



**REPUBLIC OF SERBIA
COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE**

**REPORT
OF THE IMPLEMENTATION OF THE LAW OF FREE
ACCESS TO INFORMATION OF PUBLIC IMPORTANCE**

**Belgrade
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The report of the implementation of the Law of the free access to information of the public importance in 2005.

1. INTRODUCTORY REMARKS

1.1 Legal presumptions

The Law of the free access to information of public importance has been passed on November 5th 2004 (Off. Register RS 120/04) and has gone into effect on November 13th 2004.

The institution of the Commissioner for information of public importance (in further text: Commissioner) has been established by the law, as an independent state official, autonomous in performing duties, in order to provide realization of the right to free access to information of public importance.

By the decision of the National Assembly of the Republic of Serbia, RS number 91, made on December 22nd 2004, Rodoljub Sabic has been elected the Commissioner.

The Commissioner made legal decisions in January 2005 to organize the work of the Commissioner's Department, to which the National Assembly consented on May 23rd 2005, and that is:

- The decision to form the Commissioner's Department for information of public importance,
- The decision about wages in the Commissioner's Department for information of public importance and
- The Book of regulations about the internal organization and systematization of positions in the Commissioner's Department for information of public importance.

Function of the institution of the Commissioner is to provide implementation of the right to free access to information of public importance. In accordance to regulations in the article 35 of the Law of free access to information of public importance, the Commissioner's is authorized to:

- solve complaints on decision of the officials, which violate the rights established by this law;
- supervise the fulfilment of the officials' obligations established by this law and to inform the public and the National Assembly about that;
- give initiative to enact or change regulations in order to execute and improve the right to free access to information of public importance;
- propose the officials to take steps in order to improve their work established by this law;
- take steps necessary to train the employees in state authority departments and to inform the employees on their obligations concerning the rights to free access to information of public importance, in order to implement this law effectively;

- inform the public about the contents of this law, as well as the rights established by this law and
- carry out other tasks established by this law.

According to this law, the Commissioner is in obligation to:

1. Submit the annual report to the National Assembly, within three months since the end of a fiscal year, about the actions undertaken by the officials in order to implement this law, as well as about his own actions and expenses. The Commissioner also submits other reports to the National Assembly, if he finds it necessary (article 36 of the Law),
2. Publish and update a manual with convenient instructions for efficient implementation of the rights established by this law, in Serbian language and in languages which are, according to the law, set as the languages in official use (article 37, paragraph 1),
3. By means of the press, electronic media, internet, platforms and by other means, inform the public about the contents of the book of reference for implementation of the law (article 37, paragraph 3),
4. Publish an instruction by which the information booklet is published about the work of the state agency.

According to the aforementioned authorizations and obligations, during the year 2005, according to the articles 37 and 40 of the Law of free access to information of public importance, the Commissioner has made:

1. An instruction for publishing the information booklet about the work of the state agencies(The Official register RS 57/05 since July 5th 2005) and
2. A guidebook to the Law of free access to information of public importance, as well as the manual for executing the Law, which is published in the supplement of the Official register RS number 67/05).

In the instruction for publishing the information booklet about the work of the state agency, detailed information are given on how to make and publish the information booklet of the state agencies.

The guidebook to the Law was made and published in Serbian language in 20000-copy printing and in other languages which are in official use (national minorities) in 5000-copy printing, which fulfils the Commissioner's obligation set by the article 37 of the Law.

The guidebook was made with the decisive support of OSCE Mission and the NVO Coalition for free access to information, which also distributed through their system a special edition of the guidebook in 5000- copy printing to the public authority officials and the beneficiaries of the right to information.

At the beginning of the year 2006, the Government of Serbia, on the Commissioner's repeated initiative and the proposal of the Ministry of culture, as the authorized proposer, has made:

The Regulation of the extent of the necessary expenses for issuing the document copies which contain information of public importance (Off.register RS 8/06).

In that way the basic legal presumptions for execution of the Law were realized.

1.2 Financial-technical presumptions for the work of the Commissioner's Department

The competent Government's services have provided basic financial-technical requirements for the work of the Commissioner's Department six months after the election of the Commissioner, i.e. in July 2005, and after the Commissioner has made several repeated requests to provide space and basic equipment, because of which the Department did not start work until July 1st 2005, with its main office in 42 Svetozara Markovica street in Belgrade.

However, the available space has not been suitable for the real needs of the Department, in respect of its size, for several months, because of the constant increase of the document influx, which requires an urgent admission of a certain number of new personnel for which the budgetary funds for this year have been approved.

One part of the equipment for the work of the Department is property of the Department for joint operations of the republic officials (6 personal computers, 1 lap-top computer, 4 printers, 1 projector, 1 multi-functional machine, a car "Skoda Octavia-superb", mini telephone exchange), and the other part was acquired from the Commissioner's funds in 2005(a car "Skoda Octavia" bought on October 21st 2005. according to the obtained approval of the Government of the Republic of Serbia and conducted procedure for public acquisition, 1 server, 2 personal computers, 1 network printer, 1 transmissional computer and 3 heating bodies).

1.3 Organization of the Department and personnel qualifications

According to the act of the organization and systematization of the positions in the Commissioner's Department, to which the National Assembly agreed, the Department has:

- Sector for improving the publicity of the work
- Sector for the administrative procedure
- Sector for joint operations
- Commissioner's Cabinet

The following operations are being performed in the Department:

