97%		6.00%			

4. Filed claims for requests for access to information in the period as of 2005 to 31st December 2010

Claims	NO.	%	
Number of claims to the Administrative Court	4,922	100.00%	of cases in which information was not delivered
Number of claims underway	1,164	23.65%	of filed claims in which verdict has not been reached yet
Number of reached verdicts	3,758	76.35%	of filed claims - the Administrative Court has reached verdict
Number of reached verdicts in favour of MANS	2,796	74.40%	verdict of the Administrative Court are no0w in favour of MANS
Number of reached verdicts in favour of institutions	961	25.57%	verdict of the Administrative Court are now in favour of public institutions

ANNEX 2 – PROPOSALS FOR THE IMPROVEMENT OF THE EXISTING LAW

1. LAW ON FREE ACCESS TO INFORMATION

I MISDEMEANOUR PROCEEDINGS AND INSTITUTIONAL FRAMEWORK

- It is necessary to define in the Law which body is in charge of implementing the Law and implementation of its penal provisions. This body should be given legal authority to impose sanctions directly against the body and responsible persons who violate the law. A possible solution is the Administrative Inspection of the Ministry of Interior or the second instance body for the implementation of the Law on Free Access to Information (Commissioner) if this institution is established.
- It is also necessary to expand penalty provisions of the Law in order to cover all forms of sanctions for violations of the law (failing to publish and update the Guide, failing to publish proactively determined information, failing to reply within the deadline to requests/appeals; not allowing the requested mode of access; failing to provide information confirming that the request was received and filed, illegal accrual of procedure costs, etc..) and increase the amount of Statutory sanctions. It should be also envisaged that if it is determined that an officer has repeatedly violated the Law this officer must be held not only liable for offence but must also bear disciplinary liability before the body for which s/he works.
- Regarding the institutional framework, there should be considered the possibility of introduction of one second instance body for all institutions (Commissioner for Access to Information, as a new body, or give these powers to Ombudsman, if the option is not to set up new bodies) in order to accelerate the process, and foresee the right of protection before the Administrative Court against the decisions of this second-instance body. Also, the second instance body should have the possibility of deciding on the merits – ordering the first instance institution to disclose information, not only to abolish the decision. Also, if we decide to choose this option, sanctions should be provided for non-compliance of the decisions of second instance body under misdemeanour provisions.

II EXPANDING THE NUMBER OF REPORTING ENTITIES ACTING UNDER THE LAW

- It is necessary to state explicitly that authorities (i.e. reporting entities as defined by the Law on Free Access to Information) are the following entities that are either financed from the budget or in which the state has ownership share:
  1) All political parties financed from the budget of Montenegro;
  2) All business entities in which Montenegro has any kind of share;
  3) All business entities engaged in activities of public interest or which dispose of public property including electricity, water supply and concessions;
  4) All business entities that have received subsidies from the state of more than €100,000 in a calendar year;
  5) All non-profit and other organizations which have received for their work from the state over €100,000 in a calendar year;

III EXPANDING INFORMATION THAT MUST BE PUBLIC, REGARDLESS OF THE HAZARDS TEST (IN RELATION TO ARTICLE 10 OF THE CURRENT LAW)

- It is necessary to expand the scope of information to be published regardless of any consequences that might arise by publishing this information. This information can include:
  1) detection of criminal acts of corruption and organized crime;
  2) environmental conditions (in accordance with obligations under the Aarhus Convention);
  3) health and life of people;
  4) human rights;
- It is necessary to specify that criteria for proclaiming documents classified can be based solely on the Law on Free Access to Information, which would also have to take precedence over all laws governing confidentiality of data.
- It is necessary to specify that the Guide is only a starting point for accessing information, and it does not exclude access to other information which the authority owns and which are not listed in the Guide;

IV ELECTRONIC ACCESS TO INFORMATION

- It is necessary to specify the duty of all bodies which are reporting entities by the Law to publish and update monthly a Guide for access to information. Also the Guide should specify what kind of information the authority shall publish ex officio (proactive) on its website. Also, it is necessary to specify that the obligation of authority is to prepare in the Guide a plan of expansion of information published ex officio if there are no conditions to publish all information immediately.
- It is necessary to appoint a person responsible for having all authorities act according to the Law, to publish his/her contacts in the Guide, including a valid e-mail address so that the citizens could submit requests for free access to information by e-mail.
- It is necessary to further develop procedure for the submission of requests via e-mail, and allow the submission of re-filed requests, complaints and also re-filed complaints by e-mail.

