



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

**REPORT
ON IMPLEMENTATION OF THE LAW ON FREE ACCESS TO INFORMATION OF
PUBLIC IMPORTANCE
IN 2008**

**Belgrade
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TABLE OF CONTENTS:

1. ON THE LAW ON FREE ACCESS TO INFORMATION	2
1.1. Content of the Law and protection	2
2. ON THE COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE	2
2.1. Nature of the institution	2
2.2. Election of the Commissioner	4
2.3. Normative framework	4
2.4. Human Resources	5
2.5. Assets	5
3. OVERVIEW OF COMMISSIONER'S ACTIVITIES	7
3.1. Decision-making procedures	7
3.2. Information on resolved cases	8
3.2.1. Complaints	9
3.2.2. Lawsuits in administrative proceedings	13
3.3. Activities aimed at enhancing the public profile of activities	13
3.3.1. Civil servants training and activities undertaken to promote the public interest to know.....	13
3.3.2. Other activities and events relevant for promoting the right to access information..	15
3.3.2.1. Initiatives concerning regulations	15
3.3.2.2. Cooperation with state bodies and organizations	16
3.3.2.3. Cooperation with the non-governmental sector and with the media	17
3.3.2.4. Cooperation with international organizations	17
3.3.3. Activities in connection with the preparation and publication of the Directory on Operations of Public Authorities.....	18
4. ADMINISTRATIVE AND OTHER OBSTACLES TO THE IMPLEMENTATION OF THE LAW	19
4.1. Failure to enforce the Law and absence of liability for infringements.....	19
4.2. Failure to enforce decisions of the Commissioner	20
4.3. Inadequate normative environment	21
4.3.1. Relation of the Law on Free Access to Information to other laws	21
4.3.2. Lack of relevant complementary regulations	22
4.3.3. Thee issue of insufficient premises	23
5. PUBLICITY OF COMMISSIONER'S WORK	24
6. CURRENT SITUATION IN THE FIELD OF EXERCISE OF THE RIGHT OF ACCESS TO INFORMATION OF PUBLIC IMPORTANCE	24
6.1. Interest in requesting information.....	24
6.2. How public authorities handle requests	25
6.3. Charges for issuing copies of documents	27
6.4. Organization of training and maintenance of information storage media.....	27
6.5. Submission of reports	28
6.6. Preparation and publication of Directories of Activities	30
7. RECOMMENDATIONS FOR IMPROVING THE SITUATION IN THE FIELD OF ACCESS TO INFORMATION OF PUBLIC IMPORTANCE.....	33
8. PLAN FOR 2009.....	35

Report on Implementation of the Law on Free Access to Information of Public Importance in 2008

1. ON THE LAW ON FREE ACCESS TO INFORMATION

1.1. Content of the Law and protection

The right on free access to public information is established under the Law on Free Access to Information of Public Importance (hereinafter: the Law) enacted in early November 2004. The basic content of the Law is the right of citizens to access documents held by public authorities, firstly the right of the requester to be advised by the authority whether it holds or has access to the requested information, then the right to access the document containing the information and finally the right to receive a copy of the document.

The Law and the Constitution of the Republic of Serbia guarantee this right for everyone: citizens, the media, any individual or legal entity, thus establishing a good mechanism of control of Government and other public authorities' operation by the citizens.

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

Enforcement before the Commissioner is achieved in complaint proceedings commenced by the party which has been withheld information by an authority or which has not received any notification upon filing a request. A complaint against the decisions of six 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 cannot be lodged with the Commissioner.

Judicial protection in administrative proceedings 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 through the Commissioner.

2. ON THE COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND PERSONAL DATA PROTECTION

2.1. Nature of Commissioner's institution, authorities and responsibilities

The Commissioner for Information of Public Importance is an independent and autonomous public authority, established under the Law on Free Access to Information of Public Importance in 2004. Under the Law on Personal Data Protection of October 2008, he was renamed Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: the Commissioner) upon receiving new powers as of 1 January 2009.

The Commissioner is appointed by the Decision of the National Assembly of the Republic of Serbia. The Commissioner is a notable expert appointed for a seven years term of office, with a possibility of max. two reelections.

