



REPUBLIC OF SERBIA
COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE

REPORT
ON IMPLEMENTATION OF THE LAW ON FREE ACCESS TO
INFORMATION OF PUBLIC IMPORTANCE
IN 2007

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**Report
on Implementation of the Law on Free Access
to Information of Public Importance
in 2007**

1. BACKGROUND

1.1. Freedom of access to information of public importance and its enforcement

The Law on Free Access to Information of Public Importance, enacted in early November 2004, introduced the freedom of access to information held by public authorities for citizens, the media and other stakeholders and established the institution of the Commissioner for Information of Public Importance as an independent and autonomous public authority responsible for enforcing and safeguarding this freedom.

The right to access to information of public importance is now enshrined in the Constitution of the Republic of Serbia of 2006. Under Article 51 of the Constitution, every person shall have access to information held by public authorities and organizations entrusted with public powers in accordance with the law.

The right to access information is in practice enforced in two ways: thorough proceedings before the Commissioner for Information of Public Importance and through proceedings before the Supreme Court of Serbia.

Actual assumptions for the Commissioner to enforce this freedom were not created until mid 2005, when the minimum requirements were met for the Commissioner's Office to commence with its operations after the competent Government departments provided the necessary premises and resources and after the instruments governing the operations of the Commissioner's Office were endorsed by the National Assembly. From that time until the end of 2007, the Commissioner has resolved more than 2400 complaints relating to breaches of his right.

Judicial protection in administrative disputes before the Supreme Court of Serbia is a remedy available to those who challenge the legality of Commissioner's decisions or of decisions of the six highest government authorities whose decisions cannot be appealed with the Commissioner (National Assembly, President of the Republic of Serbia, Government of the Republic of Serbia, the Supreme Court of Serbia, the Constitutional Court and the Republic Prosecutor) adopted by those authorities when acting upon requests to access information. Factual assumptions for this form of protection were created on the date when the Law took effect. By the end of 2007, the Supreme Court has ruled on 6 complaints against the highest authorities and 76 complaints against Commissioner's decisions, with a total of 48 judgments passed to this date.

Other legal assumptions for the implementation of this Law were created in the first year of its actual effectiveness, when the Commissioner passed the Instruction on Publication of Information Memorandum on Public Authority Operations ("Official Gazette of the Republic of Serbia" No. 57/05 of 5 July 2005), in compliance with Article 40 of the Law,

which was followed by the publication of a manual with practical instructions on the effective exercise of rights regulated by the Law, titled *A Guide to the Law on Free Access to Information* ("Official Gazette of the Republic of Serbia" Nos. 67/05 and 74/06), in Serbian and in six languages of ethnic minorities, thereby exercising the powers conferred on the Commissioner under Article 37 of the Law.

In early 2006, after a repeated initiative of the Commissioner and acting on proposal from the Ministry of Culture as the party authorized for making proposals, the Government passed a Decree on Amounts of Necessary Costs of Issuing Copies of Documents containing Information of Public Importance ("Official Gazette of the Republic of Serbia" No. 8/06). In the beginning of 2007, the Ministry of Finance designated a payment account for this type of costs of public authorities by virtue of the Bylaw on the Requirements for and Manner of Maintaining Public Revenue Accounts and Allocating Funds from those Accounts ("Official Gazette of the Republic of Serbia" No. 20/07).

1.2. Powers, authorities and responsibilities of the Commissioner

Pursuant to Article 35 of the Law on Free Access to Information of Public Importance, the Commissioner is responsible and authorized to:

- Handle complaints against public authorities relating to violations of the rights provided for under the Law;
- Monitor compliance of public authorities with the obligations set out in the Law and report to the public and National Assembly thereof;
- Initiate the drafting or amendment of regulations implementing and promoting the right to access information of public importance;
- Propose measures public authorities should take to improve their compliance with the Law;
- Undertake necessary measures to train the staff of public authorities bodies and to familiarize the staff with their responsibilities in connection with the right to access information of public importance for the purpose of ensuring effective implementation of the Law;
- Inform the public of the content of the Law and the rights regulated by the Law and perform other duties under the Law.

Furthermore, when handling a complaint challenging a decision to deny access to information of public importance, the Commissioner shall be given access to every data storage medium covered by the Law (Article 26, paragraph 2 of the Law).

The Commissioner shall:

1) within three months of the end of every fiscal year, present the National Assembly with an annual report on the activities undertaken by public authorities to implement the Law and his/her own activities and expenses. The Commissioner shall also present other reports to the National Assembly if he/she deems it necessary (Article 36 of the Law),

2) publish and update a manual with practical instructions for the effective exercise of rights regulated by this Law in the Serbian language and in languages identified as official under the law (Article 37, paragraph 1),

3) inform the public of the content of the manual via the press, electronic media, the Internet, public panel discussions and in other ways (Article 37, paragraph 3),

4) Issue instructions for the publication of information memoranda on the operations of public authorities.

2. COMMISSIONER'S OFFICE AND ITS CAPACITIES

2.1. Organization of the Office

The Commissioner for Information, appointed by the Decision of the National Assembly of the Republic of Serbia RS No. 91 of 22 December 2004 and subsequently, prior to the expiration of his term of office, also by the National Assembly Decision RS No. 19 of 29 June 2007, which extended his term of office to 7 years of the date of first appointment, passed instruments governing the operations of his Office in January 2005. These instruments were endorsed by the National Assembly several months later, more precisely on 23 May 2005, in accordance with Article 34 of the Law on Free Access to Information of Public Importance.

In 2006, the Commissioner passed new instruments governing the operation of his Office, harmonized with the new Civil Servants Law ("Official Gazette of the Republic of Serbia" No. 79/05) and the Law on Salaries on Civil Servants and Appointees ("Official Gazette of the Republic of Serbia" No. 62/06), but the number of staff remained unchanged. These instruments were endorsed by the National Assembly after more than a year – in November 2007.

Under the endorsed internal organization and job classification instrument, the Commissioner's Office has 3 Departments plus the Commissioner's Cabinet. These are responsible for handling complaints against decision of public authorities purported to violate the right to access information of public importance, performing duties aimed at implementing and improving the right to access information of public importance and promoting transparency in the operations of public authorities and other duties relevant for the exercise of the Commissioner's powers, as well as legal, financial, administrative and other duties responsible for proper functioning of the Office.

2.2. Human Resources

Under the law, the Office should have a total of 21 employees to cover the duties of the Commissioner, including a Deputy Commissioner, appointed by the National Assembly, a Secretary of the Office and two Assistant Secretaries, as well as a Head of Cabinet. Of the remaining 16 posts, 11 should be for persons with university level qualifications and 5 for persons with secondary vocational qualifications.

The actual number of staff at the Commissioner's Office is a mere 1/3 of the number specified in the job classification. It is insufficient, but even so it has remained unchanged

since the commencement of operations. Apart from the Commissioner and his deputy, the Office included two Assistant Secretaries, who were joined by a Head of Cabinet in September 2007. Administrative and technical duties are performed by three employees (two administrative officers and a driver). New hiring will depend solely on the willingness of competent Government services to provide additional office premises.

Financial and other specialized tasks vital for the functioning of the Office (in connection with the exercise of employees' employment rights, public procurement, technical support for the IT system etc.) are outsourced under temporary service contracts. Nevertheless, the Law does not allow this option when it comes to Commissioner's core activities in connection with the enforcement of the freedom of information.

2.3. Assets

Under Article 34 of the Law on Free Access to Information of Public Importance, the operations of the Commissioner and his office are funded from the national budget.

Since its early days, the Commissioner's Office has been based in several offices situated at Svetozara Markovica 42 in Belgrade. Given the size and structure of those premises, they very soon became inadequate for the actual needs of the Office. The scope of work and caseload of the Office has increased dramatically; given that the nature of the matters contained therein and the provisions of the Law require that all cases be resolved as soon as possible, and in any case within the 30-day deadline set by the Law, it is crucial that new staff be taken on as a matter of utmost priority.

The available equipment used by the Office is barely sufficient to cover the existing capacities. It is partly owned by the Joint Government Services and partly purchased with Commissioner's resources in the past three years. Computer equipment received from the Joint Government Services is repaired more often than it is used, even though it had been procured as new equipment.

In the previous two years, 2005 and 2006, budget resources earmarked for the operation of this authority were made sufficient for regular operations of this authority only after the Commissioner intervened either by proposing amendments to bills debated by the Assembly or by contacting directly the Ministry of Finance in advance. The first year saw near decent resources only in its second half, and even then the resources were initially allocated from budget reserves.

Financial resources for the operation of this authority in 2007, after a period of provisional funding in the first half of the year, were allocated under the Law on the Budget of the Republic of Serbia for 2007, enacted in June 2007. Under the said Law, the Commissioner and his services received an allocation of RSD 22,792,000.00. This amount should have been sufficient to ensure regular operation of the Office and to enable it to hire 5 additional civil servants by the end of the year, in accordance with the Draft HR Plan of the Commissioner for 2007, which was approved by the Ministry of Finance in its decision No. 11-00-243/2007-01 of 25 May 2007. Those 5 officers, added to the existing staff, would still have covered only 50% of the total number of posts approved by the National Assembly. Unfortunately, the all-too-necessary additional human resources could not be hired because of the unresolved issue of lacking office premises.

The objective inability of hiring the necessary staff was the main reason for under-utilization of approved budget resources in 2007. Eventually, the Office used less than three quarters of total approved resources.