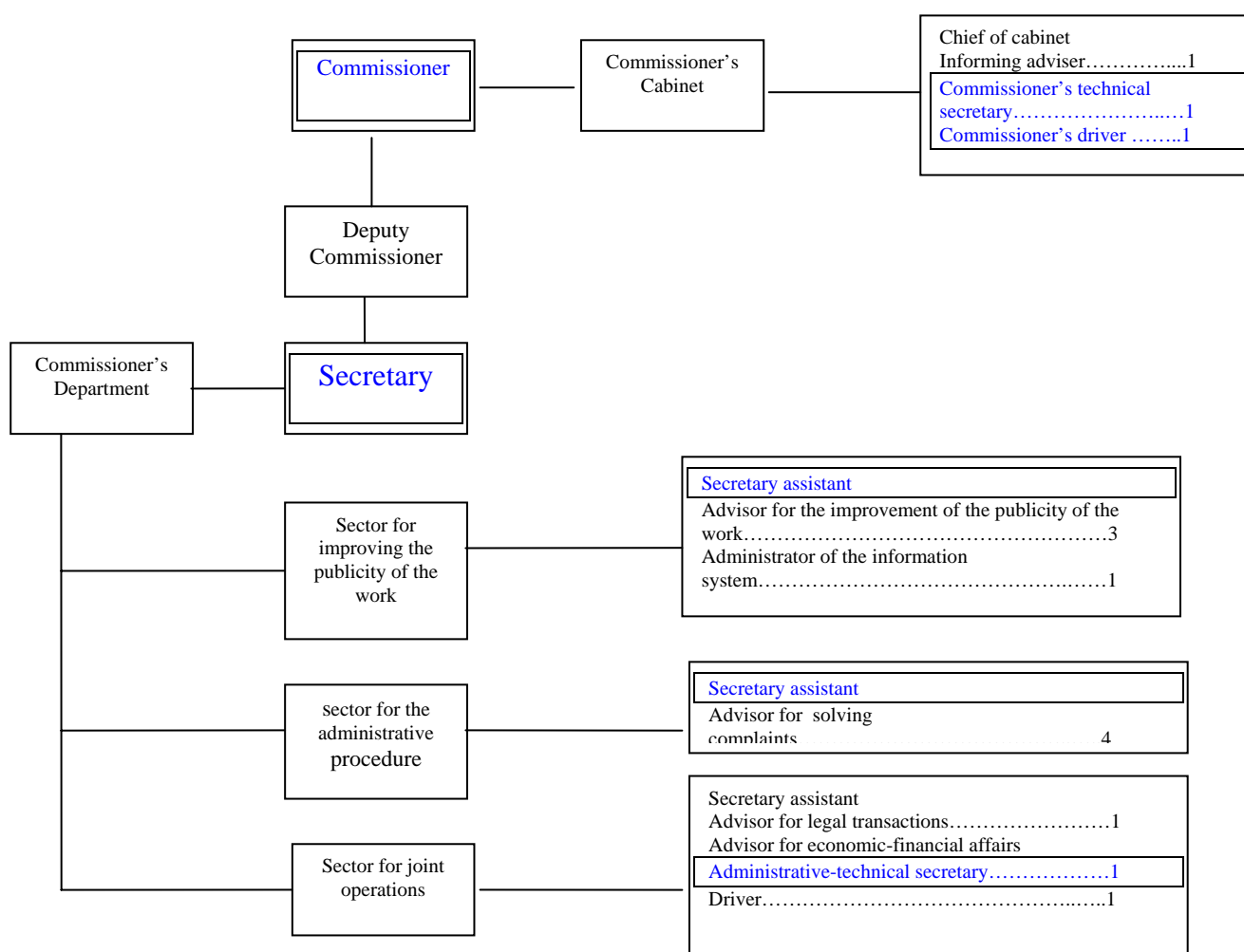
- Administrative tasks of solving complaints on decisions of the officials which violate the right to free access to information of public importance, tasks connected to the administrative dispute on the Commissioner's decisions, supervision of executing the decisions and for the offence liability;
- Expert, analytical and normative tasks, tasks regarding the cooperation with other officials, departments and institutions, advisory and other tasks which execute and improve the right to free access to information of public importance;

- Legal transactions concerning the execution of labor law of the employees in the Commissioner's Department, economical-financial and operative tasks in connection with treatment of the parties, the petitions and complaints, administrative-technical and other tasks of importance for execution of the Commissioner's authority.

For performing these tasks, 21 position was systematized in total, including one for the deputy Commissioner, elected by the Assembly according to the Law, Commissioner's secretary and two secretary assistants and the chief of cabinet, appointed by the Commissioner. The remaining 16 positions are of the employees, of which 11 are with university-level vocation training and 5 with intermediate vocation training.

Organization scheme of the Commissioner's Department according to the systematization:

/Positions in blue are taken/



The actual state of the personnel:

In the year 2005, besides the Commissioner, expert tasks were performed by the Department secretary, until September, when two secretary assistants were appointed. Administrative and technical tasks are performed by three employees (Commissioner's technical secretary, driver and person employed on administrative-technical tasks in the Department), so there are altogether six employees in the Department, of which only three, the secretary and two secretary assistants, analyze the documents regarding the complaints of the information seeker and other expert tasks of the Department. So small number of the personnel is far below the real need, and the admission of the new ones is directly caused by providing additional space.

For performing financial and other expert tasks which provide that the Department itself functions (concerning the execution of the labor law, public acquisitions, technical support to the information system and similar) persons are employed according to work on contract.

1.4 Financing the work of the Commissioner and the Department

The work of the Commissioner and the Department, according to the article 34 of the Law of free access to information of public importance, is being financed from the budget of the Republic of Serbia.

Budget for the year 2005.

Financial resources for the year 2005 were provided in June 2005, first of all out of the current budgetary resources, by the Resolution of the Government of the Republic of Serbia 05 nr. 401-3342/2005 since June 2nd 2005, and then through the budgetary rebalance, total sum of 14845000 dinars.

These resources were spent in the year 2005 in amount of 59%, and the most of that was spent to provide basic presumptions for the work of this department, for the acquisition of the necessary computer and other equipment for the work and communication, official car, publication of the manual for the implementation of the Law, placing the web presentation of the department, next for the compensation to individuals on account of performed services according to the contract(financial tasks, administration of the system, making the schedule for keeping records of receiving and solving cases, etc) and of course for payment of the employees' wages as well as taxes and fees on that basis.

In the first half of the year 2005, when the budget for the work of this department was not yet approved, so neither the basic requirements for the work, certain activities on promotion and execution of the Law of free access to information of public importance were supported by the OSCE Mission in Serbia and Montenegro and nongovernmental agencies gathered in coalition for free access to information, in coordination of the Fund for open society. That includes financing some ten seminars and other assemblies organized in various cities in Serbia and the expenses for publishing and distribution of the Guidebook to the Law in 5000-copy printing.

