



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

**REPORT  
OF THE IMPLEMENTATION OF THE LAW ON FREE ACCESS TO  
INFORMATION OF PUBLIC IMPORTANCE  
IN 2006**

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**Belgrade  
March, 2007**

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## **Report about the Implementation of the Law on Free Access to Information of Public Importance in 2006**

### **1. INTRODUCTORY COMMENTS**

#### **1.1. Legal and Institutional Frame**

The law on free access to information of public importance has been passed at the beginning of November 2004. The law has defined the right of the citizens, mass media and others to free access to information in the possession of the agencies of public authorities, except in cases as listed in this law, when it is necessary to protect a state or some other dominating public importance at a certain point in time or the right to privacy.

The commissioner for information of public importance has been elected by the decision of the National Parliament end of December 2004.

The commissioner for information of public importance, as an independent government agency, independent in performing his competences, provides for the materialization of the rights to free access to information of public importance.

The right to free access to information of public importance is guaranteed by the new constitution of Serbia. Such guarantee has not been given to the institution of the commissioner, although the expert public expected this, as is the case for example with the protector of the citizens, also an independent government agency, the function of which is the protection of human rights.

However, a significantly greater problem could be the manner in which the constitutional guarantee for the right to access to information is given.

The new constitution has introduced access to information in possession of the government agencies as a special right, however not independent, but within "the right to be informed". This solution causes confusion, particularly if we also take into consideration some provisions of the constitutional law for the implementation of the constitution. Those are the ones by which it has been foreseen that the newly elected convocation of the National Parliament is going to bring into

accord "the laws which define the protector of the citizens and the materialization of the right to be informed and elect the protector of the citizens, an agency competent for following up the materialization of the rights of the citizens to be informed..." with the constitution in the course of its first session, following the election of the government. These formulations are absolutely unclear for the time being, and do not give reliable answers to open questions. What is an agency which is competent for following up the materialization of rights of the citizens to be informed? What is its competence and what are its authorizations? Is it an agency which should replace the commissioner for information of public importance or is it an agency which should operate parallelly with him? It will obviously be necessary to wait for the relevant answers to these questions, and anyway the impression is that an opportunity has been missed to round up the concept of the right to access to information in a consistent, consequential manner.

Actually, the protection of the right to free access to information is provided for in two ways, in a procedure before the commissioner for information of public importance and in a procedure before the Supreme Court of Serbia.

This protection was established and started to function through the institute of complaints lodged to the commissioner with the beginning of the operation of the office of the commissioner, July 1, 2005, upon provision of the basic substantial assumptions for such operation by the executive authorities. Thus, actual assumptions for this form of protection were created with great delay. Since then and until the end of 2006 around 1900 complaints were lodged to the commissioner.

Judicial protection in administrative disputes before the Supreme Court of Serbia is provided with respect to the legitimacy of the decisions made by the commissioner as well as of the decisions of the six highest government agencies, against the decisions of which it is not allowed to lodge complaints to the commissioner (the National Parliament, the President of the Republic of Serbia, the Government of the Republic of Serbia, the Supreme Court of Serbia, the Constitutional Court and the Republic Prosecutor), which have been made in the procedure of determining the right to access to information. Actual assumptions for this form of protection existed since the day when the law came into effect. Since then and until the end of 2006, 3 charges were filed to the Supreme Court (and another 42 against the decision made by the commissioner).

The materialization of other legal assumptions for the implementation of this law was also completed in 2006 as follows:

The second edition of the manual for the implementation of the law titled The Guide through the Law on Free Access to Information of

Public Importance was prepared and published in 20,000 copies (published in the Official Gazette of the Republic of Serbia No. 74/06) in September 2006 in accordance with the authorizations from article 37 of the law, as well as the edition of the Guide in Romany language in 1,000 copies, whereas the first edition of the guide was published in the second half of 2005 in 20,000 copies in Serbian language (the Official Gazette of the Republic of Serbia No. 67/05) and in 5,000 copies in six languages of ethnic groups.

The guide through the law was prepared with the crucial support of the OSCE mission and the coalition of the non-government organizations for the freedom of access to information, which had also distributed a special edition of the guide in 5,000 copies through its network to agencies of public authorities and users of the right to information in 2005.

At the beginning of 2006 upon repeated initiative of the commissioner, the Government of Serbia passed a decree, at the suggestion of the Ministry of Culture, as the authorized proposer, on the amount of necessary costs for publishing copies of the documents containing information of public importance (The Official Gazette of the Republic of Serbia No. 8/06). There was a problem in the implementation of this decree in the course of the whole of 2006, because the decree did not determine the account onto which payment would be made for the costs of publishing and forwarding copies of the documents to those requesting information, although this was defined as budget revenues. In order to eliminate these doubts, the commissioner asked the proposer of this decree to settle this issue, so that the decree could be implemented in practice.

The commissioner made the instructions for publishing news bulletins about the operation of government agencies in accordance with article 40 of the law in 2005 (the Official Gazette of the Republic of Serbia No. 57/05 dated 5.7.2005).

## **1.2 Competences, Authorizations and Obligations of the Commissioner**

In accordance with the provisions of article 35 of the law on free access to information of public importance, the commissioner is competent for and authorized to:

- resolve complaints lodged against the decisions of the authorities which have violated the rights defined by this law

- follow whether the authorities respect their obligations as defined by this law and report to the public and National Parliament about this
- give initiative for passing or amending regulations for the purpose of implementation and advancement of the right to access to information of public importance
- make suggestions to authorities for undertaking measures in the aim of advancing their operation defined by this law
- undertake necessary measures for training the employees in government agencies and acquainting the employees with their obligations in relation to the rights to access to information of public importance, for the purpose of efficient implementation of this law
- inform the public about the content of this law, as well as about the rights defined by this law and perform also other tasks defined by this law.

Besides these explicitly listed competences, i.e. authorizations of the commissioner, there are also those which are derived from these, i.e. from the law, such as for example, the authorization of the commissioner to get an insight into each carrier of information to which the law is related (article 26, paragraph 2 of the law) when acting upon complaints related to the violation of the right to access to information of public importance.

The commissioner is obliged by the law to:

- 1) submit to the National Parliament an annual report about the actions undertaken by the authorities in the implementation of this law, as well as about his own actions and expenditures within three months upon the end of the fiscal year. The commissioner submits also other reports to the National Parliament, when he considers it necessary (article 36 of the law).
- 2) Publish and update a manual with practical instructions for efficient materialization of the rights defined by this law, in Serbian language and in languages, which have been defined by the law as languages in official use (article 37, paragraph 1).
- 3) Acquaint the public with the content of the manual for the implementation of the law (article 37, paragraph 3) via press, electronic media, internet, panel-discussions and other ways.
- 4) Publish instructions for publishing news bulletins about the operation of government agencies.

## **2. OFFICE OF THE COMMISSIONER AND ITS CAPACITIES**

### **2.1. Organization of the Office and Staff**

The Commissioner for information, elected by the decision of the National Parliament of the Republic of Serbia No. 91 dated 22.12.2004 in January 2005 has passed acts which define the operation of the office of the commissioner, the organization, systematization and salaries of the employees; the National Parliament of the Republic of Serbia has given its agreement to these acts in accordance with article 34 of the law on free access to information of public importance after a couple of months, more precisely on 23.05.2005.

The Commissioner forwarded to the National Parliament nine months ago new acts about the operation of the office, adjusted to the new law on government officers and the law on salaries of the government officers and employees, but has still not received its agreement. The Commissioner has thereby been brought into an absurd situation, through no fault on his part, i.e. he is late as regards the legal obligations to implement within set time frames the provisions related to the appointment of the employees, announcement of the competition for government officers of certain position and regulation of their status and determination of salaries in accordance with the new law which is in effect since 01.01.2007.

Following the act about the organization and systematization of the job posts in the office of the commissioner to which the National Parliament has given its agreement, the office has 3 sectors and the commissioner's cabinet, within which work is done in relation to the resolution of complaints against decisions of the authorities by which the rights to access to information of public importance have been violated, then work in the function of the implementation and advancement of the right to access to information of public importance and advancement of the publicity of the work performed by the authorities and other work of importance for the materialization of the competences of the commissioner, as well as legal, financial, administrative and other work required for the functioning of the commissioner's office.

A total of 21 job posts have been systematized for the performance of this work, of which one post is the commissioner's deputy, elected by the Parliament according to the law, then there is a secretary of the office and two assistants to the secretary and the chief of the cabinet, appointed by the commissioner. The remaining

16 posts comprise 11 employees with university degree and 5 with secondary school education.

**The actual staff situation** is as follows: in 2005 the expert work was done besides the commissioner by the office secretary, until September, when two assistants to the secretary were appointed. The administrative and technical work was done by three employees (2 on administrative-technical work and a driver) thus the office had a total of 6 employees in 2005, of which only three, the secretary and 2 assistants to the secretary did work related to processing the cases following complaints of those requesting information and other expert work of the office. The number of employees was the same in 2006, whereby the office secretary was elected for the commissioner's deputy by the decision of the Parliament of April.

Such a small number of staff in the office is far below the actual requirements and the engagement of new people is directly preconditioned by the provision of additional space.