This trend of relatively low use of budget resources earmarked for the Commissioner was also characteristic for the previous two years (45% of approved funds in 2006, 59% in 2005). These savings were only partly due to economizing; more often than not, they were forced upon the Commissioner because new staff could not be hired for reasons stated above. This in turn caused additional problems and required the extra time and effort to write explanations each time the budget was revised to avoid possible cuts in the future, pending the creation of adequate conditions for new hiring.

As pointed out in last year's report, in the first half of 2005, when this authority did not have an approved budget and, indeed, not even the bare essentials needed for its work, certain activities involved in the promotion and implementation of the Law on Free Access to Information of Public Importance were supported by the OSCE Mission to Serbia and the non-governmental organizations gathered around the Coalition on Freedom of Information. They funded seminars and supported the publication and distribution of the Guide to the Law in a printing run of 5,000 years. Subsequently, the Commissioner collaborated with the Official Gazette of the Republic of Serbia to issue 20,000 copies of the Guide every year. There were also special editions, printed in 1,000 copies in each official language of Serbia's ethnic minorities plus a version in Romany.

2.4 Overview of approved and utilized resources in 2005, 2006 and 2007

ITEM.	DESCRIPTION	2005			2006			2007		
		APPROVED	UTILIZED	%	APPROVED	UTILIZED	%	APPROVED	UTILIZED	%
411	Salaries and fringe benefits	2,492,000	2,446,425	98.17	16,370,000	6,805,642	41.57	12,150,000	9,006,308	74.13
412	Contributions	440,000	423,442	96.24	3,052,000	1,218,206	39.91	2,184,000	1,464,319	67.05
413	Remuneration in kind	200,000	9,000	4.50	100,000	9,845	9.85	40,000	31,334	78.34
414	Social outlays	100,000	57,391	57.39	200,000	0	0.00	70,000	59,999	85.71
415	Staff compensation	200,000	18,124	9.06	400,000	63,879	15.97	155,000	96,406	62.20
416	Rewards and bonuses	478,000	434,705	90.94	690,000	627,966	91.01	44,000	42,047	95.56
421	Recurrent expenses	1,425,000	343,674	24.12	1,760,000	795,103	45.18	1,067,000	977,019	86.88
422	Travel costs	760,000	14,290	1.88	1,000,000	113,853	11.39	166,000	115,942	69.85
423	Contracted services	2,925,000	1,724,571	58.96	6,000,000	3,596,899	59.95	4,857,000	3,752,814	77.27
424	Specialized services	0	0	0.00	100,000	0	0.00	0,00	0,00	0.00
425	Repairs and maintenance	475,000	22,954	4.83	100,000	49,987	49.99	80,000	68,986	86.23
426	Material	2,850,000	1,221,004	42.84	1,200,000	885,466	73.79	950,000	945,327	99.51
482	Taxes and charges	500,000	12,686	2.54	30,000	19,035	63.45	30,000	18,588	61.96
512	Machines and equipment	2,000,000	1,999,322	99.97	500,000	288,170	57.63	1,000,000	378,755	37.88
TOTAL		14,845,001	8,727,590	58.79	31,502,000,00	14,474,052	45.95	22,792,000	16,907,850	74.18

3. OVERVIEW OF COMMISSIONER'S ACTIVITIES

3.1. Decision-making procedures

The requester (a citizen, a journalist, the media etc.) can **lodge a complaint with the Commissioner** if a public authority body refuses to inform him whether it holds or has access to certain information of public importance, if it refuses to provide access to a document containing the requested information, if it fails to issue or send a copy of the document in question (depending on the content of the request) or if it fails to act on applicant's request within the 15-day period set by the law (this period can exceptionally be extended to 40 days, if there are justifiable grounds referred to in Article 16(3) of the Law, or shortened to 48 hours in case of specific information relevant for the protection of a person's life or freedom or relevant for the protection of public health and the environment).

The Commissioner shall act on complaints in accordance with the Law on Free Access to Information of Public Importance and in accordance with the provisions on general administrative proceedings pertaining to second-instance ruling. The Commissioner shall pass a decision without delay and in any case not later than 30 day of the lodging of complaint.

Before reaching a decision, The Commissioner shall allow the public authority, and if necessary also the applicant, to reply by means of statements in writing. When acting on a complaint, the Commissioner shall:

- reject a complaint on formal grounds if it is inadmissible, lodged by an unauthorized person or untimely/premature,
- reject a complaint as ungrounded if the public authority proves it acted in accordance with the Law,
- sustain a complaint as grounded and order the public authority to comply with the request and to provide the information to the requester within a short period of time, with an obligation to notify the Commissioner when it carries out his orders as instructed,
- sustain a complaint, rescind the challenged first-instance decision and decide as suggested by the requester, or otherwise return the case to the authority of first instance to pass a new decision in repeated proceedings,
- terminate the proceedings, if the complainant withdraws the complaint or if the reasons for continuing the complaint proceedings no longer subsist, if the public authority has in the meantime provided the requested information to the complainant.

When establishing facts necessary for reaching a decision, the Commissioner shall have the right to gain insight into any information medium covered by the Law.

As regards infringement liability, when the Commissioner finds, while acting on complaints or otherwise, that an action or inaction of a public authority involves elements of an infringement referred to in Articles 46-48 of the Law, the Commissioner shall notify the Ministry of Culture as the body responsible for launching infringement proceedings and forward to it all case documents for that purpose.

Requests for information of public importance available to the Commissioner, if created in his work or in connection with it, the Commissioner shall act like any other public authority in accordance with the provisions of Article 16 of the Law: he shall without delay and within 15 days from receipt of the request at the latest inform the requester whether he holds the requested information and make a note to that effect; if this is not the case, he shall notify the requester and, with his/her consent, forward the request to the authority that, according to his knowledge, holds the requested information. If he finds that reasons for denying or restricting access to requested information under the Law pertain, the Commissioner shall pass a substantiated decision rejecting the request.

When acting on requests forwarded or referred by other public authorities under Article 19 of the Law, the Commissioner shall first establish whether the document is held by the authority that referred the request; if this is not the case, he shall forward the request to the authority that, according to his knowledge, holds the requested document (unless the requester decided otherwise) and notify the requester accordingly, or alternatively he shall refer the requester to the authority that holds the information.

Claims in connection with the operations of public authorities which are not deemed to be information of public importance by their nature shall be forwarded by the Commissioner to the competent authority for acting and shall notify the requester within his sphere of competence.

In the procedure of enactment or amendment of other legislation, the Commissioner shall respond publicly if such legislation is incompatible with the provisions of the Law on Free Access to Information of Public Importance in that it hampers free access to information held by public authorities.

The Commissioner shall draw the attention of a public authority if, outside the complaints handling procedure in connection with alleged violations of the freedom of information, he finds that other provisions of the Law have been breached to the detriment of this freedom, e.g. if inadmissible amounts are charged as fees for issuing copies of documents etc.

3.2. Information on resolved cases

In the course of 2007, the Commissioner's Office had a total of 2,367 cases. Of that, 1,708 cases were received in the course of 2007, while further 659 remained from earlier periods. The Office resolved 1,539 cases (65.02%) and carried the remaining 828 forward into 2008.

Compared with the situation of 2006, when the Office handled a total of 1,847 cases and resolved 1,188 of them, in 2007 the caseload was more than 28% higher than in 2006 and almost five and a half times higher than the 437 cases in 2005. The year 2007 also saw an increase in the number of resolved cases – about 30% up compared with the previous year, as a result of outstanding additional efforts of the staff.

The resolved cases include:

- 1,162 complaints, of which only 45 (3.87%) related to actual decisions rejecting a request for information, while the remaining ones concerned failure of public authorities to act on requests for access to information of public importance or unsubstantiated rejection of requests,
- 23 responses to claims in administrative proceedings against Commissioner's decisions,
- 12 opinions concerning the implementation of the Law on Free Access to Information of Public Importance,
- 52 responses to requests seeking information of public importance from the Commissioner,
- 23 requests for information of public importance in connection with the operations of another authority which the Office forwarded to the public authority that holds the information and notified the requesters thereof,
- 138 cases concern communication with public authorities for the purpose of establishing their competences for handling specific cases, in connection with other issues regarding implementation of the law,
- 89 claims relating to operations of public authorities that are not deemed to be information of public importance; these have been forwarded to the relevant authorities and requesters have been notified accordingly,
- 40 cases relating to other advisory and instructional communication with public authorities in connection with the implementation of the Law in order to achieve greater transparency.

3.2.1 Complaints

Out of the total of 1,162 resolved claims, only 72 (6.2%) were ungrounded or formally deficient and urged the following decisions:

- 36 decisions (3.1 %) rejecting complaints as ungrounded,
- 36 conclusions (3.1%) rejecting complaints on formal grounds – untimely or premature submission, inadmissibility or declined jurisdiction by the Commissioner.

The remaining 1,090 complaints which were found to be grounded were resolved by the Commissioner as follows:

- in 382 cases (35.04%) the Commissioner ordered the public authority concerned to comply with the request and enable access to requested information. The Commissioner passed a total of 322 decisions, because 60 cases were joined and a single decision was used to resolve two or more complaints against the same authority,
- in 708 cases (64.95%) proceedings were terminated because public authorities in the meantime complied with the requests, following interventions by the Commissioner. In these cases, the Commissioner passed a total of 596 conclusions on termination of proceedings, because 112 cases were joined with other cases.