REALIZATION OF THE BUDGET FOR THE YEAR 2005:

POSITION	DESCRIPTION	APPROVED	SPENT	%
411	Wages, allowances, compensations	2.492.000,00	2.446.425,25	98,17
412	Contributions	440.000,00	423.442,00	96,24
413	Reparations in kind	200.000,00	8.999,99	4,50
414	Social security benefits	100.000,00	57.390,70	57,39
415	Compensations for the employees	200.000,00	18.124,42	9,06
416	Rewards and bonuses	478.000,00	434.704,99	90,94
421	Regular expenses	1.425.000,00	343.674,17	24,12
422	Travel expenses	760.000,00	14.290,00	1,88
423	Services according to the contract	2.925.000,00	1.724.571,49	58,96
425	Repairs and maintenance	475.000,00	22.954,18	4,83
426	Supplies	2.850.000,00	1.221.004,30	42,84
482	Taxes, fees	500.000,00	12.686,00	2,54
483	Fines	1,00	0,00	0,00
512	Machines and equipment	2.000.000,00	1.999.322,38	99,97
IN TOTAL		14.845.001,00	8.727.589,87	58,79

Budget for the year 2006.

According to the draft of the budget of the Republic of Serbia for the year 2006, which the Government of the Republic of Serbia approved on the meeting held on October 28th 2005, for the Commissioner's work for the whole year 2006 the funds were approved to the amount of 11.934.000 dinars, which is 20% less than the funds approved for the half of the year 2005, and the funds for the wages were planned according to four employees, including the Commissioner (the actual number on October 1st 2005 was six including the Commissioner), although the National Assembly agreed on the acts about the Commissioner's work with 21 employees, including the deputy Commissioner.

After the Commissioner's intervention through the Culture and information committee of the National Assembly and initiation of presenting the amendment, it was presented and approved the corresponding amendment according to which the resources were approved for the Commissioner's work, for the year 2005, which enable the realization the Commissioner's function:

The Review of the budget for the year 2006:

Position	Approved in dinars	Spent until February 28 th 2006.	%
411 Wages and allowances of the employees	15.500.000	1.094.472,21	7,06
412 Social contributions at charge of work	2.800.000	195.906,21	7,00
413 Reparations in kind	100.000	0,00	0,00
414 Social security benefits for the employees	200.000	0,00	0,00
415 Compensations for the employees	400.000	5.032,56	1,26
416 Rewards, bonuses and other business expenses	-	-	-
421 Regular expenses	1.760.000	90.211,93	5,13
422 Travel expenses	1.000.000	11.342,79	1,13
423 Services according to the contract	6.000.000	508.848,76	8,48
424 Specialized services	100.000	0,00	0,00
425 Current repairs and maintenance (services and supplies)	100.000	0,00	0,00
426 Supplies	1.200.000	100.152,53	8,35
482 Taxes, mandatory fees, fines	30.000	4.901,00	16,34
512 Machines and equipment	500.000	16.890,11	3,38
Budget income In total for distribution 44:	29.690.000	2.027.758,10	6,83

2. REVIEW OF THE COMMISSIONER'S ACTIVITIES

2.1 SOLVING SUBJECTS OF COMPLAINT

2.1.1 Procedure for making decisions on appeals:

Information seeker (citizen, reporter, department of public opinioned) can lodge a complaint to the Commissioner if the public authority department refuses to inform him/her if it is in possession of certain information of public importance, or if it is available ,to give access to the document containing the requested information, to issue or send a document copy (depending on what it is asked) or not to do so within the prescribed period of 15 days (exceptionally within 40 days for good reasons in the article 16 page 3 of the Law or within 48 hours for a certain kind of information significant for protection of life or freedom of an individual or for jeopardizing or protection of human health and environment).

The Commissioner acts upon the complaint according to the Law of free access to information of public importance and regulations of general administrative procedure which refer to making decisions on appeal to a second-instance organ and makes a decision without delay, and not later than 30 days since the appeal has been lodged.

The Commissioner enables the authorities, and if necessary the appellant, to speak out before making a decision. Deciding on the appeal, the Commissioner will:

- reject the appeal for formal reasons, if it is unlawful, lodged by an unauthorized person or not timely, i.e. premature with "administration's silence",
- reject the appeal as unfounded, if the authority officials have proved that they acted according to the law,
- Accept the appeal as founded and order the public authority to pass the requested information to the seeker, along with allowing a short period of time to do so and with obligation to inform the Commissioner on execution of the directive in the decision,
- suspend the procedure, if the appellant withdraws the appeal or the reasons for further conduct of the procedure on the appeal cease, when the authority department in the meantime deliver to the appellant the requested information.

In order to establish the facts essential for making the decision on the appeal, the Commissioner has the right to inspect every information bearer to which the Law is applied.

2.1.2 Actions regarding the offence liability

When the Commissioner establishes that there are elements of offence from the article 46-48 of the Law of free access to information of public importance regarding the appeal or in some other way of acting or nonacting of the public authorities, the Commissioner informs the Ministry of culture, as the department authorized to bring violation charges and delivers all case files on the account of bringing violation charges.

2.1.3 Acting on the request to access the information

On the request for information of public importance which is available to the Commissioner, arisen during the work or concerning his work, the Commissioner acts as any other public authority according to the regulations of article 16 of the Law of free access to information of public importance: he submits the information asked for to the appellant within proscribed period, if he is in possession of the information asked for and makes a note about that; if he is not in the possession of the document, he informs the appellant and with his/her consent delivers the request to the department in whose possession, at his knowledge, the document is. If he establishes that there are reasons determined by the Law to deny or restrict giving the requested information, he will make a decision to refuse the request with explanation of the reason for such decision.

2.1.4 Acting on ceded request

On the assigned or ceded request of some other public agency according to the article 13 of the Law, the Commissioner first of all makes certain that the document is in possession of the agency that ceded him the request and if it is not, he delivers it to the agency in whose possession, at his knowledge, the document is (unless the appellant did not determine otherwise) and informs the appellant on that, or he will refer the appellant to the agency in whose possession the information is.

2.1.5 Acting on other presumptions

Received petitions on the work of the public agencies, and which are not information of public importance by their contents, the Commissioner delivers to the authorized agency for acting on account of them and informs the appellant within his competence.

2.1.6 Records about the solved cases

Proceeding from a fact that, for impartial reasons, the Commissioner's Department has not started working until July 1st 2005, the records about solved cases include the period of time since July 2005 to February 2006 inclusive.

During that period of time, the Department processed 693 cases in total, of which during January and February alone it received 261 cases.

