

ACCESS TO JUSTICE IN INFORMATION CASES IN THE REPUBLIC OF SERBIA

Serbian Commissioner for Information of Public Importance
and Personal Data Protection

Belgrade, 16 February 2021

- This brief presentation will focus on information cases concerning SHPPs in Serbia
- Since 2010, Serbian Ministry of Mining and Energy issued 188 Privileged Power Producer Permits for small hydropower plants (SHPPs) *
- Serbian Cadaster of SHPPs contains 856 (existing/planned) facilities **
- Construction of SHPPs marked by controversies as to economic benefits/harm to the environment, lack of transparency and public participation;
- A number of civil society organizations and activists in Serbia argue that the Aarhus Convention is not being applied to its fullest extent, and that there is much room for improvement in that area;
- A majority of civil actors appreciate efforts made by Commissioner in defending their right to be informed

* Ministry of Mining and Energy (https://www.mre.gov.rs/sites/default/files/registri/registar-250121.html#Sec_MHE)

** <http://mhe.mre.gov.rs/>

- In line with Article 9 of the Convention (*Access to Justice*), the right of access to a review procedure is exercised before the Commissioner as *another independent and impartial body established by law*
- Request for information is submitted to a public authority body – 15 days to respond
- Serbian Law on Free Access to Information of Public Importance, Article 16, para. 2:
“If a request relates to information which can be reasonably assumed to bear on the protection of a person's life or freedom and/or the protection of public health and the environment, a public authority must inform the applicant it holds such information, grant access to the document containing the requested information or issue a copy of the document to the applicant, as the case may be, **within 48 hours of receipt of the request**”
- Commissioner as the second-instance body decides on appeals; decisions final and enforceable
- Administrative dispute against the Commissioner's decision may be instituted by the requester; Public Prosecutor (protection of public interest)

- Law on the Protection of the Environment (Article 3, item 33 d):
- “any information on imminent danger [to the environment] resulting from human activity or natural causes, including information on the emissions to the environment”
- Total number of cases before the Commissioner: 3000 to 4000 per year
- From February 2015 to 31 December 2020 “only” 35 appeals filed concerning information on SHPPs
 - 14 appeals by investigative journalists
 - 15 appeals by environmental NGOs/activists
 - 6 appeals by individuals from the general public (17.14%)*

* in 2020, 62.14 % of all other appeals filed by individuals other than journalists/activists/NGOs

The state authorities against which appeals were filed on the grounds of denying the right to access to information about SHPPs:

- Local self-government bodies (17 appeals)
- Ministry of Mining and Energy (4 appeals)
- National Bank of Serbia (2 appeals)
- Serbian Chamber of Engineers (1 appeals)
- Serbian Hydrometeorological Service (1 appeal)
- Serbian Institute for Nature Conservation (1 appeal)
- Public Utility Enterprise *Komunalac* (1 appeal)
- Public Water Management Enterprise *Srbijavode* (1 appeal)

The most frequently requested information concerning SHPPs include:

- Information as to whether environmental impact assessment was conducted
- Information about construction permits, usage permits and location requirements
- Information on spatial plans for the construction of SHPPs
- Information on energy permits
- Information about tenders for construction of SHPPs and investors

In none of these cases the parties or the Public Prosecutor instituted administrative disputes against the Commissioner's decisions before the Administrative Court.

- In 10 cases, the Commissioner ordered that the information be made available; two of the decisions have remained unenforced
- In 12 cases, the Commissioner annulled the decision of the first-instance body that rejected the request for information and ordered that the information be made available; four of the decisions have remained unenforced
- In 10 cases, the Commissioner discontinued the proceedings because the state authorities made the information available upon his intervention
- One first-instance decision was reversed for reconsideration
- Only one complaint was rejected as unfounded because the public authority did not possess the requested information
- Two complaints were dismissed on formal grounds.

In none of the cases the parties or the Public Prosecutor instituted administrative disputes against the Commissioner's decisions before the Administrative Court.

Thank you for your attention.