Information requesters usually complained about denial of access to information or copies of documents relating to: disposal of budget resources and donor funds; international

and domestic projects; investments; public procurement; legality of issuance of various licences and permits, in particular building permits; protection of personal freedoms and personal and property rights; salaries and other emoluments from the national budget; hiring and staff numbers; health care; environment protection; animal welfare measures; decisions of law enforcement and judicial authorities etc.

From the information on outcomes of complaint proceedings presented above it follows that in some 65% of all cases the authorities of first instance comply with the request of the complainant as soon as they learn a complaint was lodged, i.e. before the Commissioner passes his decision, while further 25% of them comply with the request after the Commissioner passes a decision acting on the complaint. Thus, the Commissioner's interventions following complaints in 2007 ensured access to information for requesters in more than 90% of all cases, some of which gained special publicity, e.g.:

- information from the agreement entered into by "Jat Airways" providing for the purchase of 8 airplanes from "Airbus", executed in 1998,
- documentation of the Public Enterprise "Putevi Srbije" (Roads of Serbia) concerning toll collection – the so-called "road mafia" case,
- information on remuneration of appointed and designated officials in public enterprises, agencies and directorates founded by the Republic of Serbia, following a request from the Administrative Committee of the National Assembly,
- most of the information contained in the Concession Agreement for the future Horgos-Pozega highway concluded by the Government of Serbia, more specifically the Ministry of Infrastructure,
- information from the Ministry of Defence contained in the Status of Forces Agreement - SOFA, as well as information on the number of soldiers who died while completing their compulsory military service,
- information from the Military Intelligence Agency of the Ministry of Defence concerning the number of requests filed and the number of "tapped" persons in 2005,
- information from the Military Security Agency concerning criminal offences against the constitutional order and security,
- equity sale agreements concluded by the Privatization Agency for the following companies: BIP, Belgrade Shipyard and "Rudnik" Fashion Apparel, Gornji Milanovac.

Thus, statistical information for 2007 shows that public authorities failed to comply with the Commissioner's orders in less than 10% of all cases of grounded complaints. This percentage is likely to be even lower, because it is possible that some first-instance authorities complied with the Commissioner's decision, but failed to notify the Commissioner's Office accordingly as required by the Law and stated in the order, which was very often the case. It should be noted that, as far as decisions ignored by public authorities are concerned, national and local authorities are almost equally represented among those that failed to act.

Some of the cases from 2007 in which, according to the information available to the Office, requesters did not receive any information or received incomplete information even though the Commissioner passed relevant decisions include:

- zoning or building documents relating to new construction or existing buildings and locations: hotel and business complex in Knez Mihailova street and premises in Rajiceva street in Belgrade,
- documents of the Privatization Agency concerning the privatization of the Publishing Company “Prosveta-Beograd”, “Prosveta-Nis” and the tourism company “Srbija-Turist”, Nis,
- information concerning the causes of death, the number of newborns that died and the number of those attributable to medical staff faults at the Gynecology and Obstetrics Clinic “Narodni front” in Belgrade;
- part of information contained in the Concession Agreement for the Horgos-Pozega highway,
- servicing of hemodialysis machines, documentation of the Republic-level Health Insurance Fund, requested by the Renal Disorder Patients Association, as well as a copy of International Trade Arbitration ruling and the dispute concerning the ownership of the pharmaceutical company “Galenika”;
- draft radio-frequency allocation plan by the Republic Broadcasting Agency and licences issued to TV broadcasters in Serbia by the same Agency;
- whether the Ministry of Interior has drawn up official records in connection with the “sheep molestation” case in the village of Kaculice;
- salaries of CEOs and remuneration of BoD and Supervisory Committee members in public companies “NIS” and “NIS Petrol”, as well as salaries of the director and deputy director of the Security Information Agency;
- copies of decisions passed by municipal public prosecutor’s offices concerning the rejection of petitions for criminal proceedings in certain cases in the twosn of Zrenjanin and Pancevo, at the Second Municipal Public Prosecutor’s Office and district prosecutor’s offices in Novi Sad and Belgrade,
- documentation on fees paid for consultancy services by “Jugoistok”, Nis,
- at the local level, information on projects and construction of certain buildings, provision of utility services etc., for example: in the Municipality of Pozarevac, information on the project for the use of ashes and slag from “Kostolac” Thermal Power Plant and on investments in heating projects; lake refurbishment activities in Majdanpek; agreement on outsourcing of pakring maintenance communal activities in the Municipality of Kikinda; documentation concerning the purchase of an official vehicle in the Municipality of Arandjelovac; in the Municipality of Trstenik, report of the Commission on Building Categorization at the landslide in the village of Bogdanje; in the Municipality of Pirot, information concerning the construction of a sewerage network in the village of Gnjalan; information concerning the introduction of an SMS payment scheme for parking in the town of Leskovac; information concerning environment protection programs and street asphaltting projects in the city of Nis; overview of commercial premises managed by the Commercial Properties Agency of the City of Belgrade; documentation on animal protection facilities and measures in the Municipality of Negotin and at the Public Utility Company “Morava” in Svilajinac; information concerning the funding of residential apartments building program developed by the Urban Construction Institute of the City of Novi Sad;
- access to individual documents held by public authorities which are of interest for the information requester, e.g. cadastral, civil engineering, medical, judicial etc, records.

In about a hundred cases in which public authorities failed to comply with the Commissioner's decisions passed in the last three years, requesters addressed the Government of Serbia, demanding of it to enforce the relevant decisions in accordance with its obligation set out in Article 28, paragraph 2 of the Law. Judging by the information obtained from Government's Secretariat General during the preparation of this Report, it appears that the Government failed to provide support within the meaning of the law in every single one of those cases. This issue will be dealt with in more detail later on, in the section dealing with administrative obstacles to implementation of the Law.

3.2.2. Lawsuits in administrative proceedings

According to the information obtained from the Supreme Court of Serbia and that available to the Commissioner's Office, since the beginning of implementation of the Law on Free Access to Information the Supreme Court has received a total of 82 lawsuits, of which 76 were filed against decisions of the Commissioner, 4 against the Government of Serbia for failure to act on request for information and 1 lawsuit each against the People's Office of the President of the Republic and the Republic Prosecutor's Office for failure to act on request.

Out of the 76 lawsuits relating to decisions of the Commissioner (7 in 2005, 35 in 2006 and 34 lawsuits in 2007), the Supreme Court ruled in a total of 49 cases, as follows: 19 lawsuits were dismissed as ungrounded, 23 lawsuits were rejected, 2 lawsuits were terminated and 5 were sustained, resulting in rescinding of the Commissioner's decisions on formal grounds.

As regards the lawsuits against the Government, the People's Office of the President of the Republic and the Republic Prosecutor's Office, according to the information available to the Commissioner, the Supreme Court has ruled in 1 case against the Government and rejected the lawsuit.

What is indicative is that public authorities have filed a relatively high number of lawsuits against decisions of the Commissioner. Indeed, this can be qualified either as utter lack of knowledge or as a deliberate breach of fundamental legal standards. The freedom of information procedure is there to enforce the rights of information requesters, not those of public authorities. A public authority from which a piece of information is requested is not a party to the proceedings but rather the authority of first instance, while the Commissioner for Information is the authority of second instance. The authority of first instance does not and can not have the right to challenge the decisions of the authority of second instance. Even a law student with the most average of grades would know such legal action is not permissible, we have seen that certain officials in our public authorities pretend to be blissfully unaware of this, ignoring even the fact that the Supreme Court of Serbia has dismissed all of the 20-odd cases in which it handled these lawsuits as inadmissible.

This waste of taxpayers' money and Supreme Court's precious time is an additional reason for concern because the practice of filing inadmissible lawsuits is used as a sort of "justification" for refusing access to requested information. The authorities delay the provision of information pending court rulings, counting on the fact that the proceedings will be as time-consuming as ever. This is yet another legal nonsense, because, as they are probably well aware, filing of a lawsuit in administrative disputes, even if admissible *per se*, does not delay the enforcement of the ruling.

In some cases at least this can be put down to an (unacceptable) lack of fundamental knowledge, but, more often than not, we are witnessing a far worse phenomenon – deliberate ignoring of legal standards. However, regardless of the cause, it should be an undisputable fact that a democratic government must prevent any attempt to ridicule the rights of the

public enshrined in the Constitution and applicable laws by taking adequate action through competent official of the executive government, ranging from education to determination of liability.

3.3. Activities aimed at enhancing the public profile of activities

3.3.1 Civil servants training and activities undertaken to promote the public interest to know

In order to familiarize the public with the exercise of its right to access information of public importance and to assist the authorities with the implementation of the Law, in accordance with Article 37 of the Law, the Commissioner's Office published a manual with practical instructions on the effective exercise of rights regulated by the Law, titled *A Guide to the Law on Free Access to Information of Public Importance*, as already explained above.

Staff training is an explicit obligation of every public authority under the Law, the aim being to familiarize the staff with their responsibilities under the Law, which entrusts the task of arranging for such training to the Commissioner.

Since the commencement of implementation of the Law, the Commissioner has insisted on this obligation and upheld training as the single most important prerequisite for proper exercise of the right to access information held by public authorities, which is at the same time one of the 25 recommendations given by GRECO (Group of States against Corruption under the Council of Europe) contained in the Country Report for Serbia dated 9 October 2006. The Commissioner has done this through public announcements, letters addressed on a number of occasions to the heads of highest executive authorities and persons authorized by them to enforce this Law, recalling the mandatory nature and importance of this measure and offering assistance in the implementation of training through direct involvement.