443 cases in total are solved and 253 are being processed.

Structure of solved cases:

- 330 appeals, of which only 12 are lodged to the decision of denying the request of the information seeker, and the rest of the appeals are on nonacting of the agency

according to the request to access information of public importance or on denying the request without making decision,

- 7 responses to complaints in administrative dispute, lodged on the Commissioner's decision,
- 10 opinions are given concerning the implication of the Law of free access to information of public importance,
- 5 requests to ask the Commissioner for the information of public importance,
- 22 requests to ask for information of public importance, and which the Department forwarded to the public authority department which is in possession of information on account of dealing with it and informed the appellants,
- 29 cases regarding the communication with the authorities concerning the defining the competence of that authority to act on a particular case, concerning other matters of implementation of the Law,
- 40 petitions on the work of the state authorities, which are not information of public importance and the aforementioned, are forwarded to competent authority for competence, while informing the appellant.

The outcome of the cases about the appeals:

Out of 330 solved appeals, only 14 were unfounded. Deciding on the appeals, the Commissioner has made the following decisions:

- 151 decision which prescribe the officials to enable access to the information asked for,
- 128 conclusions which suspend further procedure, because the officials meanwhile, after the Commissioner's intervention, acted upon the request to access information,
- 23 conclusions by which the appeal is rejected for formal reasons, because it was not timely, i.e. premature, prohibited or for not being authorized to make decisions,
- 28 cases are joint during processing, because they were regarding the same authority and the appeal submitter.

Execution of the decisions:

Out of 137 decisions by which access to information was prescribed:

- 15 decisions were not executed, and they refer to the following state official departments:
 1. Ministry of internal affairs-Belgrade, MoIA- CITY DEPARTMENT in Leskovac – OIA Vlasotince, MoIA – Office of the inspector general, Security-informative agency, Ministry of agriculture, forestry and water engineering,
 2. District court in Belgrade, District court in Zrenjanin, Commercial court in Belgrade, Superior commercial court in Belgrade, Second municipal prosecutors office in Belgrade, City magistrate of Belgrade,
 3. City of Belgrade – City planning and construction work department, PC PTT Communication "Serbia", PC "Office space- Vozdovac", Novi Sad – Gas, Veterinary station "Sombor".

- In some 10 cases, regarding the decisions, the appellant points out that obtained information is incomplete or inaccurate, which requires inspection during the supervising procedure.

The appeals are mostly on denying information, i.e. document copies about:

- Disposal of the budgetary and donor funds,
- International and domestic projects,
- Public acquisitions,
- Legality of the procedures of issuing various permits, especially building permits,
- Protection of personal freedom and personal and property rights,
- Wages and number of employees,
- Health care, environmental protection, protection of animals,
- Decisions of persecution agents and judicial organ, etc.

2.2 PERSONNEL TRAINING

Proceeding from a fact that personnel training in public agencies, which are under obligation to act according to the Law of free access to information of public importance, is one of the most important precondition for its high-quality implementation, the Commissioner and his Department had many activities concerning the execution of training in past period.

The law has anticipated this activity as an explicit obligation of every state agency, regarding the execution of the training of the employees and to get them acquainted with the obligations determined by this law, according to article 42 of the Law, and it is the Commissioner's obligation to take necessary steps to put this training into effect.

Because of that, according to article 35 of the Law, in the first half of October 2005, the Commissioner sent letters to the state agencies according to article 3 paragraph 1 of the Law, and that is to: every ministry, departments of AP of Vojvodina, every department of the local self governance, city of Belgrade and other cities in Serbia and reminded them of the explicit obligation of state authority departments regarding the execution of training of the employees and of them getting acquainted with obligations established by this law, proceeding from noticed disinclination of the employees in a large number of state authority departments to fulfill the obligations of the law. Simultaneously, the Commissioner's Department expressed the willingness to assist the state authority departments, according to the objective capabilities to carry out the plan of training the personnel in charge of conducts according to requests for free access to information of public importance, as well as openness of the Department for consultations regarding the implementation of the Law, as it is done anyhow through daily contacts.

According to that, the Commissioner has, in cooperation with OSCE Mission in Serbia and Montenegro and with the support of the administrative prefects, during the year 2005 carried out in five regional centers the plan of training the personnel, which includes personnel from about fifty municipalities which belong to district centers in Novi Sad, Nis, Kragujevac, Kraljevo and Krusevac. Continuation of these activities was arranged for the year 2006 and five more regional centers will be enclosed in February and March

(Pancevo, Smederevo, Uzice, Jagodina and Prokuplje). Two of these seminars were organized by the end of February, and the remaining three will be held in March.

During February 2006, also in cooperation with OSCE Mission in Serbia and Montenegro, the Commissioner held three seminars in Subotica, Kikinda and Sabac, within the cooperation regarding the education of the reporters on the implementation of the Law of free access to information of public importance.

The Commissioner was also engaged in realization of the project "Through the law to the truth" initiated in August 2005 in cooperation with CfFEaD, within which three platforms were organized in five cities in Serbia during 2005 and three in January 2006 with the purpose of getting the citizens acquainted with the Law of free access to information of public importance, through public platforms, media appearances and distribution of publicity material.

During the year 2005, the Commissioner performed other activities regarding the training of the implementation of the Law.

In the Government of the Republic of Serbia, along with the OSCE Mission, a seminar was organized for the authorized persons in the Government and the ministries regarding the implementation of the Law, in which most of the authorized persons took part and in which it was spoken about the obligations of the state authorities regarding the execution of this law and discussed about some controversial matters

The similar assembly was held in Novi Sad, with the participation of a large number of the authorised persons from the Executive council of Vojvodina and the district departments with the topic of implementing the Law.

In numerous cities in Serbia, platforms were organized and round tables in cooperation with NVO with the topic of campaign against the corruption, freedom of the press and similar, and in that context, and implementation of the Law of free access to information of public importance, (Transparency Serbia, CfFEaD, Center for the professionalization of the media, Young lawyers of Serbia and others) on which the Commissioner, i.e. his department, also took part.

Evaluating the importance and the effects of the past activities on education of the personnel on the implementation of this law, these activities will continue during the whole year 2006.