The person who has competences or is employed in a State body or a political party cannot perform the function of the Commissioner. The Commissioner exercises his duties independently. He/She shall neither request nor accept orders or instructions of other public authorities or other individuals and may not be held responsible for opinions or suggestions given while performing his duties. Pursuant to the Law, the Commissioner has a Deputy, appointed by the National Assembly, at the Commissioner's proposal, for a seven years term of office as well, with a possibility of max. one reelection.

In the field of 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.

The Commissioner's duties under the Law are to:

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.

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

2.2. Election of the Commissioner

By the Decision of the National Assembly of the Republic of Serbia, RS No. 91 of 22 December 2004, the Commissioner for Information was appointed Rodoljub Sabic, who holds a university degree in law, a lawyer from Belgrade. He was reelected subsequently, prior to the expiration of his term of office, after the enactment of the new Constitution. He was elected by the National Assembly Decision RS No.19 of 29 June, therewith extending his term of office as of the date of first appointment. By the Decision of the National Assembly, RS No. 9 of 3 April 2006, Stanojla Mandic, who holds a university degree in law, the then Secretary of the Commissioner's Office was appointed Deputy Commissioner.

2.3. Normative framework

The Commissioner passed new instruments governing the operation of the Office of the Commissioner for Information of Public Importance (hereinafter: the Commissioner's Office), in January 2005, according to which the Commissioner's Office should have 21 employee. These instruments were endorsed by the National Assembly on 23 May 2005, in accordance with the Law.

In 2006, the Commissioner passed new instruments governing the operation of his Office, harmonized with the new Civil Servants Law and the Law on Salaries on Civil Servants and Appointees, but the number of staff remained unchanged. These instruments were endorsed by the National Assembly after more than a year – in November 2007. These acts were enforced during the year 2008.

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 decisions of public authorities purported to violate the right to access information of public importance; for performing duties aimed at implementing and improving the right to access information of public importance; and for promoting transparency in the operations of public authorities and other duties relevant to the exercise of the Commissioner's powers, as well as legal, financial, administrative and other duties necessary for proper functioning of the Office.

Subsequent to adoption of the Law on Personal Data Protection, which entered into force on 4 November 2008, and became applicable on 1 January 2009 the Commissioner's sphere of competence was extended to personal data protection operations. With relation to that in November 2008 a new internal organization and job classification instrument and amendments of the Decision on the Operations of Commissioner's Office were prepared. According to these instruments, which were endorsed by the National Assembly Decision RS No. 2 of 23 January 2009, the Office should have a total of 69 employees distributed in 5 Departments plus the Commissioner's Cabinet.

2.4. Human Resources

Under the endorsed systematization in 2008, apart from the Commissioner, the Office should include 20 executives: Secretary of the Office, two Assistant Secretaries and Head of Cabinet, appointed by the Commissioner. Of the remaining 16 posts, 11 should be for persons with university level qualifications and 5 for persons with secondary vocational qualifications.

The Human Resources Plan envisaged that additional 15 executives be employed in the Office. The Ministry of Finance approved this Plan in its decision No. 400-103/200020008-001-013 of 25 January 2008.

The Human Resources Plan could not be realized in 2008 since it depends solely on the willingness of competent Government services to provide additional office premises. Office premises appointed to the Commissioner's Office by Government Resolution 77 No. 361-1847/2005-002 of 27 March 2008 remained property of the Ministry of Justice.

Thus, the actual staff of the Commissioner's Office included Deputy Commissioner and 6 other employees, thereof three with university level qualifications for performing specialized tasks (Secretary and two Assistant Secretaries) and three for performing administrative and technical duties (two administrative officers and a driver). This means that, from the outset, the Office has operated with only a mere 1/3 of the number specified in the job classification.

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.

2.5. 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 inappropriate for the actual needs and increase in the caseload of the Office; and caused the work to be performed by an inadequate number of employees and under the constant pressure of ever growing number of unresolved complaints, which due to the nature of the matters contained therein require to be resolved as soon as possible.

The available equipment used by the Office was 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.

For the year 2008, the Commissioner and his services received an allocation of RSD 34.981.000.00 of which RSD 20.609.330.76 or 58.92 % were spent. The objective inability to hire the necessary staff was the main reason for under-utilization of approved budget resources in 2008, the same as in the previous years when 47-74 % of allocated resources were used.