As part of the training efforts in connection with the Law, the Commissioner and members of his office have, over the past three years, held several dozens of seminars for members of executive and judicial authorities, the media and the public. These seminars addressed the issues of implementation of the Law and exercise of the right of free access to information and were supported by the OSCE Mission to Serbia, CoE Office in Belgrade, the American Bar Association, CESID (Centre for Free Elections and Democracy), Belgrade Human Rights Centre and other NGO members of the Coalition on Freedom of Information, with the involvement of the Human Resources Department of the Government of Serbia, in case of national-level staff, and heads of several Counties at regional and local levels.

The debates, round tables and similar events organized by other public authorities, the media and the civil sector to address the issues of corruption prevention, freedom of the press, public information and accessibility of information of public importance (Transparency Serbia, CESID, Media Professionalization Centre, Belgrade Human and Minority Rights Centre, Belgrade Open School, Open Society Fund, Belgrade Fund for Political Excellence, Centre for Security Studies, Regional Press Agency "JUGpress", Centre for Democracy of Southern Serbia, Young Lawyers of Serbia, Standing Conference of Towns and Municipalities etc.) were actively attended by the Commissioner and members of his Office.

The aim was to conduct a media campaign and use all other available means addressed to the public to affirm the Law. The issue of access to information is included in training courses and some education syllabuses as part of the subject dealing with civil rights and responsibilities. The right of the public to access information held by public authorities has been reaffirmed through copyrighted texts published by the Commissioner.

The Commissioner has launched an initiative with the Ministry of Public Administration and Local Self-government to incorporate the Law on Free Access to Information of Public Importance in the curricula for professional examinations of civil servants as a form of systemic and continual education, taking into account the level of knowledge and capacities of civil servants for the implementation of this Law and in view of the role this Ministry plays in educating and training civil servants. This initiative has not yet been implemented and the Commissioner intends to launch it again.

On proposal from the Commissioner, the issue of freedom of information was included in the Program of General Professional Upgrading of Civil Servants at Public Authorities and Government Services in 2007,

3.3.2. Other activities and events relevant for promoting the right to access information

The Commissioner's Office produced in 2007 for the first time and posted on its Website in early 2008 a Catalogue of public authorities subject to the Law on Free Access to Information of Public Importance. The Commissioner decided to embark on this challenging and time-consuming task, although there is no formal obligation to do so, because the Ministry of Culture failed to show a sufficient level of involvement, as the lack of HR, organizational and logistical assumptions has prevented it from performing this task in the past three years, even if the Commissioner's Office is alarmingly understaffed.

The Catalogue includes nearly 11 thousand public authorities covered by the Law and has been compiled from various information sources, because only a small number of public authorities responded to repeated requests from the Commissioner and provided the requested information for the Catalogue. While its nature is not constitutive, the Catalogue is undoubtedly very useful for the citizens and all other potential beneficiaries of this right. It is also useful to the public authorities themselves and to the line Ministry responsible for enforcement of the Law.

In 2007, two presentations were held to promote the publication titled "An Analysis of the Law on Free Access to Information of Public Importance with a Research into its Practical Implementation", prepared by a Slovenian expert team on the basis of a research on a sample of 26 public authorities in Serbia, as part of the project of ABA CEELI (American Bar Association – Central Europe and Eurasia Law Initiative).

On occasion of the International Right to Know Day, two conferences were held in Belgrade, in 2006 and in 2007, dedicated to the implementation of the Law on Free Access to Information of Public Importance. These conferences were supported by ABA CEELI, OSCE Mission to Serbia, Independent Journalists' Association of Serbia, the NGO Coalition on Freedom of Information and USAID. The conferences were used to present a number of

public authorities with awards and honours for outstanding contribution to the implementation of the Law.

A thematic conference was also held in Belgrade to address the issues of implementation of the Law, including the issues of personal data protection and handling of confidential information in the context of freedom of information. This event was organized in collaboration with the NGO Coalition on Freedom of Information and resulted in the formulation of recommendations and conclusions addressed to public authorities.

Cooperation in the field of accessibility of information of public importance has been established with relevant institutions responsible for enforcing this right in the countries of the region – Slovenia, Hungary, Bosnia and Herzegovina and FYR Macedonia – through participation of the Commissioner in relevant conferences or through direct meetings. The Commissioner held talks with the representatives of the World Bank and EAR in Serbia concerning the importance of the freedom of information in the context of financial and other public resources and other information on operations of public authorities. The participants also underlined the importance of expedited enactment of modern laws on confidential data classification and personal data protection and concluded it was necessary to take additional action to impose sanctions for breaches of the Law. This issue was also addressed during talks between the Commissioner and representatives of the Advisory Commission on Archives of International War Crime Tribunals, which dealt with the treatment of documentation by those tribunals after the cessation of their operations.

In the course of 2007, the Commissioner had a number of meetings and talks with other representatives of European and international institutions in connection with the exercise of human rights, including the freedom of information. The list is impressive: HE Ambassador Josep Lloveras, head of EC Delegation; HE Ambassador Urstand, head of OSCE Mission to Serbia; rapporteurs of the Monitoring Committee of the CoE Parliamentary Assembly; Special Representative of UN Secretary General; delegation of the European Commission against Racism and Intolerance; head of the UN Office in our district; and HE Ambassador of Hungary in Serbia, Szandor Pap.

In December 2007, the OSCE Mission to Serbia awarded the Commissioner for Information its “Personality of the Year” award in recognition of his efforts to ensure transparency of operations of public authorities in accordance with the Law. Before that, on the occasion of the second anniversary of his appointment, the OSCE Office congratulated the Commissioner on his efforts and results.

In the previous period, the Commissioner also received Special Honours from the Association of Serbian Journalists for his personal contribution to the implementation of the Law on Free Access to Information and for the assistance he provided to journalists

3.3.3. Activities in connection with the preparation and publication of the Directory on Operations of Public Authorities

This obligation set out in Article 39 of the Law on Free Access to Information of Public Importance applies to all public authorities, territorial autonomy bodies, local self-government bodies and organizations conferred with public powers. This provision contained in the Law and the Instructions concerning the Publication of the Directory of Operations of

Public Authorities adopted by the Commissioner pursuant to the Law in 2005 require of all these public authorities to produce a Directory containing all relevant information about them that could be of interest to the citizens and the public, to publicize the document on their Internet presentation and to update its content regularly, at least once a month.

From the very beginning of implementation of the Law, the Commissioner has insisted relentlessly on consistent compliance with this responsibility of public authorities as a fundamental assumption for enhanced and facilitated access to information of public importance even without specific requests, as well as for ensuring increased transparency of public authorities' operations, which is one of the constitutional principles governing their work.

In this context, the Commissioner has held a number of thematic working meetings and one-day seminars with the representatives of executive government, Ministries, special organizations and the Autonomous Province of Vojvodina. These meetings and seminars highlighted the importance of electronic presentation of information about the operations of public authorities, the quality of the existing standards and the need to implement relevant standards to ensure the quality and accuracy of such information, as well as the need to carry out additional staff training programs. An analysis was made of the existing Directories published by the Ministries, with relevant recommendations.

This issue was also addressed in several dozens of seminars held throughout Serbia to train the officials of local governments, judicial authorities, magistrate's court and other public authorities.

The effects of all these measures are visible, but, when it comes to actual compliance with this obligation, the situation is, unfortunately, still far from satisfactory. Quite the contrary: as far as Ministries, as the highest executive authorities, are concerned, the situation in 2007 was even worse than in 2006. This will be dealt with in more detail in the second part of this Report, together with the measures taken in this context, especially when national authorities are concerned.

4. ADMINISTRATIVE AND OTHER OBSTACLES TO THE IMPLEMENTATION OF THE LAW

There is no doubt that the numerous activities carried out in this regard have produced significant results in the exercise and enforcement of the right of free access to information of public importance. Witness the official findings of relevant institutions, conclusions of the European Commission contained in its Annual SAA Progress Report for Serbia in 2006 and the preliminary report for 2007, the conclusions and awards by OSCE, the Council of Europe and opinions of journalists' associations included in the monitoring report dealing with the implementation of the Law prepared by the NGO sector.

However, the effects of implementation of the Law on Free Access to Information would undoubtedly have been far better if only the competent authorities had been more willing to eliminate certain administrative and other obstacles impeding the implementation of the Law. In order to convey a more realistic sense of the actual achievements, this Report reiterates facts about key obstacles that significantly affected the implementation of the Law, to which we have been drawing the attention of competent authorities for three years with little success.

4.1 Failure to enforce the Law and absence of liability for infringements

The authority responsible for enforcing the Law is the Ministry of Culture. During the last three years, the Ministry has failed to act as required by the Law and thus there was no mechanism to ensure that public authorities are held liable for violation of the right of free access to information and for breaches of other responsibilities arising from the Law, including the preparation and publication of Directories, organization of staff training and maintenance of information storage media. In 2007, the Ministry acted in some 10% of all cases forwarded by the Commissioner's Office in connection with infringement liability for violation of the right to access information. This comes as no surprise given the fact that only one person within the Ministry is in charge of these duties.

