

Case Study: Procedure for obtaining information according to the Law on Free Access to Information from the Supreme State Prosecutor of Montenegro (SSP) on the status of investigations of 12 cases of human rights violations

Summary: Enclosed is the description of the proceedings for obtaining information from the state prosecution on the status of investigations of 12 cases of human rights violations. The procedure was initiated on May 12, 2010 and ended after almost two years, on April 12, 2012, when the SSP finally provided partial responses. In the meantime, HRA led the administrative proceeding in which the Administrative Court made a decision in favour of HRA claim in May 2011 thus enabling HRA to receive partial answers from the SSP a year later and after additional urgencies.

Description of the procedure:

1. HRA submitted to the Supreme Public Prosecutor (SSP) request for access to information on May 12, 2010 asking for information on the proceedings i.e. dropping of proceedings in the following cases:
 - (1) Abuse of detainees in the Spuž penitentiary in 2005;
 - (2) Death threats against the Researcher of Human Rights Violations and member of the Civic Council for Control of the Police, Aleksandar Zeković, in 2007;
 - (3) Beating of detainee Vladana Kljajić in the Spuž penitentiary in March 2008;
 - (4) Allegations on torture of the Party of Democratic Action (SDA) members published by one of its members Ibrahim Čikić in the book "Where the Sun Doesn't Shine" in 2008;
 - (5) Allegations on applications of illegal secret surveillance measures of the Podgorica Superior Court judges – the clue of the missing case-file;
 - (6) Assassination of Duško Jovanović;
 - (7) Assault on writer Jevrem Brković and murder of his bodyguard Srđan Vojičić;
 - (8) Beating of journalist Tufik Softić who reported on organized crime;
 - (9) Beating of journalist Mladen Stojović who spoke on TV B92 show "Insider" about activities of Montenegrin "football mafia";
 - (10) Allegations of veterinary inspector Mirjana Drašković regarding the high level corruption in issuing licenses for food import in Montenegro for which she was suspended from work for a year;
 - (11) Beating of Aleksandar Pejanović in Podgorica police detention unit, and

(12) Allegations on abuse of persons detained during the police anti-terrorist operation "Eagles' Flight".

2. On October 1, 2010, HRA received from the Supreme State Prosecution Office decision that the above request was entirely rejected. In the explanation it was stated that the request did not meet the requirements set forth in the Guide for access to information of the Supreme State Prosecutor of Montenegro and the access to information cannot be obtained under the Law on Free Access to Information, but pursuant to the provisions of the Criminal Procedure Code, which prescribes the manner and procedure of using the right to access to evidence and information in criminal proceedings.
3. In the HRA appeal submitted to the Ministry of Justice on October 8, 2010 it was pointed out that HRA did not request access to evidence and records in criminal proceedings but information when and what kind of investigations had been carried out regarding the mentioned cases, had there been any progress in particular cases and current stage of the initiated proceedings i.e. had they ever been subject to the state prosecution actions. In the appeal, it was noted that the public has a right to be informed on proceedings concerning the mentioned cases, which particularly aroused public attention. Finally, it was emphasized that the rejection of the request by the SSP did not help improve public confidence in the judiciary, defined as one of the key objectives of the Judicial Reform Strategy in Montenegro.
4. Subsequent to HRA filed complaint to the Administrative Court on November 3, 2010 due to a silence of administration – a failure to deliver the decision on appeal against the Ministry of Justice on November 24, 2010 HRA was informed by the Administrative Court that the Ministry of Justice on October 22, 2010 decided to annul the SSP's decision and to return the case for reconsideration. In the decision, the Ministry of Justice states that SSP did not make complete and clear reasons for rejection of HRA request in accordance with the Law on Free Access to Information thus violating the Rules of Procedure of the Law on General Administrative Procedure.
5. Although the Ministry of Justice, in the above decision, pointed out flaws and requested from SSP to make a new, legal decision on November 29, 2010 SSP made decision to reject request for access to information on 12 cases of human rights violations. Hence, the entire request was rejected for the second time.

6. On December 13, 2012, HRA filed an appeal to the Ministry of Justice on the SSP decision in which violation of the Rules of Procedure and misapplication of the Law on Free Access to Information by the SSP was pointed out.
7. On December 16, 2010, Ministry of Justice rejected HRA appeal, stating that it had no grounds. It was one of the last decisions made by Mr. Miraš Radović at the end of his ministerial mandate. (He is currently a judge of the Constitutional Court of Montenegro).
8. On February 9, 2011, HRA subsequently filed a lawsuit against the mentioned decision of the Ministry of Justice in which it was pointed out that there was no legal basis for rejection of the request and which denied the legality of the decision due to an incorrect application of the substantive law. The Administrative Court adopted HRA claim on May 13, 2011 and annulled decision of the Ministry of Justice.
9. As HRA informed public that it still had not received any of the requested information, despite the judgement of the Administrative Court, the Ministry of Justice announced on November 10, 2011 that it complied with the Administrative Court decision by issuing a new decision on June 1, 2011, which annulled the SSP's decision to entirely, reject access to information.
10. As HRA had not received by December 27, 2011 neither the requested information nor a new decision of the SSP or the Ministry of Justice decision it requested on December 27, 2011 from the Ministry of Justice and the SSP these decisions. Additionally, HRA requested from the SSP to act urgently according to the decision.
11. Ministry of Justice replied to HRA's, above mentioned, request on January 19, 2012 stating that it complied with the Administrative Court decision and the Law on General Administrative Procedure, and that the relevant decision, in the required number of copies, was delivered to the first instance body (SSP). In the same note, HRA was directed to ask the SSP for a decision.
12. Although HRA had requested the relevant decision from the SSP (see step 10), acting according to the Ministry of Justice reply, it also sent on February 14, 2012 the additional request to SSP requiring the submission of the decision and urgent submission of the required information.
13. SSP's finally delivers partial information to HRA on 12 April 2012.