3. ADMINISTRATIVE AND OTHER OBSTACLES IN LAW ENFORCEMENT

3.1. Supervising law enforcement

Enforcement of the Law of free access to information of public importance is pursuant to article 45. of this Law undertaken by the Ministry of Culture, which, as the authorized department according to article 154. of the Law of criminal offences ("Official register of the SRS" 101/05) is competent for submitting requests for initiating legal procedures in cases of offences prescribed in art. 46-48 of this Law.

On the basis of that, the Commissioner's Department has on several occasions, September 27th 2005, November 15th 2005, December 29th 2005, and February 27th 2006 delivered in total 222 cases to the Ministry of Culture belonging to its competence, which were resolved through administrative procedure according to complaints of the seeker of information, and which have offence elements prescribed in article 46. of the Law of free access to information of public importance.

Making requests for initiating criminal proceedings means previous execution of supervision for determining the identity of both persons responsible and offence elements, for which the Ministry of Culture, at the moment, has no personnel, no organizational, logistic or other capacities, nor does it have a constituent inspection service, which would undertake this supervision.

Proceeding from the fact that the purpose of the Law of free access to information of public importance is to provide the publicity of work of public authority departments, as well as of the jurisdiction of the Ministry of State Administration and Local Self-governance – Administrative inspection, it has been concluded that it would be more purposeful to have the supervision in enforcing this Law within the competence of the administrative inspection, which is already supervising the operational efficiency and promptness of state agencies, organizations and legal persons that have been entrusted with performing certain state administration tasks. (Such legal solutions are in laws on free access to information in Bosnia and Herzegovina, Croatia, Montenegro...)

The Ministry of Culture has in December 2005 (last year) informed the Government of the Republic of Serbia on the problem regarding supervision of enforcing the Law of free access to information of public importance, therefore it is expected that by undertaking concrete measures these problems would be overcome. The Commissioner's Department was verbally, two months ago, informed by the Ministry of Culture that this ministry is preparing an amendment of the Law in the sense that the supervision of its enforcement belongs to the competence of the Ministry of State Administration and Local Self governance, instead to that of the Ministry of Culture.

Consequence of the aforesaid is that besides the supervision, neither the mechanism of responsibility for offence is yet functioning, except in separate cases when the request for initiating relevant legal proceedings is directly submitted by the seeker of information as the injured party.

3.2. Execution of Commissioner's decisions

According to regulations of the article 38. of the Law of free access to information of public importance, execution of the Commissioner's resolutions and conclusions, when needed, is provided by the Government of the Republic of Serbia.

Regardless of a relatively small number of unexecuted Commissioner's decisions (some fifteen), the question of mechanisms for providing its implementation is pending.

The Law of general administrative procedure foresees that execution of non-financial obligations, which are contents of Commissioner's resolutions as well, can be provided by coercive measures in the form of fines, which can be repeated several times until the obligation is fulfilled. This mechanism can be efficiently used in cases of unexecuted resolutions. Its efficient usage could be provided by introducing appropriate resolutions into the Standing order of the Government of Serbia or by adopting a special sub-legal act.

This issue was instituted by the Commissioner in his communication with the Government, expecting that the Government, in cooperation with the Republic Secretariat for Legislation, solves this problem as soon as possible.

3.3. Determining the register of subjects to which this Law is applied

Public authority departments, in the sense of the Law of free access to information of public importance, to which this Law refers to, are: state agencies, departments of territorial autonomy, local self-governance departments, and organizations entrusted with execution of public authorization, as well as legal persons established or financed in whole, i.e. in the prevailing part, by a state agency. Practical reasons of implementing the Law point to the need of determining a register, which would comprise all of these subjects, and without which it would be almost impossible to undertake supervision tasks.

Proceeding from the competence of the Ministry of Culture for supervising the execution of the Law, it would be realistic to expect from this Ministry to compose the registry of subjects liable to its supervision. The Ministry does not, for the time being, as concluded at the joint session, have the personnel and other logistic means for realizing this task, thus it is necessary to provide the supervisory function as soon as possible through implementation of this Law, and in the framework of the aforesaid the issue of drawing up a catalogue of subjects who are supervised. The Commission's Department is, of course, prepared to assist in realization of this complex task, in accordance with its objective potentials.

In accordance with that, the Commissioner sent notes to all state agencies in the sense of this Law, requiring the delivery of information on legal persons from art. 3. par.2. of the Law in the field of activity of that state agency. Based on the information received so far, and on the expected number of subjects for which data have not been obtained yet, it is assumed that this would be a base of over ten thousand subjects, and producing it exceeds real technical and capacities in personnel of the Commissioner's Department.

3.4. Relation of the Law of free access to information of public importance to other Laws

Regarding the implementation of the Law of free access to information of public importance, the issue of relation of this Law to other Laws comprising restrictive, i.e. conditional regulations regarding the accessibility of information, has imposed itself. Such regulations are most frequently included in laws of proceedings, like e.g. LoCP, laws of offence, execution, contentious, administrative procedure, and other, where accessibility of information is restricted to only an insight in documents or the seeker of information has to prove the justification of his/hers interest in these, contrary to the Law of free access to information of public importance, or they contain regulations of denying certain documents declared as an official secret, while conditions for denying or restricting rights to information have prescribed by this law, have not been fulfilled.

The Law of the police adopted last year contains, too, similar regulations, which are in disagreement with this law, which was the reason why the Commissioner, during the parliamentary debate of this law, has sent a letter to the Culture and Information Committee of the National Assembly of the Republic of Serbia and asked the members of the Parliament to submit amendments, which unfortunately were not adopted, and this can indirectly hinder the implementation of the Law of free access to information of public importance, which as *lex specialis* has to be observed in the case of collision, which principle has been confirmed also on the international level.

As similar laws in the democratic world, our Law, too, foresees that a citizen, who is seeking information, is not obliged to prove that he/she has some kind of interest in it.

Foreseeing, in the same manner as in the Law of the police or Offence Law, the obligation to prove “justified”, or “legal”, or “founded on law”, or “legitimate” interest, causes unnecessary confusion and opens options for restricting the citizens’ rights. This is why it would be much better if the drafts, regarding access to information, would contain regulations referring to the Law of free access to information of public importance, instead of the aforementioned solutions.

The declaration of information accessibility, jointly adopted in December 2004. by the special informer of the United Nations for freedom of opinion and expression, the OSCE Commissioner for freedom of media, and the special informer of the Organization of the American States for freedom of expression, is explicit in regard with that, in case of contradictories, the law of information accessibility has priority over all other laws.