As of December 2007, the Commissioner submitted to the Ministry of Culture, as the authority competent for initiating infringement proceedings, a total of 1365 cases containing elements of infringements referred to in Article 46 of the Law, which requires a prior survey to be made in order to determine the identity of responsible persons and to identify the elements of the infringement. According to the information provided by the Ministry, the outcome was as follows: it filed 128 petitions for institution of infringement proceedings with competent authorities. Of that number, 39 cases were resolved; in 6 of them, the authorities fined the perpetrators with RSD 5,000.00-10,000.00; in 14 cases the perpetrators were given formal warnings and ordered to pay lump-sum legal charges and in 19 cases proceedings were terminated or requests were rejected. The Ministry lodged 7 complaints with the Infringement Council relating to decisions of the authority handling infringements in the first instance, which have not been resolved as yet. This shows that less than 1% of the total violations of the right to access information have been penalized under the Law and that not a single case has been processed. The question whether government authorities are thus deliberately encouraging disregard for obligations under the law may quite justly be asked.

Of course, many of these will be or already are time-barred, and failure to comply with the obligation to publish the directory, to train the staff etc. has not resulted in a single case of infringement proceedings so far. Many authorities have not responded to the request of the Ministry of Culture to provide details on the responsible person, which is why in many cases infringement proceedings has not been launched. Some actions that constitute violations of the right to access information are not even covered by penal provisions under the Law.

The Office has been informed that several persons launched infringement proceedings as plaintiffs for withholding of information by public authorities. We have learned that a magistrate in one case fined the responsible person within a public authority, while several proceedings have been terminated due to the inability of plaintiffs to state all required details for responsible persons in the petition form.

In connection with this problem, the Commissioner has launched an initiative for the Ministry of Justice to amend the Misdemeanours Law in that it should require less personal information for responsible persons within public authorities, which is at present a requirement for launching infringement proceedings. The Ministry has notified the Commissioner this initiative will be accepted.

In connection with the issue of enforcement, the Commissioner has on a number of occasions, both in writing and verbally, drawn the attention of competent authorities, including the Government of Serbia and the Ministry of Culture, to the fact, supported by the

Ministry of Culture itself, that enforcement of this Law should be entrusted to another Ministry, e.g. the Ministry of Public Administration and its Administrative Inspectorate, which has far greater HR and other assumptions for the proper discharge of this function. This initiative was rejected in 2006, but in late 2007 and early 2008 it reemerged as a topic for discussion, and the Minister of Public Administration is generally supportive of this initiative.

Failure of the competent Ministry to enforce the Law resulted also in the non-existence of a database of all authorities subject to the Law, as well as those that are deemed to be public authorities under the Law and thus have additional responsibilities in connection with the transparency of their work. In the absence of such a database, the Commissioner's Office published a Catalogue of public authorities. However, this Catalogue is not constitutive by nature; rather, its nature is informative, as explained above.

4.2. Failure to enforce decisions of the Commissioner

The issue of unregulated enforcement of decisions of the Commissioner was addressed also in Commissioner's annual Report for 2006; as little has changed in this regard, this year's Report will deal with it again.

In the absence of infringement liability for violations of the Law, including failure of public authorities to proceed in accordance with the instructions of the Commissioner to grant a requester access to information, the function of enforcement of decisions taken by the Commissioner should be activate as a matter of utmost urgency. It is also necessary to regulate the manner of compliance with Article 28 of the Law, under which the Government enforces decisions taken by the Commissioner if necessary.

In this context, the Commissioner, exercising the powers conferred on him under Article 35, item 2 of the Law, twice in 2006 addressed the Government of the Republic of Serbia, through its Secretary General, requesting that the Government establish mechanisms to enforce decisions taken by the Commissioner, make relevant amendments in the Government Rules of Procedure or adopt a separate piece of secondary legislation to govern the enforcement of Commissioner's decisions through activation or mechanisms available under the Law on General Administrative Proceedings for failure to comply with penalties other than pecuniary ones, similar to the provisions contained in the Commissioner's decisions, with enforcement measures including fines that could be repeated until a specific requirement is complied with. Unfortunately, these initiatives, as well as many verbal invitations, including the conclusions of a special debate on this issue organized by the OSCE Mission in Belgrade in December 2007, had no effect.

The passive attitude and the absence of support from the Government in the enforcement of decisions of the Commissioner even as the Commissioner continues to draw attention to this issue and citizens and the media approach the Government directly as information requesters could be seen as a sign that the Government is supporting and encouraging public authorities to violate this right enshrined in the Constitution and the Law. This opinion is supported by the above information on cases in which even some public authorities failed to comply with the Commissioner's orders.

The Government's Secretariat General of the Government went even further to confirm its passive attitude on this issue when it provided the Commissioner, for the purposes of this Report, with information concerning the number of citizens and other entities who addressed the Government seeking enforcement of Commissioner's decisions where other authorities failed to do so of their own accord since the effective date of the Law. The information provided seems to suggest that the Government did not intervene in connection with a single request for enforcement.

Thanks to an initiative by the Commissioner, tasks aimed at eliminating administrative obstacles for the implementation of the Law, including the issue of enforcement of Commissioner's decisions, have become an integral part of the Government's Action Plan on Implementation of the National Anti-corruption Strategy, as well as the Plan on Implementation of European Partnership Priorities. Regrettably, even the recommendations contained in these documents failed to eliminate the obstacles for the exercise of the right to access information.

4.3. Inadequate normative environment

4.3.1 Relation of the Law on Free Access to Information to other laws

The issue of incompatibility of the freedom of information provisions in many procedural and other laws with the provisions of the Law on Free Access to Information of Public Importance was also discussed in the Report for 2006 and, just like in the previous case, not much has changed in the meantime. Competent authorities seem to be unaffected by the lack of consistency within the legal system as regards this issue.

Many procedural laws, including the Criminal Proceedings Law, the laws on misdemeanours, executive, litigation and administrative proceedings and other laws, still contain provisions that effectively restrict access to information to certain persons (e.g. parties in the proceedings) or impose a requirement under which a person has to demonstrate "justified" or "grounded" interest to access information, which is contrary to the provisions of the Law on Free Access to Information of Public Importance.

Another group of laws contain restrictive provisions on access to information in that they refer to data confidentiality e.g. the Police Law, the Law on Taxation Procedure and Tax Administration etc., and these provisions are invoked to deny access to requested information by default even in cases when this is not justified under the Law on Free Access to Information, i.e. when there is no evidence that such action is necessary to safeguard a legitimate overriding interest and that disclosure of requested information could result in severe legal or other consequences for overriding interest safeguarded by the Law.

The Commissioner's experience shows and the public is well aware that in many cases where denial of access to requested information was justified by invoking confidentiality the actual aim of the public authority was to conceal illegal actions, notably corruption (e.g. the "road mafia" case).

What worries most is that new regulations are passed and the existing ones are amended without due regard of the need to harmonize the provisions on publicity of operations and accessibility of information with the provisions of the Law on Free Access to

Information, as a *lex specialis* based on relevant international documents, declarations and recommendations. Thus the Foreign Investment Bill, enacted by the Government in the second half of 2006 precludes the application of the Law on Access to Information to information on foreign investment, while the recent amendments of the Law on Taxation Procedure and Tax Administration of 2007 set an example of inept wording of provisions on tax data confidentiality in a way completely inconsistent with the provisions of the Law on Free Access to Information.

The Declaration on Access to Information adopted in December 2004 by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Media Freedom and the Special Rapporteur on Freedom of Expression of the Organization of American States explicitly states that, in the event of inconsistencies, the Freedom of Information Act takes precedence over all other laws.

4.3.2 Lack of relevant complementary regulations

The earlier Reports of the Commissioner also underlined the fact that proper implementation of the Law on Free Access to Information of Public Importance presupposes urgent adoption of complementary regulations, including in particular a confidentiality law and regulations on classification of confidential data and a personal data protection law. The rationale for this is that the deliberation of the order of precedence between the public's right to know and the data confidentiality requirements, with a view to ensuring effective protection of an overriding public or other legitimate interest, would be much simpler if we had a law to govern the issues of State, military and official secrets, procedures for affixing and removing confidentiality marks, classification of confidential data, responsibilities of confidential information handlers, bodies responsible for protecting data confidentiality etc.

As regards documents bearing confidentiality marks and the issue of access to information contained in such documents, the Recommendation of the CoE Committee of Ministers No. 2002 specifies that situations in which confidentiality of a document would, by automatism, preclude access to that document in the future, should be avoided, and that public authorities handling requests for information must satisfy themselves that all requirements for granting the confidential status are indeed met by applying the "interests weighing" test. Fact is that many documents in our country had a confidentiality mark affixed to them at some point or another, when it was considered necessary, but, once granted, the confidential status was never reviewed or revoked when reasons no longer pertained. This significantly hampers the implementation of the Law on Access to Information and confuses persons responsible for ensuring compliance with the Law; besides, it often comes in handy to conceal corrupt practices.

An encouraging sign is that the Government recently, acting on proposal from the Ministry of Justice, adopted the Personal Data Protection Bill, in the drafting of which the Commissioner's Office made its contribution. The existing Law of 1998 only partly regulates this issue, but it is not compliant with the EU regulations and practices.

Furthermore, in the absence of initiatives from competent public authorities, an expert NGO group, joined by the Commissioner himself, drew up a Model Confidential Data Classification Law. The relevant Bill was submitted to the National Assembly in due procedure.