For the performance of financial and other expert work which provide for the functioning of the office itself (in relation to the materialization of the employment rights of the employees, public procurement, technical support to the information system etc.) people are engaged on contract. However, this is not possible because according to the law it is not allowed when it is a question of jobs within the competence of the commissioner in relation to the provision for the materialization of the rights to free access to information.

## **2.2. Material Means**

### **2.2.1. Space and Equipment**

The competent government departments provided the basic material-technical conditions for the work of the commissioner's office, six months after the election of the commissioner, i.e. in June 2005, and following several repeated requests made by the commissioner for the provision of space and basic equipment, which is the reason why the office began its work only on July 1, 2005, with its headquarters in Svetozara Markovića 42 in Belgrade.

However, the available space as regards its area and structure has not been adequate for quite some time already as regards the actual requirements of the office, because of the enormous increase



of the work and inflow of cases, which by the nature of the matter and following the provisions of the law need to be resolved as urgently as possible within the legal time frame of 30 days, thus this requires an urgent employment of additional staff.

The available equipment for the operation of the office is partly the ownership of the administration for joint operations of the republic agencies, and has partly been purchased from the commissioner's means in 2005 and 2006. The equipment satisfies only the existing office capacities, whereby all the computer equipment obtained from the administration for joint operations has been repaired several times immediately after it was received for further use, although it was received as new. Part of this equipment is absolutely out of function. Unfortunately, despite this fact and the enormous increase of the amount of work, the Ministry of Finance, i.e. the Government of Serbia have not accepted the suggestion of the commissioner as regards the required financial means for the purchase of the equipment in 2007 necessary for the expansion of the office.

### 2.2.2. Financial Means

**The Commissioner and his office** are financed according to article 34 of the law on free access to information of public importance from the budget of the Republic of Serbia.

The financial means **for 2005** were provided in June 2005 and this meant primarily from the current budget reserves, following the decision of the Government of the Republic of Serbia 05 No. 401-3342/2005 dated June 2, 2005 and then through the budget rebalance in the total amount of 14,845,000 dinars.

These means were spent in 2005 in the amount of 59% of which the greatest part was used for the provision of the basic assumptions for the operation of this agency, purchase of required computer and other equipment for operation and communication, an official car, publishing of manuals for the implementation of the law, establishment of a web site presentation of the agency, then for compensation to people on account of performed services on contract (financial work, network administration, making programs for keeping record of received and resolved cases etc.) and of course for salaries of employees as well as taxes and various contributions in relation to the latter.

In the first half of 2005 when the budget was not approved for the operation of this agency, nor were the elementary operating conditions, certain activities related to the promotion and implementation of the law

on free access to information of public importance were supported by the OSCE mission in Serbia and Montenegro and the non-government organizations gathered into a coalition for free access to information, by their coordination of the fund for open societies. This covered financing of about ten seminars and other gatherings held in different towns in Serbia and the costs of publishing and distribution of the guide through the law of 5,000 copies.

**The law on the budget for 2006** allocated enough means for the operation of the agency and employment of the required number of employees within the approved systematization, but only after the intervention of the commissioner through the Board for Culture and Information of the National Parliament and submitted amendments, considering that the Government's proposal of the law foresaw by 20% less means as compared to those which were approved for the first half of 2005.

The small budget expenditures of the commissioner, 45% in 2006 and 59% in 2005 are certainly the result of rationalization in spending means, but also of not being able to employ the required staff in the existing premises and this opens regularly the problem whereby justifications have to be written unnecessarily for each budget rebalance, so that the means which have been allocated through hard struggle would not be reduced, all this in the hope that conditions will be made for the employment of the required staff.

**The proposed law on the budget for 2007** foresees enough means for the operation of the commissioner's office according to the required number which should be additionally employed within the total approved number of employees by the Parliament. However, within the part of the proposed law related to staff planning, the proposal of the commissioner regarding the planned number of staff (2/3 of the systematized number) has not been accepted, which means that the Ministry of Finance has not given its agreement to the commissioner to employ anyone as compared to the present situation of 6 employees (including the commissioner's deputy). According to the law the commissioner prepares independently the staff plan for which he needs the approval of the Ministry of Finance, which according to the law on government officers also gives its approval for staff plans of independent agencies, which are not included in the executive, legislative or judicial authorities. The absence of this approval is really very hard to understand considering the fact that the National Parliament has given its approval of the act which foresees a several times greater number of employees, that the volume of work is big and constant, that the means have already been approved in the budget following the expressed requirements and also that the commissioner found out that this staff plan has not been accepted only following the determination of the proposed law on budget by the Government. The commissioner had

asked twice for an explanation about this from the Ministry of Finance following the passing of the proposed law, however he did unfortunately not get any reply.

**The decree on temporary financing of the Republic of Serbia for the period January – March 2007 (the Official Gazzette of the Republic of Serbia No. 115/06)** the means of the total amount of 8,759,000.00 dinars have been approved for the operation of the commissioner's office for the first quarter of 2007.

### Spent budget in 2005 and 2006

ITEM	DESCRIPTION	2005.			2006.		
		APPROVED	SPENT	%	APPROVED	SPENT	%
411	Salaries, additions, compensations	2.492.000	2.446.425	98,17	16.370.000	6.805.642	41,57
412	Contributions	440.000	423.442	96,24	3.052.000	1.218.206	39,91
413	Compensation in products	200.000	9.000	4,50	100.000	9.845	9,85
414	Social Contributions	100.000	57.391	57,39	200.000	0	0,00
415	Compensations for Employees	200.000	18.124	9,06	400.000	63.879	15,97
416	Bonuses	478.000	434.705	90,94	690.000	627.966	91,01
421	Fixed Costs	1.425.000	343.674	24,12	1.760.000	795.103	45,18
422	Travel Costs	760.000	14.290	1,88	1.000.000	113.853	11,39
423	Services on Contract	2.925.000	1.724.571	58,96	6.000.000	3.596.899	59,95
424	Special Services	0	0	0,00	100.000	0	0,00
425	Repairs and Maintenance	475.000	22.954	4,83	100.000	49.987	49,99
426	Material	2.850.000	1.221.004	42,84	1.200.000	885.466	73,79
482	Taxes	500.000	12.686	2,54	30.000	19.035	63,45
483	Pecuniary Fines	0	0	0,00	0	0	0,00
512	Machines and Equipment	2.000.000	1.999.322	99,97	500.000	288.170	57,63
<b>TOTAL:</b>		<b>14.845.001</b>	<b>8.727.590</b>	<b>58,79</b>	<b>31.502.000,00</b>	<b>14.474.052</b>	<b>45,95</b>

## 3. OVERVIEW OF THE COMMISSIONER'S ACTIVITIES

### 3.1. Solving Cases

#### 3.1.1. Decision Making Procedures

People asking for information (citizens, journalists, associations of citizens, mass media etc.) may lodge a **complaint to the**

**commissioner** when the agency of the public authorities refuses to inform them whether it possesses a certain piece of information of public importance, or whether it is available to it, to give him an insight into a document which contains the requested information, to issue him or forward a copy of the document (depending on what is requested) or if it does not do this within the set time frame of 15 days (exceptionally within 40 days for justified reasons from article 16, paragraph 3 of the law or within 48 hours for certain kinds of information of importance for life protection or someone's freedom or endangered health of the population and the environment or their protection).

The Commissioner takes action following the received complaint as foreseen by the law on free access to information and following the provisions on the general administrative proceedings related to the resolution of complaints by a second degree agency and makes a decision without delay and within 30 days at the latest from the submission of the complaint.

Before making his decision, The Commissioner enables the agency of the authorities to make a statement and if necessary to do the same to the complainer. In resolving the complaint, the commissioner will:

- reject the complaint for formal reasons, if it is not allowed, made by an unauthorized person or untimely, i.e. premature
- reject the complaint as groundless, if the agency of the authorities has proven that it has acted in accordance with the law
- accept the complaint as justified and give orders to the agency of the public authorities to take action following the request and forward the requested information to the person requesting it, giving it a short time to do so and with the obligation to inform the commissioner about the execution of the instructions from the decision.
- discontinue the proceedings, if the complainer refrains from the complaint or the reasons for further proceedings related to the complaint cease to exist, when the agency of the authorities forwards the requested information in the meantime to the complainer.

The Commissioner has the right to get an insight into each carrier of information to which the law is implemented in the aim of determining the actual situation which is essential for making the decision with respect to the complaint.

**As regards the responsibility with respect to violation** the commissioner informs the Ministry of Culture, as the competent authority for initiating the proceedings related to the performed violation and forwards

it all the documents related to the case, for the initiation of the violation proceedings, when he determines based on complaints or in other ways that there are elements of violation based on article 46 – 48 of the law in the actions taken or not taken by the agencies of the public authorities.

**When a request is made for some information of public importance which is at the disposal of the commissioner**, which has occurred in the course of the performed work or in relation to his work, the commissioner acts like any other agency of public authorities in accordance with the provisions of article 16 of the law: forwards the requested information to the person asking for it within the set time frame, if he has the document with the requested information and makes a note of this; if he does not have the respective document, he will inform the person asking for it and with his agreement, he will forward the request to the agency, which according to his knowledge, has the respective document. Should he determine that there are reasons as provided by the law for not giving or limiting the giving of the requested information, he will make a decision whereby the request will be rejected with a justification of the reasons for such a decision.