This trend of relatively low use of budget resources as a consequence of involuntary economizing due to inability to hire the necessary staff, but also due to

rational use of budget resources, required the Commissioner's frequent interventions 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.

Overview of approved and utilized resources in 2008

ITEM.	DESCRIPTION	APPROVED	UTILIZED	%
411	Salaries and fringe benefits	23.033.000	11.472.073	52,07
412	Contributions	4.133.000	2.053.501	49,69
413	Remuneration in kind	40.000	0	0
414	Social outlays	70.000	0	0
415	Staff compensation	264.000	116.070	43,97
416	Rewards and bonuses	53.000	50.457	95,20
421	Recurrent expenses	1.231.000	1.101.177	89,45
422	Travel costs	166.000	85.050	51,23
423	Contracted services	4.289.000	3.828.326	89,26
424	Specialized services	0	0	0,00
425	Repairs and maintenance	90.000	54.576	60,64
426	Material	1.771.000	1.1747.860	98,63
482	Taxes and charges	41..000	40.122	97,86
512	Machines and equipment	800.000	21.640	2,70
TOTAL		34.981.000	20.60.331	58,92

Certain Commissioner's activities involving the promotion of the right of the public to access information and regional and local level training of civil servants, as well as raising the capacities of his Office in the form of expert assistance and assistance in designing his Internet presentation, which shall be discussed in more detail later on, were financed within the projects of international organizations.

Under the National Investment Plan budget resources earmarked for the promotion of the right to free access to information of public importance, through the Ministry of Public Administration and Local Self-government, which amounted up to RSD 6 million at first, were subsequently reduced to RSD 2.4 million.

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. The latter has never happened.

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 2008, the Commissioner's Office had a total of 2,345 cases. Of that, 1,517 cases were received in the course of 2008, while further 828 remained from earlier periods. The Office resolved a few more cases compared to the number received over the year, i.e. 1,521 cases, which compared to the total number of cases including those from the previous year amounted to 64.84%. The remaining 824 were forwarded into 2009.

A few more cases were resolved compared to the number received over the year, i.e. 1,521 cases, which compared to the total number received over the year along with those forwarded from 2007, amounted to 64.86 %. The remaining 824 were forwarded into 2009.

In comparison with the situation of 2007, when the Office handled a total of 2,367 cases and resolved 1,539, it is evident that the caseload in 2008 was almost the same,

and that it was more than 22% higher than in 2006 and almost five and a half times higher than in 2005. Also, the number of resolved cases in 2008 was almost equal to that in 2007, with the difference that the last two months of 2008 a great deal of time and effort was spent by the Commissioner's Office, even though in the lack of HR and logistical assumptions, on preparations to create so-as conditions for exercising new powers, established under the Law on Personal Data Protection. (of 23 October 2008).

The resolved cases include:

- 1.145 complaints, of which only 90 (7,86 %) related to actual decisions rejecting a request for information, while the remaining ones concerned
- relevant procedure was commenced ex officio in three actions related to the creation of the Report on activities of State Body.
- 10 responses to claims in administrative proceedings concerning failure of public authorities to act on requests for access to information of public importance or unsubstantiated rejection of requests, against Commissioner's decisions,
- 26 opinions concerning the implementation of the Law on Free Access to Public Information,
- 35 responses to requests seeking information of public importance from the Commissioner,
- 60 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,
- 126 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,
- 104 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,
- 12 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 1,145 resolved claims, only 102 (8.9 %) were ungrounded or formally deficient and urged the following decisions:

- 60 decisions (5.24 %) rejecting complaints as ungrounded,
- 42 conclusions (3.67%) rejecting complaints on formal grounds – untimely or premature submission, inadmissibility or declined jurisdiction by the Commissioner.

The remaining 1,043 complaints which were found to be grounded were resolved by the Commissioner as follows:

- In 280 cases the (26.84 %) 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 20 cases were joined and a

single decision was used to resolve two or more complaints against the same authority.

- In 755 cases (72.38%) 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 634 conclusions on termination of proceedings, because 121 cases were joined with other cases.
- In 8 cases (0.77 %) rescinded the challenged first-instance decision and returned the case to the authority of first instance to pass a new decision in repeated proceedings.