3.5. Providing additional space for the needs of the Commissioner’s Department

The workload of the Commissioner’s Department has been significantly increased and is being increased enormously on a daily basis, and the existing space does not allow engagement of additional personnel. Offices in which the Department is now working have been noticeably decreased, not only regarding the needs of the Department in full number provided by the act to which the National Assembly has agreed, but also regarding the number of employees for which, at this moment, budget funds are approved and provided, and whose work is a necessity.

The Commissioner has four times in written pointed out this problem to the Republic property directorate, with a request and concrete proposition for allocation of additional space, which till today has not been resolved, although the Director of the Directorate has assured the Commissioner in December last year that this would be dealt with as a priority.

Constantly maintained promptness in solving complaints till the end of last year is now seriously endangered if this issue is not resolved urgently, and employment of new personnel not allowed. This, of course, refers also to execution of other tasks in the competence of the Commissioner while implementing the law.

In that sense, it is expected that the several times made request for allotting additional space is solved.

4. PUBLICITY OF COMMISSIONER’S WORK

All information regarding the Commissioner’s work are available at the web site of the Commissioner, at: www.poverenik.org.yu, including both information regarding the implementation of the Law of free access to information of public importance and those regarding the Commissioner’s Department itself. Publicity of the data regarding the implementation of the Law is provided through:

- The Commissioner’s releases by means of mass media, with stands on certain issues related to the implementation of this law, which are also published on the pages of the Commissioner’s web site, under the title “Statements”,
- Opinions and stands of the Commissioner on the implementation of certain regulations of the Law, which are released in the form of statements, through

individual opinions per request submitted or through the Commissioner's decision on complaints, and the more important are published in the Information booklet on the work of the Commissioner,

- Statistical data on solving cases and the decisions made, which are shown on the web site pages, under the title "Case number" and "Reports".

Information related to the work of the Commissioner's Department, approved budget and its execution, wages, work equipment at the disposal, organization, employees, and etc. are included in the Information booklet on the work of the Commissioner, which, too, is presented on the site.

Publicity of the work is provided also by the means of the Commissioner's reports to authorized departments, the National Assembly, i.e. to the authorized parliamentary committee, as well as through informing the Prime Minister, the Government of Serbia and the Ministry of Culture, as the body in charge of supervising the implementation of this law.

The first report on the implementation of the Law of free access to information of public importance, to October 31st 2005 inclusive, was submitted by the Commissioner to the Culture and Information Committee of the National Assembly of the Republic of Serbia at the beginning of November last year. This report, to the Commissioner's knowledge, was not reviewed by the Committee.

In the second half of September that year, the Commissioner has sent a letter to the Prime Minister of the Republic of Serbia, informing him on the crucial activities of the Commissioner and heretofore work of the Department, and pointed out to some of the most important administrative obstacles in execution of the Law, especially to the supervision issue, and in the second half of October he has forwarded a similar letter to the Minister of Culture.

5. IMPLEMENTATION OF THE LAW BY STATE AGENCIES

5.1. Agency procedure on request for access to information

Based on reports delivered by state agencies (310 reports) it was determined that during the year 2005 over 2,000 requests for access to information of public importance were submitted to state agencies. Of course, considering that these were data from submitted reports, and that the reports were submitted by a minor number of those who were obligated to do so, the real number of submitted reports is most likely far higher.

Right of access to information was mainly exercised by citizens, citizen's associations, and state agencies themselves, and in a smaller scope by media.

Regarding the contents of requests for access to information, the largest interest was in information about handling the budgetary and donor resources, wages and number of employees, public acquisitions, legality of the procedures of issuing various permits, especially for construction of facilities, then for documents of importance to the claimant in judicial proceedings or other procedures for the purpose of protecting personal freedom or personal and property rights, health care, environmental protection, animal protection and other.

Having in mind the data mentioned above on the number of complaints resolved by the Commissioner and the result of decisions made, it can be concluded that the

willingness of state agencies to allow access to all information on their work, which have to be accessible to the public, in accordance with the Law, is still on a low level.

Especially, a cause for worry represents the fact that the largest number of complaints lodged to the Commissioner for information of public importance was lodged due to, as usually verbalized, "the silence of the administration". It is, in fact, their ignoring of requests for free access to information and lack of any procedure following these, within the time limit prescribed by the Law. Such situations are no cases of "the silence of the administration", as the Law of free access to information of public importance has no knowledge of such procedure affairs. Quite contrary, it defines non-performance on request within legal time limits as illicit procedure and prescribes offence liability. The authorized person at the state agency are obligated to, within the time limit prescribed by the Law, either act on request or dismiss it by making a decision in accordance with the Law. They cannot ignore this request, since in this way they are committing an offence, and unfortunately, such action was the most frequent. That is why it can be concluded that in heretofore implementation of the Law by state agencies a large number of offences was committed, which is certainly much higher than the one registered in the praxis of the Department of the Information Commissioner.

The most frequently used reason of the state agencies for denying the requested information was invoking the confidentiality of documents, without offering proof that in this way some more important interest has been safeguarded, as required by the Law, or that the claimant has no justified interest considering that he did not have the status of a party in a procedure before the state agency regarding the requested information, which cannot either be a reason for denying information.

Denial of information on the request of another public authority department, which occurred in several cases, mainly on the local level, was specifically registered as a problem causing concern. Although it was not likely, the Information Commissioner was approached by state agencies, too, for the purpose of protecting the right of free access to information. An especially bizarre case was a case of non-acting on request of one of the city ombudsmen, submitted to the authorities in the same town. Besides that, there were also other cases of inappropriate actions of the agencies, like for example when authorized municipal administration was ignoring a lodged request, explaining that this was in the competence of the chairman of the municipality, who was already responsible for the work of this same executive authority, or that this was in the competence of the chairman of the municipal assembly. This was obviously a consequence of relations between authority holders within the relevant municipality, and since these relations, regardless whether they are personal or defined by membership in political parties, should not endanger the realization of appropriate relations among official authorities, this occurrence was in the opinion of the Commissioner worthy of the attention of the National Assembly.