**Upon forwarded or assigned request from another agency of public authority** following article 19 of the law, the commissioner will firstly check whether the document is in the possession of the agency which has forwarded him the request, and if it is not, he will forward the request to the agency which is in the possession of such document, according to his knowledge (except if the person making the request has not given other instructions) and informs the person making the request of this, or he will direct him to the agency in the possession of which the information is.

The Commissioner forwards the **requests related to the work of the agencies of public authorities** which are not information of public importance by their content, to the competent agency to take action and informs the person making such a request within his competence.

The Commissioner reacts publicly **in the procedure of passing other laws** when there is a disagreement of the regulations which are passed i.e. amended with the provisions of the law on free access to information of public importance, which endangers the materialization of the free access to information in possession of public authorities.

**The Commissioner points out to the agency of public authorities** also when he determines, besides the procedure of decision making related to the complaints because of the violation of the right to access to information, violation of the other provisions of the law, such as for example with respect to the collection of costs for publishing copies of documents in amounts which are not allowed etc.

### **3.1.2. Information about Resolved Cases**

In the course of 2006 The Commissioner's office had a total of 1,847 cases in operation, of which 106 cases were carried over from the previous period, being in procedure but not resolved, and 1,741 cases were received in the course of 2006. 1,188 cases were resolved in 2006 (68.24%) and 659 cases are in the process of being resolved and have been carried over to 2007.

As compared with 2005 when there was a total of 437 cases in operation, of which 331 cases were resolved, this means that the number of cases in 2006 has been increased more than four times.

#### **The Structure of Resolved Cases:**

- 911 complaints of which only 67 (7.35%) have been lodged onto decisions about rejection of the request of the person requesting information, whereas the other complaints are due to agencies not having taken action following the requests for access to information of public importance or rejection of requests without decisions
- 16 answers to charges in administrative disputes, expressed against the decision of the commissioner
- 21 opinions were given in relation to the implementation of the law on free access to information of public importance
- 11 requests by which information of public importance are requested from the commissioner
- 42 requests for information of public importance, which the office had forwarded to the agency of public authorities in possession of the information for further action with advise to the applicant.
- 92 cases are related to the communication with the authorities with respect to the determination of the competences of the agencies in taking action in actual cases, regarding other issues of the implementation of the law
- 95 requests related to the operation of agencies which are not information of public importance have been forwarded to the competent agencies for further action, with advise given to the applicant

#### **Outcomes of Cases Based on Complaints:**

Of the 911 resolved complaints, only 41 complaints (4.5%) were groundless. In making decisions related to the complaints, the commissioner made the following decisions:

- 289 decisions instructing the agencies of the authorities to take action based on the request and make possible access to the requested information
- 41 decisions rejecting the complaints as groundless
- 401 decisions by which further proceedings were discontinued as the agencies of the authorities had taken action in the meantime regarding the request for access to information, following the intervention of the commissioner, whereby the complainers had refrained from complaint because of this in 103 cases
- 55 decisions rejecting the complaints due to formal reasons, because they were untimely, i.e. premature, unallowed or beyond the competence of the commissioner for resolution
- 125 cases were merged in the course of their resolution, as they were related to the same agency of the authorities and complainer

The complaints are mainly related to denial of information i.e. copies of documents related to:

- disposal with budget and donation means, international and local projects, public procurement, legality of the procedures for issuing various licences, particularly for building, protection of personal freedom and personal and property rights, salaries, employment of staff and number of employees, protection of human health, environment, animals, decisions of the law enforcement agencies and juridical agencies etc.

### **Outcomes of Cases Based on Charges for Proceedings of Administrative Disputes:**

Following the information received from the Supreme Court of Serbia and available information of the commissioner's office, based on the law on free access to information, a total of 45 charges were filed to this court (7 in 2005 and 38 in 2006), of which 42 against the decision of the commissioner, 2 charges because the Government of Serbia had not taken action following the submitted requests and 1 charge because action had not been taken following the request submitted to the National Office of the President of the Republic.

Of the 42 charges filed against the decision of the commissioner, the Supreme Court resolved 18 charges by rejecting 13 charges and refusing 5 as groundless.

As regards the charges pressed against the Government and the National Office of the President of the Republic, the Supreme Court has not made decisions following the information forwarded to the commissioner.

### **Execution of Decisions:**

Following the decisions made as of 31.12.2006 whereby access is to be provided to information, action has not been taken entirely or partly in several dozens of cases (around 10%), or the agencies of the authorities have not forwarded the commissioner as of January 31, 2007 proof of such.

Following the available information, despite the decisions made by The Commissioner, the public was still denied information about:

- the construction of the bridge near Beška and the cablecar on Kopaonik; about the projects in the municipality of Preševo, Bujanovac and Medvedja; about five of the biggest investments in Serbia by the Ministry of Capital Investments;
- the number of submitted requests and tapped people in 2005 by the Security Informative Agency
- the factual state and undertaken measures regarding the criminal charges filed by the Serbian Radical Party and the National Movement RESISTANCE in relation to the MOBTEL case
- the agreement given to the document Memorandum about the Agreement of the PC PTT (post office) Serbia and the new MOBTEL owners by the Ministry of Capital Investments and the Republic Legal Office
- proceedings related to the tragic death of the journalist Radoslava Vujasinović from the district prosecutor in Belgrade
- purchase of trains from Sweden, by the PC SERBIAN RAILWAYS
- purchase of airplanes by JAT from the company AIRBUS
- salaries of directors or compensations to the members of the boards of directors and supervision boards in the PC NIS (oil industry of Serbia) and NIKOLA TESLA airport, the news agency TANJUG
- paid compensations on account of representations, testimonials and expert testifying in the arbitration court in Zurich, in the dispute between PC PTT Serbia and the company KARIĆ BROTHERS SYSTEM – BK TRADE
- equipment and donations in the city of Niš and about the representation costs in the municipality of Crveni krst in Niš.



- financing the political parties and about issued licences for business and combined housing and business buildings in the municipality of Indjija
- public works on repairing the streets in Leskovac, Vrbas and Novi Sad
- allocated budget means for religious communities in the municipality of Novi Pazar and Trgovište
- financing political parties in Jagodina
- transfer of means of the municipality of Vršac to BANAT television
- use of the languages of ethnic groups in the municipalities of Ruma and Titel
- information about the facilities and measures related to the protection of animals in the municipalities of Negotin, Sombor
- spent means for advertising, cost specification of the financing of the building program and information about the apartments of the Bureau for Building of the city of Novi Sad
- budget expenditures in the municipality of Temerin
- salaries and telephone costs in the municipality of Aleksandrovac
- documents of the sessions of the local self-administration authorities (about termination of mandates of the board members, minutes of the sessions etc.) in the municipality of Žitište
- about engagement of staff in the municipality of Trgovište
- access to separate agency documents of interest to the people requesting information, such as for example the Security Informative Agency dossiers for dead family members, copies of documents from the real estate cadasters, building documents, medical documents, court case documents and other documents

As regards action not taken by the ministries with respect to the number of decisions made by the Commissioner, the following stand out:

- The Ministry of Capital Investments, which had not forwarded the requested information in relation to any of the 6 decisions made by the commissioner such as: information related to the construction of the bridge near Beška and the cablecar on Kopaonik to the NIN journalist, then information related to the request of the citizens about the five currently biggest investments in Serbia, about projects in the municipalities of Preševo, Bujanovac and Medvedja, about information in the MOBTEL case, about the decision made regarding the complaint to the decision of the inspector for building operations in Novi Sad and about information in relation to the implementation of the law on access to information

- The Ministry of the Interior of Serbia, which has not executed 11 decisions made by the commissioner of which 5 decisions order access to information about the factual state and undertaken measures following the above mentioned criminal charges filed by the Serbian Radical Party and the National Movement RESISTANCE. The other cases were about information about arresting certain people in two cases, as well as about other information in relation to the conduct of the authorized people. It is a fact that the Ministry of the Interior had undertaken in the course of last year a series of organization measures with respect to the implementation of the law on free access to information of public importance in the sense that the minister had authorized 60 people to take action following the requests for access to information in all regional administrations and other organizational units, as well as in the headquarters of the agency, which resulted in obvious progress in the implementation of this law as compared to the previous year from which most of the above mentioned cases originate and which have not been treated in accordance with this law.
- The most drastic example is the Security Informative Agency. Its case is not just a matter of violation of the right to access to information in possession of the agencies of the authorities, but of absolute lack of implementation of the law on free access to information of public importance. The Security Informative Agency did not have the required communication with the citizens, which were contacting it with requests for materializing their right guaranteed by the law and constitution, nor did it have the required communication with the commissioner, as the second degree agency. It did not respond to the requests of the citizens, it did not express its stand about the submitted complaints upon the request of the commissioner. It did not take action following the orders contained in the decisions of the commissioner. Of all the decisions made by the commissioner related to the Security Informative Agency the greatest publicity was given to the one by which the commissioner had ordered this agency that information should be given to those requesting it, about the number of submitted requests and tapped citizens in 2005, as statistical information which cannot endanger any legitimate interest protected by law. Although it was obliged to take action following this order the Security Informative Agency did not do so. It did also not take action even after the rejection of its charge against the decision of the commissioner by the Supreme Court. However, this case is definitely not the only one. The Security Informative Agency did not respect its legal obligation in as many as 6 cases in which the commissioner had made the appropriate decisions. The Security Informative Agency did not execute even the

elementary obligations defined by the law for all government agencies in the form of forwarding an annual report about the implementation of the law to the commissioner and making and publishing a news bulletin about its operation. Examples of absolute ignorance of the law by anyone should be given serious attention by the National Parliament of the Republic of Serbia according to the commissioner. The laws of the Republic of Serbia must oblige everybody except those who are excluded by the law itself. No one should be allowed and it should not be tolerated that anyone should be able to exclude themselves from the implementation of the law. Those who still do so, show not only disrespect of the actual law, but also of the principle of legality and certainly of the authority of the National Parliament which passes the laws.