V THE PROBLEM OF ACCESS TO INFORMATION BY MAIL AND FAX

- It is necessary to specify measures of protection of rights of persons in judicial proceedings who submit requests for access to information by mail or fax. Namely, as the court does not recognize receipts as a proof that the request has been submitted to the institution, it is necessary to regulate this area so that receipts are recognized as adequate evidence before the court confirming that the Request (or any other document) has been submitted.

VI OTHER ADJUSTMENTS

- All the procedures and deadlines related to access to information until the submission of claims to the Court should be prescribed in this Law so that procedures from the Law on Free Access to Information and the Law on Administrative Procedure would not interfere.

- It is necessary to state precisely that access to information must be conducted in a way required by the person who requests access to information without exception.
- It is necessary to specify that physical insight can be made only if both the person requesting the access to information and institution to which the request has been submitted are from the same local self-government unit;
- The Law should provide for and specify the possibility of oral submission of request for persons with disabilities, where officer in the institution which should provide information would be obliged to draw up the request in writing on behalf of the applicant;
- To specify legally the price of copying the requested information, and for what types of information it is charged (unlike now when this is defined by a by-law);
- Additionally define protection of officer who discloses information in accordance with the Law against possible consequences that the officer could suffered by the head of that institution.

2. LAW ON CLASSIFIED INFORMATION

- Amend the Law on Classified Information in order to allow the Commissioner (or Ombudsman) to access all classified information including the document marked as "Top secret". This should be also allowed to all judges of the Administrative and Supreme Courts who determine whether the documents requested through the Law on Free Access to Information should be proclaimed classified;
- Fully harmonize the definition of classified information from the Law (Article 3) with the definition from the Law on Free Access to Information;
- Eliminate the possibility to consider data classified if they are marked only by the degree of confidentiality and do not contain information on the manner of how they will cease to be classified, the details of the person authorized to determine the level of confidentiality and data on the body whose authorized person has determined confidentiality of data (Article 22 of the Law);
- Specifying the duration of confidentiality of data according to the degree of confidentiality prescribed by the Law:
  1) Top secret - 5 years;
  2) Secret - 3 years;
  3) Confidential - 1 year;
  4) Internal - 6 months;
- Prescribe mandatory creation and ongoing updates of public register on the web site of the body which would contain information on all documents which are declassified, as well as which body holds these specific documents;
- Article 21 of the Law should be harmonized with Article 9 of the Law on Free Access to Information, in order to bind institutions to prepare a test of harmfulness when deciding on filing a request for free access to information;
- Provisions of Article 10 of the Law on Free Access to Information should be applied to Article 10 this Law. Article 10 of the Law on Free Access to Information specifies in which cases data must be published regardless of the possible adverse consequences that would result from disclosure of that information. Also, a clearer formulation of this Article is needed which would specify the possibility of marking only one part of the document with the degree of confidentiality, while other parts of the document should be public by their nature;

- Amend Article 7 of the Law in order to prevent that journalists and representatives of civil society bear consequences because of disclosing information marked with a specific degree of confidentiality if this information is in public interest.

3. LAW ON PROTECTION OF PERSONAL DATA

- It is necessary to introduce public officials as a new category of persons whose data are protected in accordance with the definition in the Law on Preventing Conflicts of Interest. This would prescribe that public officials are obliged to "stand" more public insight, which means that as compared to personal data of ordinary citizens all data related to them would not be regarded as personal data and these are:
  1) Personal ID number;
  2) Data relating to their income and assets;
  3) Data relating to the functions they perform, whether in private or public legal entities;
  4) Tax returns;
  5) Contracts for loans and deposits with foreign and domestic banks;
- Tighten penal policy in the Law.