In addition, another important issue is the unused anti-corruption potential of the Law on Free Access to Information. This is because there are no legislative provisions providing for the immunity of employees who, with the aim of safeguarding public interest, disclose information on malpractice known to him/her in violation of the confidentiality requirements applicable under labour law (protection of the so-called “whistleblowers”). In this context, it would be particularly useful if the National Assembly enacted the Amending Bill to the Law on Free Access to Information of Public Importance, submitted in late 2007 by the NGO Coalition on Freedom of Information.

4.3.3 The issue of insufficient premises

Apart from all of the above obstacles hampering the implementation of the Law on Free Access to Information of Public Importance, another not insignificant impediment is the lack of adequate office premises for the Commissioner’s Office. As already mentioned, this problem runs back to the time of formation of this authority. Even the barest of necessities for proper functioning of the Commissioner’s Office were provided by the competent Government services only after six months had elapsed since the appointment of the Commissioner.

However, as the scope of work increased dramatically, the Commissioner made a plea in writing to the Republic Property Directorate in the second half of 2005, followed by four more pleas in 2006, as well as two pleas to the then Minister of Public Administration as the chairperson of the competent Government commission, urging every time to be given additional premises because the existing ones could not accommodate a single extra staff member apart from those already there. The Commissioner received only one response, in September 2005, which pledged assistance in addressing the problem as a matter of priority, and the Head of the Directorate made a verbal promise in early September 2006 to resolve the issue within a month.

In October 2007, the Commissioner approached the Minister of Health, as the newly-appointed chairperson of the competent Government commission, with a repeated request for urgent addressing of this issue. On that occasion, and also in communication with the Minister of Justice in late 2007, the Commissioner was reassured this issue would be resolved.

Notwithstanding all these efforts and the fact that the Head of the Republic Property Directorate repeated his promise in September 2007, the situation in this regard remained unchanged at the end of 2007: the Office is drastically understaffed measured by the approved job classification, the budget allocations and the Human Resources Plan.

As a direct consequence of this lack of any visible effort on behalf of the authorities to resolve this issue is that some 800 cases filed by complainants whose right to access information was violated are pending resolution through no fault of the Commissioner, even though they are well past the 30-day deadline set by the Law within which the Commissioner was required to pass a decision. It should be noted that a piece of information becomes irrelevant if it is not timely provided. The dramatic increase in the scope of work is evident from the fact that the Office had more than 1800 cases in 2006, as opposed to about 450 in

the second half of 2005 and some 1700 cases in 2007. Due to the understaffing problem, the Commissioner performed primarily those duties and responsibilities that cannot be delayed.

Before the conclusion of this Report, the Commissioner received verbal information from the Republic Property Directorate confirming that an agreement was reached in connection with the issue of providing additional office premises for the Commissioner's Office and that implementation was pending.

The Commissioner hopes these expectations will become reality, but reminds that it will take months after hiring new staff to repair the damage caused by delays in processing complaints.

5. PUBLICITY OF COMMISSIONER'S WORK

All information concerning the Commissioner's work is available at Commissioner's Internet presentation, at www.poverenik.org.rs. This includes both information concerning the implementation of the Law on Free Access to Information of Public Importance and information on the Commissioner's Office itself. The publicity of information in connection with the implementation of the Law is ensured through public announcements, opinions and advice given on request from public authorities, or opinions and advice formulated by the Commissioner on a case-by-case basis in response to complaints, some of which are published in the Information Memorandum issued by the Commissioner.

Information in connection with the operations of the Commissioner's Office, statistics on case handling and decisions made and information pertaining to the approved budget and its execution, salaries, available equipment for work, organization, staff etc. is contained in the Information Memorandum on the Commissioner's Work, which is also posted on the Website and updated on a monthly basis.

The publicity of work is ensured through reports which the Commissioner submits to the competent authorities, the National Assembly and/or the competent committee of the National Assembly, as well as through reporting to the Prime Minister of the Government of Serbia and the Ministry of Culture as the body responsible for enforcing the Law.

From the commencement of his work, the Commissioner submitted an extraordinary Report on Implementation of the Law on Free Access to Information of Public Importance to the Culture and Information Committee of the National Assembly in November 2005, as well as two regular reports to the National Assembly, for 2005 and 2006 respectively. The Report for 2005 and 2006 were reviewed and endorsed by the Culture and Information Committee, while the National Assembly did not review them. Indeed, the Report for 2006 was the subject of debate between National Deputies (MPs) at the time of Commissioner's reappointment in June 2007.

6. CURRENT SITUATION IN THE FIELD OF EXERCISE OF THE RIGHT OF ACCESS TO INFORMATION OF PUBLIC IMPORTANCE

6.1 Interest in requesting information

The three years of Commissioner's experience with the implementation of the Law on Free Access to Information of Public Importance, the reports submitted by public authorities in connection with the implementation of the Law and the implementation monitoring reports submitted by the NGO Coalition on Freedom of Information have revealed the following aspects of the situation in the field of exercise of the right of free access to information of public importance:

The citizens are markedly less and less reserved when it comes to exercising their right to access information held by public authorities. According to the information contained in some 630 reports submitted to the Commissioner, in 2007 citizens filed about 9,000 requests with public authorities, which is 3,000 requests more than in 2006 and several times more than in 2005, when they filed a mere 2,000 requests.

As these figures are taken from the reports that have been submitted to the Commissioner, and not all public authorities subject to this requirement have gone through the effort of doing so, and as many of those reports are incomplete, it is evident that the actual number of request for information is much, much higher. This is confirmed by disclaimers frequently encountered in the reports submitted by public authorities, namely that they did not keep track of all requests, especially verbal ones, in cases where the requester received the information immediately.

Apparently, the holders of the right to access information held by public authorities are increasingly becoming interested in exercising their right. Data contained in the reports seems to suggest that in 2007 this right was used predominantly by the citizens and their associations – more than 50% of all cases, with the media as a distant second at 25% of all cases, followed by public authorities, political parties and other entities.

As regards the content of requests for information in 2007, issues with greatest appeal for the citizens again included disposal of budget resources, public procurement, privatization of socially-owned and State-owned property, investment and realization of large-scale projects, salaries and staff, but some request for other issues have been frequent as well: actions of different authorities in judicial and administrative proceedings concerning the issuance of various licences and permits, in particular building permits; documents concerning the operational activities of law enforcement agencies; medical records and treatment information; environment protection; animal welfare measures; functioning of local self-government bodies, funding of political parties and the media etc. The citizens are obviously still very much interested in information that is or could be related to actual and potential corruption and it is not infrequent that a requester is at the same time a damaged party.

6.2. How public authorities handle requests

There has been certain progress in the actions taken by public authorities pursuant to requests for information, but the still too high number of complaints submitted to the Commissioner seems to indicate that public authorities are still not quite willing to grant access to all information about their work that ought to be available to the public in accordance with the Law and tend to provide information only after a requester has lodged a complaint.

This is supported by the fact that, of the total number of resolved complaints, only 3.1% were ungrounded and as many dismissed for procedural reasons, which seems to support the claim that requests for information submitted to authorities of first instance are still rejected without justification or are not handled in accordance with the Law.

What is worrying is that there are still too many complaints against the so-called “silence of administration”, although the Law on Free Access to Information of Public Importance does not recognize such procedural situation and envisages liability for infringement in those cases. This is supported by the fact that only 3.87% of all complaints lodged with the Commissioner concern decisions on refusing access to information, while all the remaining cases are related to complaints for failure to act upon request or complaints for rejection of requests in the form of communication addressed to the requester.

In a large number of cases, as many as 64.95%, complaint proceedings were terminated because the public authorities concerned immediately granted access to information following interventions by the Commissioner – up by 20% compared with 2006. This goes on to confirm our opinion stated elsewhere that it takes only a little more willingness, knowledge and responsibility to please the citizens, the media and all others who requested information and to reinforce their trust in public authorities, while at the same time avoiding the unnecessary administration of complaints, costs of proceedings and liability for infringements.

The reason most frequently cited as the grounds for withholding requested information was alleged document confidentiality, without supporting evidence verifying that such measures are aimed at safeguarding an overriding interest, as required by the Law. Another frequently used excuse was that a requester did not have justified interest to know because he/she was not party to a procedure held before a public authority to which the information relates, which is also inadmissible as a reason for denying access to information. There have also been cases of ungrounded denial of access with reference to legislative provisions on privacy or on abuse of the right to information because a person filed several requests, even though the information in those cases concerned operations of public importance, e.g. information on salaries and other emoluments from the budget for public office holders, recruitment of civil servants etc.

Public authorities have, in most cases, rejected the requests for information by sending a communication, which contravenes the provisions of the Law, under which the public authority concerned is required to pass a decision, give the rationale behind its decision to reject a request, provide evidence that the purpose of such denial of access to information is to safeguard an overriding interest, list the possible harmful effects of disclosure and include instructions on available remedies.

There have also been cases in which access to information was denied to other public authorities, notwithstanding the fact they filed written requests with references to the Law on Free Access to Information. This is not only contrary to the provisions of this Law, but also violates the well-known duty of mutual cooperation between public authorities.

A new development in this field is the fact that, in 2007, the right to access information was also used by representatives of political parties, both the ruling majority and the opposition, who apparently sought information from bodies led by their political adversaries.

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 6.2% of the total of lodged complaints were refused or rejected by the Commissioner on the grounds of substantive law or procedural requirements, which is even lower than in 2006.