According to the information received from the General Secretariate of the Government of Serbia, the people requesting information reverted to the Government requesting the Government to provide for the execution of the decisions in accordance with article 28, paragraph 2 of the law, in the couple of dozens of above mentioned cases in which the agencies of the authorities did not take action following the decision of the commissioner. The commissioner has no information that this has been done in even one case. More will be said further on in the report about the absence of the support of the Government in the execution of the decisions made by the commissioner.

### **3.2 Training and Other Activities Related to the Advancement of the Publicity of the Operation of the Agencies**

#### **3.2.1. Activities Related to the Training of Public Officers and Acquaintance of the Public with the Law**

The staff training according to article 42 of the Law is prescribed as an express obligation of each government agency in the aim of acquainting the employees with the obligations defined by this law, and it is the commissioner's obligation to undertake the necessary measures for this training to take place.

Starting from the fact that training is one of the most essential preconditions for the materialization of the right to free access to information in possession of the agencies of public authorities, the commissioner and his office had a lot of activities in the past period in relation to conducting this training.

One of the recommendations of GRECO (Group of states fighting against corruption under the cover of the Council of Europe) included in the Report dated 9.10.2006 for Serbia is related to the organization of the

training of the government officers for the implementation of the law on free access to information and to inform the wider public about this law.

Considering all this, the commissioner reminded several times in written form or through public announcements the agencies of public authorities on all levels of the necessity to undertake measures in order to implement the obligations prescribed by this law, with an accent on training the staff, in accordance with article 42 of the law, offering assistance in the realization of the training program.

Appraising the necessity to include this matter by all means into systematic and continuous training of staff which is to work in state administration and other agencies of public authorities, an initiative was forwarded to the Ministry of State Administration and Local Self-Administration for the law on free access to information of public importance to be included in the curriculum of the expert exams of the employees, starting from the actual state with respect to the capabilities of the public officers for the implementation of this law as well as from the role of that ministry with respect to the further advanced training of the employees in government agencies.

A proposal including the subjects from the field of free access to information of public importance was forwarded to the Office for Staff Management of the Government of the Republic of Serbia in order to establish a uniform program of expert training of the employees in state administration.

The commissioner and the representatives of this office took also part directly in the realization of the training for the implementation of this law. Thus, the realization of the training program, which began in 2005, continued in 2006 in cooperation with the OSCE mission in Serbia and with the support of the heads of the administrative districts in 10 regional centers whereby staff were covered from all municipalities belonging to the district centers, and five seminars were organized for journalists.

The commissioner took also part in 2006 in cooperation with CESID in the materialization of the project "TRUTH BY IMPLEMENTATION OF LAW" initiated in August 2005 within which panel discussions were held in 15 towns throughout Serbia in the aim of acquainting the citizens with the rights and the authorities with the obligations defined by this law, through panel discussions, participation in mass media shows and distribution of brochures.

Eight seminars were held in cooperation with the Belgrade center for human rights, with the support of the American Association of Jurists, intended primarily to judges and prosecutors on the subject of the implementation of the law on free access to information of public importance.

Special seminars were held for the requirements of the Office for Staff Management of the Government of the Republic of Serbia, as well as with the representatives of the Ministry of the Interior after a similar seminar was held in the Government of Serbia in 2005 for authorized people in the Government, i.e. ministries, together with the OSCE mission, as well as in the Executive Council of Vojvodina.

The Commissioner, i.e. his office took also active part in the panel-discussions, round tables and similar gatherings, organized by other state agencies, mass media and the civil sector on the subject of fighting the corruption, free mass media, informing the citizens etc. and the implementation of the law on free access to information of public importance in this context (Transparency in Serbia, CESID, Center for the professionalization of mass media, Belgrade center for human and ethnic rights, the Fund for the Open Society, the Young Jurists of Serbia, the Permanent Conference of Cities and Municipalities etc.), in order to also contribute to the promotion of this law through mass media and other campaigns addressed to citizens. The right of the public to information in possession of the agencies of the authorities has also been popularized in public through various texts written by the commissioner.

The subject of the access to information was also the subject of the education of the participants in the educational system, as a constituent part of civil education.

Following the requests of the agencies of public authorities and of those asking for information, daily consultations are held in the office of the commissioner related to the implementation of the law.

### **3.2.2. Activities Related to Making News Bulletins about the Operation of the Agencies**

In the implementation of the obligations of the agencies of the authorities with respect to the materialization of the rights to access to information, the commissioner has paid special attention to the materialization of the legal obligation of the government agencies with respect to making news bulletins about their operation, so that information is available even when no requests are submitted to agencies.

The Commissioner held a meeting on this subject with the representatives of all ministries and special organizations, as well as the representatives of the Autonomous Province of Vojvodina, to discuss the importance of the electronic presentation of information about the operation, quality of existing standards and the need to apply appropriate standards with respect to providing updated and quality information about

the operation of the government agencies and to realize an additional program of training for the employees working directly on the implementation of this law. A separate analysis was made of the published news bulletins of the ministries with respective recommendations and distributed among the participants at the meeting, as a form of assistance in the implementation of this legal obligation.

A large number of letters were forwarded to the agencies of the authorities with suggestions or answers to the questions related to making and publishing news bulletins about operation.

Consistent implementation of this obligation from article 39 of the law in the manner prescribed in the instructions given by the commissioner would undoubtedly contribute to the advancement of the publicity of the agency operation, in accordance with article 11 of the law on state administration.

The importance of the electronic presentation of information about the operation of the agencies of the authorities, particularly of those related to financial and other substantial public resources, agency procedures for the materialization of the rights of the citizens, as well as of all important information about the operation of the agencies, has also been confirmed in all the discussions of the commissioner with the representatives of the European and world organizations, as an important mechanism from the aspect of fighting the corruption.

### **3.2.3. Other Activities and Events**

A conference was held mid 2006 in Belgrade in the organization of the coalition for free access to information, on the implementation of the law on free access to information of public importance, including also subjects about the protection of information and people and dealing with secrets in the context of access to information, at which the commissioner spoke about the implementation and some problems related to the implementation of this law. Recommendations and conclusions were forwarded from this conference to the competent agencies with respect to the elimination of the obstacles in the implementation of this law, its further development and with respect to the necessity to pass appropriate complementary regulations necessary for its implementation.

A conference was held on September 28, 2006 in Belgrade on the occasion of the international day of the right of the public to be informed, in cooperation with the American Association of Jurists – the Legal Initiative for Central Europe and Euro-Asia, OSCE mission in Serbia, the Independent Association of Journalists of Serbia, the Coalition for Free Mass Medias and the American Agency for International Development, dedicated to the implementation of the law on free access to information of

public importance, at which an award was given to the government agency for special contribution to the implementation of this law.

The Commissioner took part in the Conference held in December 2006 in Sarajevo, dedicated to the advancement of the law on free access to information of public importance in Bosnia and Hercegovina, in the organization of the Media Center in Sarajevo, in the aim of exchanging experience in the field of protection of human rights, particularly of the right to access to information.

In the course of the activities related to the adoption of the new constitution of Serbia in 2006, the commissioner addressed the members of the Constitutional Board of the National Parliament of the Republic of Serbia with a special letter. The cause for this was the fact that the right to access to information of public importance was not included in the first text of the agreed constitutional provisions presented to the public. The commissioner talked to the Chairman of the National Parliament for the same reason, pointing out on this occasion to the necessity for the right to free access to information of public importance to be guaranteed as a constitutional right, but also to the need to pay more attention within the legislative activities of the Parliament to the unity and consistency of the legal system from the aspect of availability of information.

The commissioner went to Slovenia for a two day visit mid 2006, where he had discussions with the commissioner for information, the state secretary for public administration, the director of the directorate for the protection and classification of information and the ombudsman for human rights of the Republic of Slovenia, whereby he agreed to continue cooperation in the aim of exchanging experiences in the field of the realization of human rights, particularly the rights to information.

The Commissioner had discussions in the course of October 2006 with the parliamentary ombudsman for the protection of information and free access to information of the Republic of Hungary, Dr. Atila Peterfalvi, as well as with the commissioner for information of the Republic of Slovenia, Ms Nataša Pirc Musar.