The subject matter of requests were mostly information relating to: disposal of budget resources and donor funds; running the procedure before the administrative bodies for the purpose of exercising any other right or before the judicial bodies; international and domestic projects; investments; public procurement; legality of issuance of various licenses 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.

The Statistical information shows that in 2008 most complaints to the Commissioner were related to national authorities and organizations, local authorities, judicial authorities, organs of local self-government, and public companies, and the least number was related to provincial bodies.

From the information on outcomes of complaint proceedings presented above it follows that in some 70% 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 20% of them comply with the request after the Commissioner passes a decision acting on the complaint.

Thus, the Commissioner's interventions following complaints in 2008 ensured access to information for requesters in more than 90% of all cases, some of which gained special publicity, e.g.:

- information on representation costs and salaries in public enterprises (Airport »Nikola Tesla«, NIS, PE Electric Power Industry of Serbia, Transnafta-Pancevo, Serbian Textbook & Teaching Equipment Company, Air Traffic Services Agency, PE »Ski Resorts of Serbia«, PE »Putevi Srbije« (Roads of Serbia) and RDU RTS-Serbian Broadcasting Corporation etc. agency and directorate founded by the Republic of Serbia), following a request from the Administrative Committee of the National Assembly,
- servicing documentation of hemodialysis machines of the Republic-level Health Insurance Fund, following a request from the Renal Disorder Patients Association,
- tender documentation, contracts and other information of the Privatization Agency and Agency for Deposit Insurance concerning equity i.e. shares sale of for the following companies: BPI, Belgrade Shipyard, DDOR Novi Sad and RTB Bor (Group Mining and Smelting Complex Bor).
- information from the Ministry of Defense on allocation of apartments of the Serbian Army, Cvecara 2, on foreign donations for digitalization of military records and enlisted Army promotions,
- information on PE »SDPR« concerning operations of the company in Iraq,

- numerous information on budget resources usage and other information on operations of the Municipality of Zrenjanin etc.
- information from the President of the Lucani Municipality on revenues and expenses of the manifestation „Sabor trubaca“ in Guca etc.

Intelligence and Security Agency should also be mentioned when discussing the greater readiness of public authorities to comply with the request to access information and perform of other duties under the Law. Although, it is a single case it surely deserves attention. Namely, in previous years, Intelligence and Security Agency had an inadmissible, ignorant attitude towards the Law on Free Access to Information of Public Importance, civil and public rights and towards its own obligations under the Law as well.

Therefore the Commissioner felt obligated to issue a warning in the last year's Report on Implementation of the Law that this attitude should not be tolerated, as no one should be allowed to put him self above and beyond Law. Thus, it should be noted that the Intelligence and Security Agency has taken steps to act upon the request for information, to follow the procedure provided for by Law, to perform its duties and to publish certain information on its operations. It is implicit that the Agency, as well as other public bodies, should promote its relations with the public, but it should also be noted that it has made significant progress thereby last year.

Due attention should also be paid to the case of the return to work, after three years of absence, of "the insider" i.e. the worker of PE "Putevi Srbije", who made a significant contribution to the unraveling of the so called "road mafia" case, following the involvement of the Commissioner and the media that reported on the case.

Positive effects, which are greatly the result of the application of this Law, the Commissioner's actions and measures and the fact that these actions had strong media support, also include recent Government measures concerning salaries and fringe benefits in public enterprises and representation expenses. These measures were introduced subsequent to the joint intervention of the Administrative Committee of the National Assembly and the Commissioner that the relevant information be published.

Statistical information for 2008 shows that public authorities failed to comply with the Commissioner's orders in about 7.5% of all cases of grounded complaints, whereby national and local authorities are almost equally represented. This is evident in some of the cases from 2007 in which requesters did not receive any information or received incomplete information even though the Commissioner passed relevant decisions:

- approval of the Memorandum on the agreement between PE PTT "Srbija" and new owners of Mobtel company by the Office of the Public Defense Lawyer of Republic of Serbia and the Ministry for Infrastrucasturcture;
- information from the Ministry of Interior: on allocation of apartments without an open competition and rank list, on steps taken in criminal proceedings initiated by the Serbian Radical Party relating to "Mobtel" case, in criminal proceedings initiated by the National Movement "Otpor" on official records drawn by the Ministry of Interior in connection with the "sheep molestation" case in the village of Kaculice, on the Serbian Ministry of Interior public procurances in 2006 and 2007, as well as the information concerning verification of the signatures of the national initiative for the Amending Law to the Law on Free Access to Information of Public Importance and the Bill on Data Classification Law;