The aforesaid data about the Commissioner's decisions made in regard with lodged complaints in cases of denying access to information show a huge percentage of groundlessly dismissed or unsolved requests by the state agencies, i.e. that there is less than 10% of the total number of lodged complaints which were refused or dismissed by the Commissioner due to tangible-legal or procedural reasons.

Attention should be paid also to the fact that in a large number of cases the procedure was ended by the Commissioner's decision to suspend the proceedings, as the official agency has in the meanwhile, right after Commissioner's intervention, acted on the request of the claimant and provided access to information. This fact clearly demonstrates

that with additional, not great, efforts of those in charge all this could have been avoided, and at the same time could have had beneficial effects in the form of more satisfied citizens and media, of a better image on the relation of official agencies toward obligations they have by the Law, and in the form of avoiding unnecessary administration required after instituting proceedings before the Commissioner.

Further, special attention should be given to the fact that almost all departments in the field of justice have pointed out the problem that in budgets approved for their work no funds have been foreseen for the implementation of this law, which, fairly speaking, can be a problem for its proper implementation.

5.2 Payment of the expenses

According to the aforementioned information, a very small number of state agencies have been collecting payment for the expenses of issuing document copies, which can be a result of making the statement of expenses not until the beginning of this year, in other words the lack of it during the whole past year. Unfortunately, there have been separate cases of collecting payment for much bigger expenses for document copies in relation to necessary expenses, as well as collecting payment of fees for submitted request to access information, which is not according to this law.

The problems aforementioned, by the Commissioner's judgment, have the origin in unsatisfactory knowledge of the contents of the Law of free access to information of public importance by those who should enforce it in practice, as well as in numerous cases of "collision" of the regulations of this Law with the regulations of other laws, but also with sublegislative acts of the authorities on various levels by which the administrative charges are being regulated.

In cases known by now, the Commissioner, insisting on the implementation of the Law of free access to information of public importance, has been calling attention of the authorities to conducts which were in contradiction to the Law. The Commissioner has been, in certain cases, pointing out to the local authority departments that the regulations of the Law of free access to information of public importance should be abided during establishing of the administrative charges.

For the same reasons, proper initiative is being prepared in the Commissioner's Department toward the competent ministries.

Anyhow, the cited problems have been also occurring as the result of a legal gap caused by the fact that the Government of Serbia fulfilled its obligation established by the article 17 paragraph 3 of the Law with significant delay, to issue the statement of expenses on the basis of which the authorities calculate the compensation of the necessary expenses which appear during making the requested document copies. Although the Law went into effect in November 2004, the Government of Serbia did not make the appropriate enactment until January 2006.

Unfortunately, even by adopting the enactment mentioned above, the problem is not still solved, at least not completely. By the governmental enactment which regulates the expenses for issuing the document copies, it is defined that these expenses are the income of budget of the Republic of Serbia, but the account to which they should be paid is not defined by the Enactment, so it prevents, or at least to a great extent makes its use difficult.

5.3 Carrying out training and maintaining the information bearers

If the activities mentioned above are excluded which the Commissioner and his Department had, in cooperation with the nongovernmental sector, it is concluded from the submitted reports that the largest number of state authority departments had done almost nothing or completely little to educate their personnel in implementation of the Law of free access to information of public importance, although the Law prescribed it as an explicit obligation of every state authority department.

Maintaining the information bearers (paper documents, tapes, films, electronic media, etc), handling them and the way of maintaining them are the important precondition of high-quality implementation of this law and the legal obligation of all public authorities. According to the submitted reports, it might be concluded that, in regard to this, there were somewhat more activities regarding putting training into effect.

5.4 Submitting reports

In accordance with the article 43 of the Law of free access to information of public importance, the authorized person from the state authority department submits the annual report to the Commissioner concerning the actions of that department undertaken to implement this law.

Except for the state authorities, this obligation also refers to other public authorities who according to this law have the status of state authority (authorities of the territorial autonomy, local self governance authorities, as well as the organizations which have been entrusted with performing public authority).

In regard to making and submitting the annual report, during last December, the letter was sent to almost every state authority to which the legal obligation to submit the report about implementation of the Law refers to, and by means of public announcement the Commissioner had also invited twice every state authority to fulfill this obligation.

Before that, by the letter sent in October, the Commissioner reminded the state authorities of the obligations which result from this law, including the submission of the annual report according to the article 43 of the Law, stressing the need to keep the appropriate records with all data about the cases in which they act according to this law, and which are necessary to submit the report.

As the deadline for submitting the report was set January 20th 2006. Having in mind that by that deadline only a small number of the state authorities fulfilled this obligation, the data from supplemental reports, received to February 28th 2006 inclusive, are included in this report.

To that day inclusive, the report was submitted by 310 state authority departments. Having in mind, as stated, that there is no catalog of all public authority departments to which the law refers to, especially of those which in sense of this law have the status of a state authority, it cannot be stated in percentage what number of the authority departments fulfilled this obligation in regard to submitting the report.

The report was submitted by:

- Highest state authorities: The National assembly, president of the Republic, the Government, the Supreme court, the Constitutional court, District attorney,
- The republic committee for solving the conflict of interests,

- All ministry departments, except for the Ministry of capital investments,
- All regional departments, except for the Provincial department for agriculture, waterpower engineering and forestry,
- Special organizations: the Department for public acquisitions, the Republic bureau of statistics, the Republic bureau of development, the Government department for refugees,
- National bank of Serbia,
- Economic council of Serbia,
- The superior commercial court and 10 commercial courts,
- 17 district and 63 municipal courts, 3 department for offences,
- War crime prosecutor's office, 24 district and 56 municipal public prosecutor' offices,
- Cities, except for the city of Kragujevac, as well as 84 municipalities,
- 5 administrative districts and a few public authority offices, for which there is no legal obligation to submit the report.

Information survey of the submitted reports:

State authority	In total has	Submitted reports	% of submitted reports
Highest state agencies(The National Assembly, President of the Republic, The Government, The Supreme court, The constitutional court, The district attorney)	6	6	
Ministries	17	16	94,11%
Agencies of the AP of Vojvodina	19	18	94,7%
District courts	30	17	56,6%
Municipal courts	138	63	45,65%
Superior commercial court	1	1	100%
Commercial courts	17	10	58,82%
District public prosecutors	30	24	80%
Offence departments	140	3	2,14%
Municipal public prosecutors	109	56	51,38%
Cities	4	3	75%
Municipalities	173	84	48,5%
Other state agencies	?	9	
In total		310	

The special remark was made that none of the public enterprises on republic or regional level did not submit the report, although the data about the requested information say that there was a lot of public interest about their work, of the citizens as the service beneficiaries, but also the trade unions themselves in those enterprises.