They discussed the issues related to the materialization of the freedom of access to information and protection of information and people and agreed that it was necessary to pass a modern law in Serbia as soon as possible on the protection of information and people. The possibility of further profound cooperation was agreed with the representatives of Hungary and Slovenia.

The Commissioner received in November 2006 ambassador Urstadt, the chief of the OSCE mission in Serbia and his associates. They discussed the up to date results in the implementation of the law on free access to information and the constitutional provisions for the materialization of this right and concluded that it was necessary to do more

on the level of responsibility related to the violation of this law and provision for the execution of the commissioner's decisions, as well as with respect to the importance of fast adoption of modern regulations related to the classification of confidential information and protection of information and people.

The Commissioner had discussions with the chief of the World Bank office in Serbia mid December 2006, Ms Jungr and her associates about the situation related to the corruption in our country and the functioning of the anti-corruption agencies. They agreed about the importance of the right of the public to free access to information of public importance with respect to financial and other substantial public resources as well as other information about the operation of the agencies.

Ambassador Urstadt, the OSCE mission chief congratulated The Commissioner for the efforts made and achieved results in the implementation of the law and establishment of standards of free access to information in Serbia on the occasion of the second anniversary of the appointment of The Commissioner for information.

The Association of the Journalists of Serbia gave The Commissioner for information mid December a special charter for his personal contribution to the implementation of the law on free access to information and support given to journalists.

#### **4. ADMINISTRATIVE AND OTHER OBSTACLES IN THE IMPLEMENTATION OF THE LAW**

##### **4.1. Non-Performance of Supervision over the Implementation of the Law and Absence of Responsibility for Violation**

The function of supervision defined by the law as the competence of the Ministry of Culture, was practically not implemented in 2006, entailing also that there was no responsibility of the agencies of public authorities for the violation of the right to access to information nor for the non-performance of the other obligations defined by the law, with respect to making and publishing news bulletins about operation, conducting staff training, maintenance of information carriers.

The Commissioner forwarded to the Ministry of Culture, competent for the submission of requests for the initiation of violation proceedings, over 760 cases with elements of violation from article 46 of the law, which entails that previous supervision had been conducted for the purpose of identifying the responsible people and the elements of violation.

Following the information received mid December 2006, the Ministry of Culture had initiated 15 proceedings against violations based on the



forwarded cases from the office of the commissioner while 50 requests are in the procedure of submission. A large number of cases will certainly become outdated, or are already outdated, and as regards the non-performance of the legal obligations related to making news bulletins about operation, staff training etc. no violation proceedings have been initiated. For some actions which represent violation of the right to access to information no sanctions are even prescribed.

The Ministry of Culture forwarded to the commissioner end of February the first decisions made by judges in charge of violation cases, about the determination of the responsibilities of the authorized people in the agencies of local authorities for performed violations (3 cases) at the request of this Ministry, of which two were settled by pecuniary fines, and one was settled by reprimand and warning. If we add to this a case in which the judge in charge of violation cases, in the proceedings initiated by the damaged party, had decided to settle the case of the violation of this law by a pecuniary fine, it is possible to conclude that not even 1% of the total evidence of cases of violated rights to access to requested information have been penalized up to date following the law and that not even one case of non-performance of the other obligations defined by the law, have been processed.

The Commissioner had pointed out several times to the competent authorities in relation to this problem, and in support of the proposal of the Ministry of Culture that the supervision be entrusted to another ministry, for example the ministry competent for the operation of the state administration – administrative inspection, which has better staff and other assumptions for the materialization of this function. This initiative has not been accepted.

The Commissioner addressed a letter to the Prime Minister of the Republic of Serbia in September 2006 in which he acquainted him with the important activities of the commissioner and the up to date operation of his office and pointed out some of the most significant administrative obstacles in the implementation of the law, particularly the issue of supervision, and he forwarded a similar letter related to the same issues to the Ministry of Culture in October 2006.

**The Non-Existence of a Uniform Catalogue of Subjects** to which the law is implemented in a situation in which it is obviously a matter of a very large number of agencies of public authorities in the sense of this law (government agencies, agencies of territorial autonomy, agencies of local self-administration, organizations entrusted with the performance of public authorizations, as well as legal entities established and financed entirely i.e. mainly by government agency), causes great difficulties in the determination of the situation as regards the implementation of the legal obligations and undertaking of prescribed measures.

The determination and making of the catalogue of subjects to which the law is implemented should be one of the basic obligations of the Ministry of Culture as the competent ministry for the performance of the supervision over the implementation of the law on free access to information of public importance. The existence of such a catalogue is actually an essential assumption for the performance of organized, serious supervision. However, the ministry does not dispose with staff, organizational and logistic assumptions to make this catalogue and thus it has not made it.

The office of the commissioner has requested twice this information from the ministries and other agencies of the authorities, in its endeavour to form this data base itself, although this objectively surpasses its factual capacities, so as to overcome this problem of the non-existence of the appropriate catalogue which should be made by the competent ministry in charge of the supervision over the implementation of the law. Unfortunately, a large number of agencies have still not responded to this request.

#### **4.2. Unregulated Manner of Execution of the Decisions Made by the Commissioner**

In the absence of both responsibility for the violation of this law, including no action taken by the agencies of the authorities upon instructions given by The Commissioner to make access possible to information to those who request it, the activation of a mechanism for the provision of the execution of the decision of the commissioner in such cases requires urgent regulation of the manner of implementation of the provision of article 28 of the law, following which the Government of the Republic of Serbia provides for the execution of the decisions of the commissioner, when necessary.

These are the reasons why the commissioner forwarded a letter in March 2006 to the Government of the Republic of Serbia, the General Secretary, based on the authorizations from article 35, paragraph 2 of the law, requesting that the Government should establish mechanisms for the provision of the execution of the decisions made by the commissioner, that special interventions be made by the Government in the form of some of its documents, or by passing a special act within the present law, whereby the manner of execution of the commissioner's decisions would be regulated, by activating mechanisms as foreseen by the law on the general administrative procedure for the non-performance of the non-pecuniary obligations, such as the decisions of the commissioner contain, using forced measures in the form of pecuniary fines, which may be repeated several times until the obligations are executed.

As this initiative was not accepted, The Commissioner repeated the same initiative in August 2006 and pointed out once again that the problem of non-execution of the decisions is becoming more and more acute, with

harmful consequences on the implementation of the law. This initiative has also had no effect.

The passive attitude and absence of support of the Government in the execution of the decisions of the commissioner despite permanent attention being drawn to this problem by the commissioner as well as the direct requests made to the Government by the citizens and media for obtaining information, could mean that the Government is supporting and encouraging the government agencies to violate this right guaranteed by the constitution and law. In any case the number of non-executed decisions made by the commissioner, which was very small at the beginning has been growing more and more lately, which serves as evidence to support such assumption.

At the initiative of the commissioner, tasks related to the elimination of the administrative obstacles in the implementation of this law, including the execution of the decisions made by the commissioner, have become an integral part of the documents which the Government has adopted and this means an action plan for the implementation of the national strategy for fighting against the corruption as well as a plan for the implementation of the priorities from European partnership. Unfortunately, this has had no practical effect.

In the discussions with ambassador Urstadt, the OSCE mission chief in Serbia in November 2006 about the up to date results of the implementation of the law on free access to information and constitutional provisions related to the materialization of this right, it has been concluded that it is necessary to do more concerning the responsibility for the violation of this law and provision for the execution of the decisions made by the commissioner as well as regarding the importance of the fast introduction of modern regulations about the classification of confidential information and protection of information and people.

### **4.3. Inadequate Normative Environment**

#### **4.3.1. Relation of the Law on Free Access to Information and Other Laws**

There is quite a number of process laws, such as for example the criminal law, the law on violations, executive, lawsuit, administrative proceedings etc. which have provisions which allow access to information only to certain people (for example the parties involved in the proceedings) or there is a precondition for this whereby it is necessary to prove that there is a "justified" interest in access to information, which is contrary to the law on free access to information of public significance.

The second group of laws also have limiting provisions as regards the access to information, justified by the confidential aspect of certain

information, such as for example the law on police, the law on the tax process and tax administration etc. thus on this basis requested information is also automatically denied even in cases when the other conditions defined by the law on free access to information have not been fulfilled, i.e. when there is no proof that such denial serves to protect some more important interest, and that the disclosure of the requested information could cause serious legal or other consequences related to interests protected by the law which are more important than the importance in access to information.

The Commissioner's experience shows that it has not been a rare case, that the denial of the requested information justified by the confidential aspect of such documents, could be due to the fact that such information is related to unpermissible or criminal actions (such as for example the "road mafia", or the abuse of official position in the boarding school for secondary school students in Belgrade etc.).

We should particularly be concerned about the situation whereby even in the process of passing new regulations (for example the law on police) or bringing into accord the existing ones with the regulations of the European Union states, not enough care has been given in the period of this report, to the necessity to bring into accord the respective provisions about access to information in these laws with the provisions of the law on free access to information, as a *lex specialis*, which is a solution founded on the respective international documents, declarations and recommendations. Thus the proposed law on foreign investments, which the Government passed in 2006 represents a typical example of a law which absolutely eliminates the implementation of the law on access to information, in the case of information about foreign investments.