In only 91 of public authorities (about 14%) of the total 628 that submitted reports, the head officer appointed an officer responsible for complying with requests for access to information, whereas none of the remaining ones did so. The commissioner's experience shows such that this practice of the authorities is not good, particularly in larger agencies with many organizational parts, which are usually dislocated from the headquarters of the agency. This certainly causes difficulties in the exercise of rights when requesters do not reside in the town/city where the agency has its headquarters, and also makes the dispatch of documents more expensive. In addition to the Ministry of Internal Affairs, quoted as a positive example in the 2006 Report, which made substantial progress with respect to the level of exercise of this right, the Treasury Department of the Ministry of Finance deserves to be commended for the same reasons in 2007.

Authorities that appointed an officer responsible for complying with requests for access to information head a head start in terms of prior knowledge when they attended the numerous seminars organized for their education, which were much less attended by the representatives of authorities that failed to appoint such officers.

Officers responsible for complying with requests for access to information usually perform other duties as well and they claim they are unable to dedicate their full attention to the responsibilities set out in this Law. In addition, they are the ones held liable for infringements where a requested is denied access to information, even if the decision is often not made by them, but by the heads of their authorities. In this context, it would be of utmost importance to adopt the proposed amendments of the Law, under which managers, and not authorized officers, would be liable for.

It appears that the underlying reason for the unwillingness of public authorities to allow the exercise of the right to access information of public importance still stems from insufficient staff education, with occasional obvious attempts at concealing certain information.

6.3. Charges for issuing copies of documents

Under the relevant Decree of the Government of Serbia, the costs of issuance of copies of official documents are deemed to be national budget revenues.

Data presented in the submitted reports show that, in 2007, a total of about RSD 26,000.00 was collected from charges related to requests for information of public importance, which is much higher than in 2006, and that only 21 authorities collected such charges for issuing copies of documents. These included certain courts and magistrates, several Ministries and a number of municipalities.

According to the official information held by the Treasury Administration of the Ministry of Finance, the total amount of funds paid to the designated Treasury Account 840-742328843-30 on this basis in 2007 amounted to RSD 17,381.66, which was more than RSD 8,000 lower than the amounts stated in the reports submitted to the Commissioner. This difference between reported figures and official data provided by the competent authority could mean that some authorities directed the resources to their own accounts, instead of the budget account designated for this purpose, which the Ministry of Finance introduced in late February 2007. This fact could be relevant to bodies responsible for budget audit, but they bear little significance for the Commissioner from the aspect of exercise of the right to information.

Last year there were individual cases in which charges for issuing copies of documents were higher than the amount of necessary costs, and some authorities have been collected stamp duty on requests for information in accordance with the regulations on administrative charges, which is incompatible with the freedom of information regulations. In order to address the obvious lack of clarity as regards the bases for administrative charges in these procedures, the Commissioner initiated and the Ministry of Finance backed amendments to the Administrative Charges Law in this context. Once adopted, these amendments will remove all dilemmas regarding this issue.

Where the Commissioner learned about cases of collection or attempted collection of charges higher than those set by the law, he insisted on the application of the Law on Free Access to Information of Public Importance and drew attention of the public authorities concerned to the malpractices inconsistent with the Law.

None of the public authorities that submitted reports for 2007, except Belgrade City Municipality of Palilula and the City of Nis, did not earmark funds in their budgets for compliance with this Law, even though there is a need for such action, which was made evident in particular by the actions of judicial authorities.

6.4. Organization of training and maintenance of information storage media

Some 47% of the public authorities that submitted their reports specified they held staff education and training activities in 2007 in connection with the implementation of the Law on Free Access to Information of Public Importance. 25% of them stated they held no such training, while about 26% of authorities did not include any information in this regard. These figures are close to the 2006 level and their value is obviously very relative and far from encouraging. It is apparent that, setting aside the abovementioned training activities organized by the Commissioner and his office jointly with relevant public authorities and

NGO, only a small number of public authorities actually carry out training activities for their staff in order to familiarize them with the provisions of the Law and the ensuing duties and responsibilities.

Apart from being an obligation laid down by the law, training is beyond doubt the single most important precondition for consistent application of the Law on Free Access to Information, which is why the Commissioner advocates and calls for this issue to be included in the mandatory curriculum of civil servants' professional upgrading, which would create conditions for consistent implementation of the binding recommendation of GRECO (Group of States against Corruption, under the Council of Europe).

As regards the requirement for public authorities to maintain regularly their information storage media (paper documents, tapes, films, electronic media etc.), more than half of those that submitted their reports indicated that they execute this obligation, while the number of those that stated expressly they did not undertake any such measures declined sharply compared with the previous year; one third of the authorities that submitted their reports made no statement regarding this legal obligation. This situation is far from satisfactory, as it shows that a not insignificant number of authorities disregard the issue of regular maintenance of their own documents, which is a prerequisite for retrieving requested information as soon as possible. An evaluation of the actual situation regarding compliance with this obligation by the authorities entails supervision, which does not as yet exist in this respect.

6.5. Submission of reports

Under Article 43 of the Law on Free Access to Information of Public Importance, the authorized officer of a public authority shall submit annual reports to the Commissioner on the activities of the body undertaken with the aim of implementing the Law. In addition to public authorities, this provision covers also all other bodies set up under public law treated as public authorities for the purposes of the Law on Free Access to Information, including: territorial autonomy bodies, local self-government bodies and organizations vested with public powers.

In connection with the preparation and submission of annual reports, the Commissioner addressed a letter in mid December last year to almost all public authorities covered by this legal requirement. This was reinforced by public announcements, in which the Commissioner called on all public authorities to comply with this requirement by 20 January 2008, inclusive.

Reports on Implementation of the Law in 2007, as of the date of conclusion of this Report, were submitted by more than 630 authorities, twenty of which were not even required to do so under the Law. Measured by the number of authorities covered by this requirement, there were about 100 more reports in 2007 than in the previous year. Given that there is no catalogue of authorities deemed to be public authorities required to submit reports for the purposes of this Law, and the category of organizations vested with public powers cannot be precisely defined without a relevant survey, it is impossible to state the exact percentage of compliance with the requirement to submit reports.

All 6 highest government authorities - National Assembly, President of the Republic of Serbia, Government of the Republic of Serbia, the Supreme Court of Serbia, the

Constitutional Court and the Republic Prosecutor – have submitted their reports. Out of the 22 Ministries, three of them did not submit reports: the Ministry of Infrastructure, the Ministry of Foreign Affairs and the Ministry of Telecommunications and Information Society. At the provincial level, this requirement was not observed by the Assembly, by the Executive Council and by all Provincial Secretariats of the Province of Vojvodina. All 4 cities in the country submitted their reports. Judicial authorities tend to comply with this requirement to a greater extent than other authorities. Thus, reports were submitted by all commercial and district courts, all district prosecutors' offices, more than 92% of municipal prosecutors' offices, about 80% municipal court and about 80% of magistrate's courts. Compared with the previous year, the most significant improvement is that of courts, in particular district courts, and of district prosecutors' offices, followed by municipal prosecutors' offices and magistrate's courts.

Out of the 30 public enterprises (Republic level and Provincial level) vested with public powers and hence required to submit annual reports to the Commissioner, 19 of them (63.33%) complied, which is much more than last year, when only 3 enterprises submitted their reports. However, this year's result is still far from satisfactory, given that the citizens and the media have a keen interest in ensuring the transparency of operations of these bodies, which handle significant amounts of public resources and whose services are used by virtually all citizens. A number of other Republic-level organizations that are also vested with public powers, including agencies, institutes, directorates etc., some of them with considerable public powers, e.g. the Privatization Agency, the Business Registers Agency, the Republic Broadcasting Agency, the Drugs Agency, the Civil Engineering Directorate of Serbia and the Republic Property Directorate, also failed to submit their reports.

The worst situation is found at the local level. Reports were submitted by 91 municipalities, or 51.70%, which was even lower than in the previous year. Given that 2007 was the third year of implementation of the Law, this information about the way local authorities treat their duties under the law gives reason for great concern.

Overview of information on the number of received reports:

Public authority	Total No. of public authorities	Submitted report	% of submitted reports	Note
Highest authorities (National Assembly, President, Government, the Supreme Court, the Constitutional Court and the Republic Prosecutor)	6	6	100 %	
Ministries	22	19	86.36%	Reports not submitted by Ministries: - of Infrastructure, - of Foreign Affairs and - of Telecommunications
Authorities of the Autonomous Province of Vojvodina	19	19	100%	
District courts	25	25	100%	
Municipal courts	121	98	80.99%	
Commercial courts	19	18	100%	The court in the town of Novi Pazar is non-functional
District prosecutors' offices	25	25	100%	
War Crimes Prosecutor's Office	1	1	100%	
Municipal prosecutors' offices	103	95	92.23%	
Magistrate's courts	160	129	80.63%	
Cities	4	4	100%	City of Nis – by Mayor only; City of Kragujevac – by City Council only
Municipalities	176	91	51.70%	
Public enterprises (Republic and Provincial level) required to submit reports	30	19	63.33 %	
Other public authorities		84		
Total		633		

Just like last year, in 2007 some authorities, e.g. courts, instead of reports on the measures they took to comply with the Law on Free Access to Information of Public Importance, submitted to the Commissioner their full annual activity reports, which is not required by the law. This speaks of low levels of knowledge about this Law and the

obligations arising from it, both in terms of formal compliance with the reporting requirement and in terms of essential implementation of the Law.