- information from the Privatization Agency on the sale of DIN "Fabrika duvana" Nis, on tender documentation of the majority owner of "Srbija turist"-Nis, on "Alba"-Novi Sad auction;
- information from PE Airport "Nikola Tesla" on "Bodrum-Milas" Project,
- data from Republic Electoral Commission (RIK) on MP's electoral campaign expenses in May 2008,
- Records from the Ministry of Finance ,Tax Administration on inspections of Water Polo Club „Crvena Zvezda“, and companies „Sever“, „Voda-Voda“, „Si&Si“ etc.,
- Information from RDU RTS concerning Eurovision Song Contest budget, information from the Ministry of National Development and Environment pertaining to issuing the Approval for rehabilitation of the building "Usce Tower" - the ex headquarters of the Central Committee of the League of Communists.

As for public authorities that could be said to have special problems concerning enforcement of the Law on Free Access to Information of Public Importance; according to statistical information on the number of cases of rejected requests or withheld information on Republic level, the Ministry of Interior can be singled out. Nevertheless, it should be noted that this is a large public body holding a vast number of information and subject to a great number of requests for access. Also, the distinct indicator of nonabidance by the law- failure to enforce binding Commissioner's rulings is greatly an inherited problem. For the past three years the Ministry failed to enforce 14 legally binding Commissioner's rulings. In order to surmount this problem the Commissioner for Information established direct contact with the Minister of Interior. The Commissioner estimates that it is viable, that with application of corresponding measures, the Ministry of Interior will achieve an adequate level of enforcement and improve its rapport with the public.

Special attention should be paid, according to the Commissioner, to indications that, in structures subordinated directly to the Government, individuals and even departments are supporting non-enforcement of legally binding Commissioner's rulings by issuing unauthorized and incompetent opinions on the enforcement of the Law on Free Access to Information of Public Importance. The Government is due to put a stop to such intolerable obstruction of justice. In that context the Ministry of Health deserves to be paid special attention, i.e. actions of the Inspection Service therein.

At the local level, the most drastic, practically burlesque case of the violation of the right on free access to information is the case of Cultural Information Centre Vrnjacka Banja. Not only has the centre failed to act upon the requests for information but it has also refused to receive the Commissioner's submissions including the Commissioner's orders.

Apropos some cases in which requesters received no information, even though the Commissioner passed relevant decisions, in 27 of those cases the requesters have appealed to the Government of the Republic of Serbia to enforce the Commissioner's rulings pursuant to Article 28 of the Law

In the report of Secretariat General of the Government it is evident that the Government has taken no action in this context, even in the cases concerning the Government members, i.e. the Ministries, which shall be discussed in more detail later, in the part pertaining to administrative obstacles for the 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, pursuant to the Law in 2008 the Supreme Court has received a total of 23 lawsuits, of which 10 were filed against the decisions of the Commissioner, 3 against the Government of Serbia for failure to act on request for information, 5 for failure to act on request for information, i.e. for rejecting the request, filed to the Supreme Court of Serbia and the Supervisory Board of the Supreme Court and 1 lawsuit each against the National Assembly and the Republic Prosecutor's Office for failure to act on request and two lawsuits against authorities of first instance.

Out of 10 lawsuits relating to the decisions of the Commissioner, two were filed by authorities of first instance, one was rejected and one is awaiting the ruling of the Supreme Court. Out of 8 remaining lawsuits filed by the requesters of information against the decisions of the Commissioner, only two have been ruled-one rejected and the other sustained.

Out of 10 lawsuits filed against the highest government authorities, the Supreme Court has ruled only in 1 case against the Government of the Republic of Serbia by rejecting the lawsuit for formal reasons. The remaining 3 lawsuits filed against authorities of first instance, according to the information obtained from the Supreme Court of Serbia are also awaiting the ruling.