The declaration about the access to information, which was jointly adopted in December 2004 by the special representative of the United Nations for freedom of thought and expression, the OSCE representative for free mass media and the special representative of the Organization of American States for Freedom of Expression, defines clearly in this respect that in case of contradiction, the law on access to information has priority against all other laws.

Besides pointing out to the the chairman of the National Parliament in 2006 to the necessity of taking care about the unity and consistency of the legal system from the aspect of access to information, within the legislative activities in the Parliament, the commissioner stressed this issue particularly also in his annual report about the implementation of the law on free access to information of public importance in 2005. The respective parliament board accepted this report unanimously, however it was never included in the agenda of the sessions of the National Parliament, and thus there were no anticipated results.

#### **4.3.2. Non-Existence of Appropriate Complementary Regulations**

Quality implementation of the law on free access to information of public importance requires urgent passing of complementary regulations and this means above all: the law on classification (confidential information) and the law on protection of personal information.

The evaluation of the dominance of importance between the right of the public to be informed and the protection of confidential information, in the aim of protecting some state or other higher interest, would be much simpler if the idea of state, military and official confidential information, the procedure for labelling and unlabelling something as confidential, the classification of confidential information, the responsibility of those manipulating confidential information, the agency in charge of their protection etc. were regulated by law in accordance with modern European standards.

The existence of a large number of documents which were labelled at a certain point in time for possible justified reasons as confidential, without having checked later the necessity for keeping them confidential, causes significant harm to the implementation of the law on access to information and causes confusion to people authorized to implement this law. This represents an excellent means to not rarely camouflage corruption behind such, as has already been mentioned above.

The situation is particularly delicate when authorities (for example ministries) are asked to give access to documents which are labelled as confidential, when this label has been given by another authority (for example the government) and when such authority is obliged in accordance with the law to decide about the dominance of interest, which it practically never does, leaving this to the commissioner in the procedure of taking action for resolution of complaints.

The recommendations of the Ministerial Committee of the Council of Europe No. 2002 state that „it should be avoided that the confidentiality of documents automatically makes insight into documents impossible in the future“, thus the authorities acting upon the request of those asking for information, must get assured whether conditions have really been fulfilled for keeping a certain document as confidential, by applying the test of ”measuring up the interests”.

The implementation of the law on access to information is also significantly impeded by the lack of the appropriate law on the protection of personal information. The present law from 1998 regulates only partly these issues, but not in the manner as requested by the EU regulations and standards. Considering that the documents of the Government of Serbia,

the plan for the implementation of priorities from European partnership already foresee "the passing of the legislation in the field of protection of personal information", and so does the action plan for the implementation of the national strategy for fighting corruption, it is necessary to start work on them as soon as possible.

Besides the above mentioned, attention should certainly also be paid to the issue of insufficient use of the anticorruption potential of the law on free access to information due to the lack of appropriate legal provisions about the exemption from responsibility of the employees who, while protecting the public interest, give the public insight into information about abuse which they have, which is contrary to the obligation of confidentiality of their working post (the protection of the so-called "whistle blowers").

#### **4.3.3. Problem of Additional Accomodation Space**

The competent Government departments, as has already been said, provided the basic material-technical conditions for the operation of The Commissioner's office six months after the election of the commissioner, i.e. in June 2005, following several repeated requests made by the commissioner, which is the reason why the office started operating only on July 1, 2005.

However, as the volume of work has been increasing enormously, The Commissioner reverted five times in written form in the second half of 2005 and in 2006 to the Republic Directorate for Property and twice to minister Lončar, as the president of the competent commission of the Government of Serbia, requesting provision of additional accomodation space for the office, as the existing space does not allow employment of any new officer. Only one reply was received and that was in September 2005 from the director of the directorate, stating that the problem would be resolved as a priority issue.

Despite the given commitment, the situation is still unchanged presently, thus the office still has, with the exception of The Commissioner and the Commissioner's deputy, only two law school graduates, two executives of administrative work and a driver, of the foreseen and by Parliament approved number of 21 employees.

The lack of engagement of the authorities in the resolution of this issue has a direct consequence, so that the constantly maintained promptness in the resolution of complaints until just before the end of 2005, which was achieved by outstanding efforts of the employees, is seriously endangered, and information which is not received on time, loses its importance. The fact that over 1800 cases have been received in 2006 as compared to around 450 in the second half of 2005 as well as over 600

cases in the process of work of the office which are yet to be resolved speak enough about the enormous increase of the volume of work of the commissioner.

As another consequence of the lack of adequate staff, the commissioner performed in the period of this report primarily those tasks and competences which it was not possible to postpone.

## **5. PUBLICITY OF THE COMMISSIONER'S WORK**

All information related to the work of the commissioner is available on the pages of the commissioner's web presentation, at the address [www.poverenik.org.yu](http://www.poverenik.org.yu) and this means both the information related to the implementation of the law on free access to information of public importance and the information related to the commissioner's office itself. The publicity of the information in relation to the implementation of the law is provided by public statements, principal opinions and views following requests of the authorities, or those expressed through the decisions of the commissioner in resolving complaints, the more significant of which are published in the news bulletin about the work of the commissioner.

Information related to the work of The Commissioner's office, the statistical information about the resolution of cases and made decisions, approved budget and its materialization, salaries, available equipment for work, organization, employees etc. is included in the news bulletin about the work of the commissioner, which is also presented on the site and is updated on a monthly basis.

The publicity of work is also provided by reports made by The Commissioner to the competent authorities, the National Parliament, i.e. the competent parliament board, as well as by reporting to the Prime Minister, the Government of Serbia and the Ministry of Culture, as the authority in charge of supervision over the implementation of this law.

The Commissioner submitted the first report about the implementation of the law on free access to information of public importance as of 31.10.2005 to the board for culture and information of the National Parliament of the Republic of Serbia at the beginning of November last year. The board has not taken this report into consideration, according to the information available to The Commissioner.

The Commissioner submitted the annual report about the implementation of the law on free access to information of public importance for 2005, which covers the period July 2005 – February 2006, to the National Parliament of the Republic of Serbia mid March

2006. The board for culture and information took into consideration and accepted the submitted report at its session held on March 24, 2006.

The Commissioner sent a letter to the Prime Minister of the Republic of Serbia in September 2006, in which he acquainted him with the significant activities of The Commissioner and the up to date operation of the office and pointed out to some of the most significant obstacles in the implementation of the law, particularly the issue of supervision, and a similar letter was also sent in October to the Ministry of Culture.

## **6. EVALUATION OF THE SITUATION IN THE FIELD OF MATERIALIZATION OF THE RIGHT TO FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE**

### **6.1. Importance in Requesting Information**

The two year experience of The Commissioner in the implementation of the law on free access to information of public importance, the reports forwarded by the authorities about the implementation of the law as well as the reports about monitoring the implementation of the law conducted by the coalition of the non-government organizations for free access to information of public importance, show the following as regards the situation related to the materialization of the right to free access to information:

The citizens used a lot more the right to free access to information in possession of the agencies of public authorities in 2006 as compared to 2005. Following the information from over 630 forwarded reports to the commissioner, around 6000 requests were submitted to the agencies in the period of the report, which is three times more as compared to 2005 in which there were around 2000 requests.

Considering that it is a question of only information from reports forwarded to the commissioner, and that reports have been submitted only by the minority of those who were obliged to do so, and also that quite a number of these reports are not complete, it is clear that the number of actually submitted requests for access to information of public importance is obviously incomparably greater.

It is thus possible to conclude that the importance of the holders of the right to free access to information in possession of the agencies of public authority is constantly increasing. As compared to the initial period following the passing of the law, when citizens and associations of citizens were the ones who used this right more as did the government agencies themselves, nowadays the mass media use this right significantly more.



As regards the content of the requests for access to information, the greatest interest of citizens is still in information about the disposal with the budget means, public procurement, materialization of significant projects, salaries and employees, but also about actions taken by the agencies in various court and administrative procedures related to the issuance of various licences, particularly for building, about documents related to operative activities of the employees of the Ministry of the Interior, about medical documents i.e. medical treatment, measures for protection of the environment and animals, about the functioning of the local self-administration, financing of political parties, local mass media etc. Citizens are undoubtedly interested in information which is, or could be related to the actual and potential corruption.

## **6.2. How do Agencies Act upon Requests**

Certain progress has been achieved in actions taken by agencies upon requests for access to information, however the large number of complaints submitted to the commissioner shows that there is still not a satisfactory readiness of the government agencies to make access possible to all information about their work, which must be available to the public, in accordance with the law, before those requesting information lodge their complaints.

As compared to the number of resolved complaints, only 4.5% of complaints were groundless, and 6% were rejected for processing reasons, which serves to confirm the statement that the requests for access to information submitted to first degree agencies are unjustly refused to a large extent or are not treated in accordance with the law.