6.6. Preparation and publication of Directories of Activities

Under Article 39 of the Law on Free Access to Information of Public Importance and the Instructions on Publication of Directories, public authorities and other bodies granted the status of public authorities within the meaning of the Law shall at least once a year publish a directory with the key facts about their work. They are required to produce the Directories in electronic form and to publicize it as required under the Instructions, i.e. on their Web presentation, with the possibility of publishing the Directory also in other forms in addition to this one.

This Directory is undoubtedly crucial from the aspect of implementation of the Law on Free Access to Information. By publishing the Directory, public authorities make available to the citizens and the media the key facts about their operations, HR and other capacities, organization, powers, spending of budget resources, types of services they render and procedures for the exercise of requester's rights, types of information available to the authorities etc. Preparing and updating this document gives public authorities a chance to review their organizations, set procedures and to eliminate possible shortcomings, while at the same time affirming the body's operations.

According to the reports, this requirement was fully observed by 197 public authorities that published Directories on their Websites. This is a slight increase compared with 2006.

The requirement was also partially observed by further 217 authorities that produced printed directories, but failed to publish them as instructed by the Commissioner. Most of them had objective reasons for failing to do so, namely they did not have their own Internet presentations. However, they failed to make use of the possibility, specified in the Instructions, to publish the directory on the site of their immediate superior authorities, of authorities that control their operations or of authorities that delegated powers to them, this was, for example, how commercial courts posted their directories.

Overview of published directories by structures of authorities:

Public authority	Total	Directory prepared and posted on Website	%	Directory prepared, but not posted on Website	Note
Highest authorities (National Assembly, President, Government, the Supreme Court, the Constitutional Court and the Republic Prosecutor)	6	5	83,33%	1 Republic Prosecutor's Office	
Ministries	22	15	68,18%	1 (Kosovo and Metohia)	Not posted by Ministries of: - Telecommunication. - Infrastructure - Agriculture, - Foreign Affairs, - Youth,
Authorities of the Autonomous Province of Vojvodina	19	16	84,2 %	1	Not posted by the Provincial Secretariat of Energy
District courts	25	10	40%	6	
Municipal courts	121	19	15,70%	46	
Commercial courts	19	16	84,21 %	2	
District prosecutors' offices	25	1	4,00 %	17	
War Crimes Prosecutor's Office	1	1	100%	-	
Municipal prosecutors' offices	103	8	7,76%	47	
Magistrate's courts	160	8	5,00 %	65	
Cities	4	4	100%	-	
Municipalities	176	44	25 %	15	
Public enterprises (Republic and Provincial level) required to submit reports	30	17	63,33%		
Other public authorities		33		16	
Total		197		217	

All six highest authorities produced directories of their operations and, except for the Republic Prosecutor's Office, they all posted the directories on the Internet presentations. This is in contrast with 2006, when two authorities had only printed directories. The National Assembly and the Constitutional Court have announced changes in their Internet presentations and preparation of new directories due to substantial changes. The Republic Prosecutor's Office will publish the directory once its Internet page is developed, because it was, as they stated in the report, "... still under construction", adding that the directory, at this stage, could be accessible to the public "from certain IT fields."

As regards Ministries, the situation in 2007 was even worse than in 2006, even with all reminders sent by the Commissioner through letters addressed to Ministers and persons authorized by Ministers, public announcements and verbal contacts. Unlike 2006, when all Ministries formally complied with this duty, with apparent differences in terms of contents of their documents, at the end of 2007, nine out of 22 Ministries did not publish their directories, including some that had published directories on their Websites in 2006.

Directories of operations, until the date of conclusion of this Report, had not been posted on the Web by: the Ministry of Telecommunications and Information Society, the Ministry of Agriculture, Forestry and Water Management, the Ministry of Youth and Sports, the Ministry of Foreign Affairs, the Ministry of Kosovo and Metohia and the Ministry of Infrastructure; it should be noted that the last two Ministries listed here do not even have their own Websites. The Ministry of Religions stated in its report that the Directory was under preparation, even if the Commissioner recalls that this Ministry published its directory on the Website of the Government of Serbia in December 2005 because it lacked its own Internet presentation. The Ministry of Kosovo and Metohia has a printed directory and it will publish it "after they have updated their Website architecture."

Upon explicit request sent to all Ministries that failed to comply with this requirement even as 2008 began, 6 Ministries informed the Commissioner they would do so as soon as possible; two of them have done so in the meantime, and one Ministry has complied partially, while three Ministries failed to even respond. This is why the Commissioner will formally, in accordance with the Law, pass a decision ordering the authorities concerned to comply with this requirement in a consistent manner and demand of the Ministry of Culture to carry out an investigation and identify persons responsible for these infringements.

As regards the duty to update the information contained in the directory on a regular basis and at least once a month, the situation is better than last year, because two thirds of all Ministries have been doing so on a regular basis, while the remaining ones either did it periodically, usually when the Commissioner brings up this issue, or did not update their directories at all since they posted them. This goes on to prove that the latter group published their directories only to meet a formal requirement.

The quality of published directories is uneven, ranging from those comprising only facts about their organizations, approved budget etc., which can usually be found elsewhere on the Website, to those that contain high volumes of useful and current information in connection with the operations of the authority concerned. This issue was one of the central issues in all seminars organized by the Commissioner for the purposes of public authorities, especially those attended by representatives of Ministries in September 2007. This was preceded by a thematic meeting in which an analysis of directories published by Ministries

was presented, with relevant recommendations for introducing uniform standard to make these documents useful.

As regards judicial authorities, even though they generally have problems with technological aspects of these actions, the situation is becoming more positive, as they publish more directories on their Websites and produce more printed directories in the absence of Internet presentations. This shows their commitment to this legal requirement. In this context, attention should be drawn to the results of commercial courts, lead by the Higher Commercial Court. Public prosecutors' offices have also improved their performance markedly compared with the previous year. The same is true also of magistrate's courts.

As regards Republic and provincial level public enterprises, the situation in 2007 was somewhat better than in 2006 (17 directories published on the Web), but only with respect to the number of posted directories. In terms of content of the published directories, there was hardly any progress, because much information, including information on salaries, is identified as confidential; however, this is typical also of other organizations vested with public powers, including agencies, institutes, funds, directorates etc.

The authorities of the Autonomous Province of Vojvodina complied with this requirement in accordance with the conclusions of the discussions of the commissioner with the President of the Provincial Executive Council.

As regards local authorities, the situation has improved in that all four cities have published their directories, including the City of Nis, which only partially complied with this requirement last year. However, when it comes to municipalities, the number of municipalities that produced their directories is identical as in 2006 – a total of 59, with a shift in the form of directories. According to the reports for 2007, 44 municipalities have published their directories on Websites and 15 in print, unlike 2006 when, also according to the reports, there were 51 directories on the Web and 8 printed directories. The fact that only one quarter of the total number of municipalities made the effort to comply with this requirement in the third year of implementation of the Law is very worrying, because these authorities usually provide services to the citizens and the citizens, as a rule, are the ones in the greatest need for information on their rights and on applicable procedures.

Because of this situation in terms of compliance of local authorities with the Law, the Commissioner has held several talks with the representatives of the Standing Conference of Towns and Municipalities, so as to ensure that the ongoing projects aimed at introducing a code of ethics for local officials also focus on these requirements under the Law.

7. RECOMMENDATIONS FOR IMPROVING THE SITUATION IN THE FIELD OF ACCESS TO INFORMATION OF PUBLIC IMPORTANCE

We have seen increasing compliance with the Law on Free Access to Information of Public Importance and this is certainly an encouraging sign. However, almost none of the problems highlighted in previous Annual Reports as serious impediments for the implementation of the Law have been resolved so far, save for the issue of endorsement of the foundation instruments of the Commissioner's Office by the National Assembly. What is particularly worrying is that last year's report of the Commissioner was endorsed in full by the competent committee of the National Assembly and it contained almost identical recommendations; also, the situation has remained more or less the same as at the time of reporting in 2005, but none of this has resulted in any actions being taken. Thus, problems that have been evident for almost three years now, which effectively hamper the exercise of the freedom of information, have not been addressed, and this in turn prevents us from achieving better results in terms of democratic control of the government by the public, not to mention the fight against excessive spending, abuse and corruption.

The Commissioner therefore proposes that the National Assembly decide it is necessary, without delay, to:

1. ensure comprehensive enforcement of the Law, including launching of infringement proceedings, in accordance with the proposed amendments to the Law;
2. activate the available mechanisms to enforce the decisions of the Commissioner by the Government of Serbia;
3. expedite the procedure of enactment of the Amending Bill to the Law on Free Access to Information of Public Importance, as well as regulations complementary with this Law, in particular the Confidential Data Classification Law and the Personal Data protection Law;
4. ensure that the procedures for the enactment or amendment of laws take into account the need to harmonize all provisions pertaining to the publicity of operations and availability of information with the Law on Free Access to Information of Public Importance;
5. include the issue of free access to information of public importance in the training curricula for State examinations for prospective staff of public authorities and other bodies;
6. ensure that the competent services of the Government of Serbia provide additional premises to enable proper operations of the Commissioner's Office.

The measures suggested above would eliminate key obstacles and facilitate the implementation of the Law on Free Access to Information of Public Importance.

COMMISSIONER
Rodoljub Sabic (signed)