Compared to 2007 when 34 lawsuits were filed against decisions of the Commissioner, there of 13 filed by the authorities ordained by the Commissioner to forward the requested information, in 2008 there is an evident decrease in the number of lawsuits against decisions of the Commissioner, and especially in those filed by the authorities of first instance. This is a positive sign, having in mind the reasons for filing the lawsuits, and also the fact that authorities of first instance did not have a legitimate right to file those lawsuits.

Namely, it can be logically assumed that the reason for filing otherwise inadmissible lawsuits was not ignorance, but that it was actually a means by which the authorities of first instance wanted to postpone the Commissioner's rulings.

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 the course of 2008, significant attention was given to the activities of the Commissioner and his Office 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.

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.

As in the years 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 him self and members of his office have participated in 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 and information classification, the Internet and web presentations, safety and security of biometrics, availability of archive data 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.

Apart from taking part in several seminars for judicial authorities, the Commissioner has also participated in a gathering called "Sudijski Dani" (the Days of the Judges) organized by the Supreme Court of the Republic of Serbia relating to practices in the field of free access to information of public importance.

Following the Commissioner's proposal, 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 2008, and in the curricula for professional examinations of civil servants.

On occasion of the International Right to Know Day, in presence of a great number of media representatives, public authorities and the members of the diplomatic core, a special gathering was held in Belgrade, in September, dedicated to achievements in the implementation of the Law on Free Access to Information of Public Importance. It was supported by ABA CEELI, OSCE Mission to Serbia, Independent Journalists' Association of Serbia, the NGO Coalition on Freedom of Information and USAID, and also used to present a number of public authorities with awards and honors for outstanding contribution to the implementation of the Law.

In order to facilitate the exercise of the public's right to know, the Commissioner's Office posted on its Website in 2008 a Catalogue of public authorities subject to the Law on Free Access to Information of Public Importance. It includes 11 thousand public authorities and electronic addresses of those with Internet presentations on their Websites. It is regularly updated.

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. Nevertheless, its nature is not constitutive, since only a small number of public authorities responded to repeated requests from the Commissioner and provided the requested information for the Catalogue.

The Commissioner's new Website was built with support from UNDP Office in order to promote the right to free access to information. It has the latest technological solutions suitable to the new duties allocated to Commissioner's institution with a possibility to add new components, segments and data bases, in accordance with the new extended powers, as of 1 January 2009. Commissioner's Internet presentation can be accessed by disabled people as well.

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

3.3.2.1. Initiatives concerning regulations

In the course of 2008 the Commissioner had several talks with Minister for Information and Minister of Public Administration, concerning the amendments to the Law on Free Access to Information of Public Importance. The Commissioner's initiative that the Ministry of Culture, together with the Commissioner's Office, prepared amendments to the Law was accepted. This was performed without delay, so that the Ministry, being the competent authority, could forward the amendments to the Government for approval. The Minister of Public Administration supported these amendments by which that Ministry would be entrusted to enforce this Law. Unfortunately the Draft of the Law has not been forwarded to the Government yet. The Commissioner has decided to launch this initiative because Draft Amendment, which was forwarded to the National Assembly at the end of 2007, as a result of the civil initiative in accordance with civil rights to organize and participate in a national initiative, unfortunately hasn't entered parliamentary procedure.

It would be particularly useful if the National Assembly enacted the Amendment to the Law on Free Access to Information of Public Importance, 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 related to violation of the confidentiality requirements applicable under labor law (protection of the so-called "whistleblowers").

In the course of the year the Commissioner has forwarded several other initiatives and suggestions to the competent authorities concerning the drafting or amendment of regulations, i.e. other significant documents, in order to improve and facilitate the exercise of the right to access information and also protection of right conferred by the Constitutional as follows:

- Then Penal Law, concerning simplification the procedure for filing a motion for penal proceedings commenced by the party which suffered the damage,
- The Law on Market on Securities, concerning Shareholders Data in the Central Registry of Securities,
- The Law on Personal Data Registry, concerning exercise of the right to access information in the Birth Registry,
- The Law on Administrative Charges, concerning removal of ambiguities on nonexistence of administrative charges upon requests to access information of public importance,
- The passing of technical regulations for the Telecommunication Agency on subsystems, devices, equipment and installations for Internet Provider Services, concerning solutions for interception of Internet communication,

- The enactment of National Program for EU Integration, in the part relating to Law on Access to Information Amendment.