It is of particular concern that there is still an extremely high percentage of complaints to the so-called "silence of the administration", although the law on free access to information of public importance does not recognize such process situation, it foresees instead responsibility for such violation. This statement is confirmed by the fact that there are only 7.3% lodged complaints related to decisions rejecting requests for access to information, whereas the other cases are related to complaints because of no action being taken upon requests or rejection of requests in the form of information given to those asking for information.

In a large number of cases, 44%, the procedures related to complaints were discontinued, as the authorities had acted in the meantime, immediately after the intervention of The Commissioner, to the request of the people asking for information making access to information possible. This still shows that it was possible to satisfy the citizens or mass media with just a little good will and responsibility, strengthening thereby

their trust in the authorities, and avoiding at the same time unnecessary administration related to complaints, costs and responsibility for violation.

The most frequent reason given for the refusal of the government to give the requested information was reference to the confidentiality of the documents, without giving proof that some greater interest was being protected thereby, as the law requires, or that the people asking for information did not have a justified interest, since as they claimed, they had not the status of parties in the proceedings before authorities for which the information were requested, which may also not be a reason for denial of information. There have been cases and groundless denial of information with reference to legal provisions about the protection of privacy or abuse of the right to information, although it was a question of information related to the performance of work of public importance, such as for example salaries and other compensations from the budget of the holders of public functions etc.

The refusal of requests is in the form of information in the greatest number of cases, which is contrary to the law which defines that a decision must be made in such cases, with an indication of the reasons for the refusal of the requests, proofs that this is done for the purpose of protection of a higher public importance, of the possible harmful consequences and advise about legal remedy.

There have also been cases of denial of information at the request of other agencies of public authorities, mainly on the local level, i.e. within the same unit of the local self-administration, which makes the actions of the responsible people within these agencies impermissible and something to be concerned about. Obviously this is the result of the relationships among the holders of authority within the municipalities. Considering that it is very difficult to exclude the assumption that the information courses are discontinued in these cases due to disagreements and fights among political parties, and in any case of something impermissible, it is a matter, in the opinion of the commissioner, of a phenomenon which deserves the attention of the National Parliament.

The above given information about the decisions of the commissioner made with respect to the lodged complaints in cases of denial of access to information, show a high percentage of unjustly refused or unsolved requests by the government agencies, i.e. that only 10% of the total of lodged complaints were refused or rejected by the commissioner for substantial-legal or process reasons.

As regards the staff, i.e. people authorized to take action following the requests for access to information, the greatest number performs also other tasks and are not capable of dealing with the obligations from this law in an appropriate manner.

In around 240 agencies of the authorities (around 38%) of the total of 634 agencies which have forwarded their reports, people have been appointed for taking action in relation to the requests for access to information, whereas this has not been done in the other cases. The commissioner's experience is such that this practice of the agencies is not good, particularly in bigger agencies with a large number of organization parts, most frequently dislocated from the headquarters of the agency. This certainly causes difficulties in the materialization of the rights when people requesting information do not live in the place where the agency has its headquarters, and also makes the dispatch of documents more expensive. A positive example in this sense is the Ministry of the Interior which has, as has already been mentioned above, made big progress with respect to the degree of materialization of this right, by its organization in taking action regarding requests for access to information of public importance.

It is possible to conclude that the main reason for insufficient readiness of the agencies of authorities to materialize the right to access to information of public importance is the insufficient education of staff, with the exceptions of expressed intention to hide certain information.

### **6.3. Collection of Payment for Costs**

The information from the report shows that a little less than 20.000,00 dinars were collected on account of the costs of the process related to the requests for access to information of public importance in 2006 and that a relatively small number of agencies collected payment for the costs of issuing copies of documents. Courts, mainly some commercial, municipal and sporadically district courts, then municipalities collected mainly payment for costs, while ministries, provincial agencies, prosecutors and public companies did practically not collect payment for such costs.

There were cases, unfortunately, of collection of much higher amounts for copies of documents than the actual costs, as well as collection of taxes for submitted requests for access to information, lack of differentiation between requests for access to information with requests for copies of existing documents, from requests for issuance of certain documents, certificates etc.

Although the Government passed a decree with a list of expenditures only at the beginning of 2006, it was practically impossible to implement this decree as it did not establish the account onto which payments should be made for this kind of budget revenues and this was the reason for the above described situation. In the absence of a solution for this, it is possible to conclude that the agencies acted in different ways, from refraining to collect payment for any costs to following the procedure applied in the collection of payments for prescribed administrative or court taxes.

According to the commissioner the above mentioned problems are also due to the insufficient acquaintance with the content of the law on free access to information of public importance of those who should implement it in practice, as well as to numerous cases of "collision" of the provisions of this law with the provisions of other laws, but also with other legal acts of the authorities on different levels which prescribe administrative taxes.

The commissioner has pointed out to the authorities to actions which were contrary to the law with respect to the collection of payment for costs related to the procedures in the cases known to date, while insisting on the implementation of the law on free access to information of public importance.

Regarding the implementation of the above mentioned decree, following the obtained information from the Ministry of Finance that it did not dispose with the requested information about the total paid means into the budget on these grounds, as the account was not established, The Commissioner forwarded an initiative to the Ministry of Culture, asking it to forward a request for the opening of such an account, as the government agency competent for supervision over the implementation of the law on free access to information and proposer of the decree, so as to make possible the implementation of the decree. This problem was resolved by the adoption of the regulations of the Ministry of Finance in February 2007.

Practically no agencies had planned nor provided any special means in the budget for the implementation of this law, which is what the judiciary agencies pointed out to.

The fact that practically all judiciary agencies pointed out that no means had been foreseen in the approved budgets for their operation regarding the implementation of this law, which may objectively be a problem for its quality implementation, deserves special attention.

#### **6.4. Implementation of Training and Maintenance of Information Carriers**

Judging by the information given in reports according to which about 50% of the agencies which had forwarded their reports, indicated that they had activities related to training for the implementation of the law on free access to information of public importance in 2006, it would seem that there were more activities last year as compared to 2005 in relation to the training of the staff for the implementation of this law. However, with the exception of the above mentioned activities which the commissioner and his office had regarding training, in cooperation with the non-government sector, it can be concluded that a very small number of agencies had so far their own activities related to this issue.

Besides being a legal obligation for the agencies, training is undoubtedly also the most important precondition for consistent implementation of the law on the access to information, which is why the commissioner forwarded the respective, above mentioned initiative for this issue to be included in the obligatory program of expert training of the government officers.

The absence of organized training of government officers means besides other things that the above mentioned (obliging) recommendation of GRECO (Group of countries fighting the corruption under the cover of the Council of Europe) in this respect, has still not been implemented.

As regards the legal obligation of the agencies to have regular maintenance of their carriers of information (paper documents, tapes, films, electronic media etc.), a little less than half of the agencies which had forwarded their reports, indicated that they execute this obligation, around 15% of the agencies stated expressly that no measures were undertaken with respect to the maintenance of the carriers of information, whereas the others made no statement regarding this legal obligation, which is a fact to be concerned about as it shows how the agencies keep and maintain the documents. The real situation regarding the execution of this legal obligation of the agencies, entails supervision which does not exist in this respect for the time being.

## **6.5. Submission of Reports**

Following the provisions of article 43 of the law on free access to information of public importance, the authorized people of the government agencies submit annual reports to the commissioner about the actions taken by the agencies in the aim of implementation of this law.

Besides government agencies this is also the obligation of other agencies of public authorities which have the status of government agencies in the sense of this law, such as: agencies of territorial autonomy, agencies of local self-administration as well as organizations which have been entrusted with the performance of public authorizations.

As regards the making and forwarding of the annual reports, the commissioner sent a letter first at the beginning of November, then in December last year to almost all government agencies which have this legal obligation, which he also did through public statements, asking all government agencies to execute this obligation as of January 20, 2007.

As of this date 583 agencies had forwarded their reports, and after this date another 51 agencies, which gives a total of 634 reports. Considering, as has been mentioned above, that there is not a catalogue of

all the agencies of public authorities to which this law refers, particularly of those which in the sense of this law have the status of government agency, it is not possible to state what is the percentage of agencies which have completed their obligation of sending their reports.

There is an obvious trend of increase of the number of agencies which have completed this legal obligation. The number of reports forwarded to the commissioner is more than double as compared to last year. Of the 6 highest government agencies, only the Republic Prosecutor did not forward his report. Of the 19 ministries only the Ministry for Capital Investments did not forward its report. As regards the provincial level, the Parliament, Executive Council and all the provincial Secretariats had completed their obligation. All four cities forwarded their report. As regards the other agencies the percentage of completion of this obligation is not so good, but in all cases it is better than last year. The most obvious improvement is in the case of the agencies for violations, as 109 or 78% of them forwarded their reports this year as compared to only 3 i.e. 2% last year. The worst situation is with the local self-administration. 91 or around 53% municipalities forwarded their report. This percentage is better than the 48% last year, but the fact that in the third year of the implementation of the law, almost half of the municipalities had not completed their elementary legal obligation is certainly something to be very concerned about.