A certain number of the agencies, mostly judicial, instead of the report about the measures taken to implement the Law of free access to information of public importance, submitted the complete annual report about their work to the Commissioner, for which there is no legal obligation. That also says about the insufficient knowledge of this law and the obligations which come from it, as in regard to formal execution of obligation to inform, so in the fundamental implication of the Law.

5.5. Making and publishing the Information booklet on work

According to regulations of the article 39. of the Law of free access to information of public importance and Instructions for publishing the information booklet on state agency's work, the state and other public authority departments have the same status in the sense of this law, they are obligated to make the Information booklet in electronic form and publish it in the way prescribed in the Instructions, i.e. on the Internet, i.e. their web presentation, with an option of publishing it in another form.

The purpose of adopting and publishing the Information booklet on the work of a state agency is to make the most important issues on its work available to the public, seekers of information, citizens and other users of services, and to make easy the execution of some other rights before this department. At the same time, this is a chance for the relevant agency to review its present organization, determined procedures, and eventually eliminate detected defects. This is why the significance of making and publishing the Information booklet is indisputable for implementation of this Law, and therefore efforts in the coming period would be focused on better observation of this liability, including activating mechanisms of offence liability.

The Information booklet should contain data on the department's authority, kinds of services it provides and procedures for effectuating rights at this department, data on budget and other means, their spending, data of significance for effectuating the rights before that department, the data about budgetary and other resources, their expenditure, data significant for access to information of public importance and other prescribed data contributing to the publicity of work of the relevant department.

This legal obligation was, too, something the Commissioner has reminded the state agencies of in his letter since October last year, then in his letter sent in regard with submission of reports, as well as through public notices.

According to data submitted in reports, this legal duty has been carried out by only 46 state agencies, in accordance with the following structure:

State agency	Has in total	Information booklet prepared and posted on the web site	%	Note Information booklet prepared as a text- not posted on the site
Highest state agencies (N. Assembly, President of the Republic, Government, Supreme Court, Constitutional Court, Republic Public Prosecutor)	6	2	33,3%	2
Ministries	17	9	52.90%	2
Agencies of the AP of Vojvodina	19	5	26,3 %	-
District courts	30	3	10%	5
Municipal court	138	3	2,17 %	15
Superior commercial court	1	1	100%	-
Commercial courts	17	4	23,5 %	4
District public prosecutors	30	-	0%	3
Offence departments	140	1	0,7 %	2
Municipal state attorneys	109	-	0%	17
Cities	4	2	50%	-
Municipalities	173	17	9,8 %	2
Other state agencies	?	4	-	1
In total		51	-	53

Listed data show that only a very small number of state agencies have carried out their legal duties, and not even all of the highest state agencies, including the Government. When it comes to the issue of the highest state agencies, the Information booklet was posted on their Internet presentation by the National Assembly of Serbia and the Supreme Court of Serbia, while the General secretariat of the President of the Republic and the Constitutional Court have prepared Information booklets in textual form.

Regarding the publishing of the Information booklet on the agencies' sites, the general problem with agencies within the justice department was the lack of technical conditions to do so, i.e. lack of their own web presentation. This is also shown by the information that a certain number of these agencies, i.e. courts and state attorneys, have prepared the Information booklet in textual form. In regard with pointing out the problems referring to the state of technical equipment in the justice department, the Commissioner has recommended to these agencies, in accordance with the Instruction regulations, that in such situations they could agree with the immediately superior court, i.e. state attorney, to publish the Information booklet on their site, or the site of the Ministry of Justice.

Regarding ministries and organizations on the republic level, which were entrusted with enforcing public authority, although there are technical preconditions for publishing the Information booklet, the number of agencies, which have made and published the Information booklet, is inexcusably small. The same goes for municipalities, of which only 9.8% have published their Information booklet.

Regarding the quality, i.e. contents of the published Information booklets, analyses show the following:

- Among the highest state agencies, the Information booklet of the National Assembly of Serbia represents, regarding the contents of published data, a great contribution to the execution of the Law of free access to information of public importance, followed by the one of the Supreme Court of Serbia.
- Regarding the ministries, published Information booklets either have no or very scarce data, like e.g. data on wages, public acquisitions, available equipment and other means of work, the number of employees, most important opinions and stands regarding implementation of the law, for which there is a huge interest, and similar. Still, the Information booklet of the Ministry of Health and of the Ministry of State Administration and Local Self governance should be mentioned as good examples.
- Information booklets of jurisdictional bodies are rather similar in their methodology; they mainly contain data on organization, contact information, and mostly data referring to inadequate equipment of the relevant body.
- On the local level, among towns which have published Information booklets, Novi Sad should be mentioned as a good example, and among municipalities: Smederevo, Sabac, Sremska Mitrovica, Cacak, the urban municipality of Palilula in the city of Nis.

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On the basis of presented information, it may be concluded that the Law of free access to information of public importance has begun to be implemented practically, and that the level of its in the last six months has been noticeably improved; however, there are still very serious problems in the quality of its.

These problems show that the following is required:

1. Supervision of implementation of this Law has to be provided, including activating mechanisms of offence liability and defining catalogues of subjects to which this Law refers,
2. Available mechanisms for executing the Commissioner's decisions should be activated by the General secretariat of the Government,
3. Other laws should be brought in line with the Law of free access to information of public importance, regarding the publicity of work of agencies and information accessibility in the framework of procedures for their adoption, i.e. amendments,
4. State agencies should undertake measures for carrying out legal duties of training their personnel for implementation of this Law,
5. Additional working space should be provided for the work of the Commissioner's Department, as a necessary condition for employing new staff members and maintaining promptness of Department's operation.

Aforesaid measures would eliminate the largest problems, i.e. administrative obstacles, and provide necessary conditions for more thorough implementation of the Law of free access to information of public importance, and better quality of this implementation.

In order to provide consistent execution of this Law, it is necessary, in the shortest of terms, to undertake measures in solving the aforementioned problems and to eliminate administrative obstacles.

COMMISSIONER

Rodoljub Sabic,s.p.