## Overview of information about the number of forwarded reports:

Government Agency	Total Number of Government Agencies	Forwarded Report	% Forwarded Reports	Comments
Highest government agencies (National Parliament, President of the Republic, Government, Supreme Court, Constitutional Court, Republic Prosecutor)	6	5	83,33	Republic Prosecutor did not forward (only a news bulletin about completed work was forwarded)
Ministries	17+2	16+2	94,73%	Ministry of Capital Investments did not forward
Agencies of AP Vojvodina	19	19	100%	
District Courts	30	20	66,6%	
Municipal Courts	138	90	65,2%	
Higher Commercial Court	1	1	100%	
Commercial Courts	17	14	82.35%	
District Prosecutors	30	25	83,3%	
prosecutor for war crimes	1	1	100%	
Municipal Prosecutor	109	84	77,06%	
agencies for violations	140	110	78,6%	
Cities	4	4	100%	For Niš and Kragujevac reports were forwarded only for City Councils
Municipalities	173	91	52,6%	
Public companies (republic and provincial)	25	3	12%	
Other government agencies	?	149	—	
<b>Total</b>	<b>?</b>	<b>634</b>		

The information shows that the public companies on the republic and provincial level disregarded this legal obligation to the greatest extent, just like last year, when none of these companies forwarded their report, although the information about requested information shows that there was a lot of interest in the public about their operation on the part of the citizens as the users of their services, but also of the trade unions themselves from these companies and the mass media.

There have been cases this year, like last year of agencies, such as courts or agencies for violations, which forwarded complete annual reports to the commissioner about their operation for which there is no legal obligation, instead of reports about the measures taken in the implementation of the law on free access to information of public importance, This also shows lack of acquaintance with this law and obligations derived from it, both with respect to the formal execution of the

obligation of submitting reports, and the essential implementation of the law.

## **6.6. Making and Publishing News Bulletins about Performed Work**

Following the provisions of article 39 of the law on free access to information of public importance and instructions for publishing news bulletins about the work done by the government agencies, it is the obligation of the government agencies and other agencies of public authority which have this status in the sense of this law to make news bulletins in electronic form and present them in the manner defined by the instructions, via internet, i.e. their web presentations, with the possibility of publishing them also in another form.

By publishing news bulletins about their operation, the government agencies would give the citizens and mass media the most significant information about the operation of the agencies, their organization, competences, spending of budget means, kinds of services offered by the agencies and procedures for the materialization of rights, without formal requests for access to information. In making this document agencies have an opportunity at the same time to get an insight into their existing organization, established procedures and to eliminate the possibly observed shortcomings. Thus, there is no doubt about the importance of making and publishing news bulletins for the implementation of this law, thus efforts will be made in the coming period also to respect this obligation to a greater extent, including the activation of the mechanism for responsibility for violation.

Following information from reports, this legal obligation was entirely respected by over 180 government agencies, having presented their news bulletins on the agency web site, which is three and a half times more as compared to 2005.

This obligation was partly completed by another 210 agencies which made their news bulletins in printed form, but did not publish them in the manner defined in the commissioner's instructions. Most of these agencies did not do so because of objective reasons, due to the lack of their internet presentation, whereby they did not make use of the possibility foreseen by these instructions, meaning that news bulletins could in such cases be presented on the site of the immediately higher agency or on the site of those supervising their operation or who have entrusted them with certain tasks as is the case of the Higher Commercial Court with another 14 commercial courts.



## Overview of published news bulletins by agency structure:

Government Agencies	Has a total	News Bulletin Made and Presented on WEB SITE	%	News Bulletin Made but is not Presented on WEB SITE	Comments
The highest government agencies (National Parliament, President of the Republic, Government, Supreme Court, Constitutional Court, Republic Prosecutor)	6	4	66,6%	2	
Ministries	17+2	17	89,5%	-	No news bulletin from the Ministry of Defence and the Ministry of Foreign Affairs
Agencies of AP Vojvodina	19	16	84,2 %	-	
District Courts	30	8	26,6%	8	
Municipal Courts	138	16	11,6%	54	
Higher Commercial Court	1	1	100%	-	
commercial courts	17	14	82,35%	2	
District Prosecutors	30	1	3,33%	15	
Prosecutor for War Crimes	1	1	100%	-	
Municipal Prosecutor	109	1	0,92%	47	
agencies for violations	140	3	2,14 %	62	
Cities (Belgrade, Novi Sad, Kragujevac, Niš)	4	4	100%	-	Niš news bulletin published for the City Council and the Administration of the IT and telecom. technology
Municipalities	173	51	29,5 %	8	
Public Companies (republic and provincial)	25	13	52%	2	
other government agencies	?	34	-	13	
<b>Total</b>	<b>?</b>	<b>184</b>	<b>-</b>	<b>213</b>	

Of the six highest government agencies this obligation was fulfilled and news bulletins about their operations presented on their internet presentations by: the National Parliament of Serbia, the Government of Serbia, the Constitutional and Supreme Courts of Serbia, whereas the General Secretariat of the President of the Republic did this in printed form, announcing its presentation on the internet. The republic prosecutor forwarded to the commissioner on 1.3.2007 the printed version of their news bulletin, pointing out that the web site was in the process of "construction".

This obligation was formally fulfilled by all the ministries, except the Ministry of Defence and the Ministry of Foreign Affairs (which were not included by the law until the termination of the State Union of Serbia and Montenegro), whereby the quality of the content of news bulletins and updating of information is questioned in a certain number of ministries, such as for example in the case of the Ministry of Capital Investments, the Ministry of the Interior, the Ministry of Agriculture, the Ministry of Economy, the Ministry of Labour etc. Thus, only half of the ministries of the total number had updated the information in their news bulletins end of 2006, of which only a few had done this regularly, i.e. monthly. The other half did not make any changes after presenting the news bulletins on the internet, which serves to confirm the statement that the news bulletins about their work were published just to satisfy the formalities, which is unfortunately also the case with some of the highest government agencies. A special one day seminar was dedicated to this issue with the representatives of the ministries, at which occasion they were acquainted with the results of the analyses of these documents and were given recommendations for unifying the standards so that these documents would make sense.

As regards the judiciary agencies, despite the general problem with respect to their technical equipment, the situation changes in a positive direction and the production of more and more news bulletins in textual form, in the absence of an internet presentation shows their readiness to answer to this legal obligation. Efforts made by commercial courts, headed by the Higher Commercial Court, deserve special attention. Significant efforts are also made by other courts and agencies for violation.

As for public companies on the republic level, the situation was somewhat better in 2006 as compared to the previous year (13 news bulletins presented on internet and 2 in printed form), but only with respect to the number of presented news bulletins, which is not the case with the other organizations on the republic level, which were entrusted with the performance of several public authorizations, primarily agencies. Still, a significant progress could not be determined as far as the content of the presented information in the news bulletins of the public companies is concerned, as a lot of information, such as that related to salaries is still confidential.

The agencies of AP Vojvodina implemented this obligation in accordance with the conclusion resulting from the discussions of the commissioner with the President of the provincial Executive Council, which took place end of March 2006.

As regards agencies on the local level, the situation has changed significantly, since all four cities (except Niš which has completed this obligation partly) and twice as many municipalities as compared to 2005 completed this obligation. However, considering that this is less than a third

of the total number of municipalities, this is certainly something to be concerned about. Particularly considering that we are in the third year of implementation of the law and that citizens are the most frequent users of the services of these agencies, thus information about their rights and procedures is by rule what they need most.

## **7. RECOMMENDATIONS FOR THE IMPROVEMENT OF THE SITUATION IN THE FIELD OF ACCESS TO INFORMATION OF PUBLIC IMPORTANCE**

The degree of implementation of the law on free access to information of public importance is constantly increasing, however none of the problems presented in the annual report, which make its implementation significantly difficult, have still not been resolved, whereas new ones have been created in the meantime.

It is therefore the commissioner's view that it is necessary to:

1. provide comprehensive supervision over the implementation of the law (including also the initiation of proceedings for responsibility for violation) by establishing the necessary conditions for this in the Ministry of Culture or by amending the law and entrusting such supervision to some other agency which has logistic assumptions to perform this.
2. Activate available mechanisms by the Government of Serbia so as to provide for the execution of the decisions made by the commissioner,
3. Adopt as soon as possible a set of complementary regulations with this law, meaning above all laws on classification (of confidential) information and on protection of personal information
4. Provide in the procedure of adoption, i.e. amendments of other laws for their interrelated agreement with respect to the publicity of operation of the agencies and access to information, including also the issue of the administrative and other taxes for the operation of the agencies with the law on free access to information of public importance
5. Include the issue of free access to information of public importance by appropriate measures of the competent ministries and the department of the Government of Serbia, competent for expert training of government officers, into the program of expert training
6. That the National Parliament should decide as soon as possible about giving agreement to the acts related to the

operation of the commissioner's office, so as to provide normal materialization of the legal rights of the employees and eliminate the absurd formally illegal situation in which the commissioner and his office operate and with the first amendment of the law the issue of this agreement should be placed within the competence of the competent Parliament body.

7. That the competent departments of the Government of Serbia provide additional space for normal operation of the commissioner's office

With the materialization of the recommended measures, the greatest obstacles would be eliminated and the necessary conditions would be provided for quality implementation of the law on free access to information of public importance.

COMMISSIONER  
Rodoljub Šabić