Almost all initiatives have been implemented.

Unfortunately, the one which is maybe the most important, and which is supported by the Ombudsman, has not been implemented. It is the initiative concerning the controversial Article 45 of the Law on Personal Data Protection, and provisions of the Law on Availability of Information, by which the powers of the competent monitoring body for the implementation of the Law, i.e. the Commissioner for Information of Public Importance and Personal Data Protection, are restricted contrarily to Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data and Additional Protocol to the Convention. The provision introducing the restrictions for the powers of competent authority, which is by definition independent, is an unprecedented solution in Comparative Law. It will definitely have a negative effect on the EU rapporteur's estimate on the implementation of the Law on Data Protection and to its conformity with the international documents afore mentioned and generally accepted European standards, and also to the exercise of the rights established under this Law.

3.3.2.2. Cooperation with other public authorities and organizations

Cooperation on a regular basis has been established with other competent and independent public authorities and institutions concerning the improvements of their operation. Thus, the Commissioner, The Ombudsman and representatives of other independent authorities and bodies, together with the Supreme Audit Institution, the Commission for the Protection of Rights and Public Procurement Commission have forwarded a joint public statement and subsequently the Commissioner talked with the President of the Republic, the Prime Minister and the President of the National Assembly about the way to surmount the obstacles in these institutions' operations.

The Commissioner has also talked with the President of the National Assembly about the destiny of the Amendment Law to the Law on Free Access to Information of Public Importance of 2007 in order to reintroduce it in the parliamentary procedure as soon as possible. In two meetings with the Prime Minister, the Commissioner has highlighted the importance of addressing certain issues important for the implementation of the Law relating to the enforcement of the Commissioner's decisions, monitoring the enforcement of the Law and on the importance and necessity to pass regulations on confidential data classification.

The Commissioner has on several occasions addressed the President of the Supreme Court on the harmonization of practices of these two authorities in relation to protection of the right to free access to information. The Commissioner has also talked with the President of the Constitutional Court concerning filing of appeals to the Constitutional Court in the context of protection of this right.

The Commissioner's relations with the Ministries, other public authorities and local authorities, were relations of the authority of the second instance to the authority of the first instance. These relations were maintained by lending support in the form of educational seminars and other expert meetings and consultations on a daily basis between the representatives of these authorities and the Commissioner's Office.

It is also significant to mention improved cooperation with EU Integrations Office in relation to meeting priorities set by the Government National Program, and with the Joint Government Services of the Republic of Serbia in providing corresponding technical services.

Good cooperation was established with representatives of Chamber System in Serbia, with whom the Commissioner's Office realized a total of 16 one-day seminars throughout Serbia for the purposes of public enterprises and public offices.

3.3.2.3. Cooperation with non-governmental sector and with the media

Throughout 2008 the Commissioner established good cooperation with the civil sector and the media. The cooperation with the civil sector was established in the field of organization of various seminars intended for training and promotion of the public interest to know, which has already been discussed afore, especially with NGO members of the Coalition on Freedom of Information

The excellent cooperation between the Commissioner and the media in 2008 and their role in the affirmation of the right to access information was vitally important for the implementation of the Law. In that context the cooperation with the following institutions should also be mentioned: Transparency Serbia, Belgrade Human and Minority Rights Centre, Standing Conference of Towns and Municipalities, YUCOM (Yugoslav Lawyers Committee for Human rights), Archivist Society of Serbia, Open School, Open Society Fund, Belgrade Fund for Political Excellence, Centre for Security Studies, UNS (Association of Journalists of Serbia), NUNS (Independent Association of Journalists of Serbia) and with many other subjects of civil sector society as well.

Excellent Commissioner's cooperation with the media in 2008 and their role in promoting the public interest to know was extremely significant to the enforcement of the Law. The public is familiar with the cases where public authorities, following great media pressure, granted access to certain information, such as for example, information contained in the Concession Agreement, and information on salaries in certain public enterprises etc.

3.3.2.4. Cooperation with international organizations

In the course of 2008 the Commissioner established, i.e. continued cooperation with:

- OSCE mission, which began 3 years ago to support organization of seminars on the right to access information held by public authorities, intended for the media representatives and civil society, and as a form of support to the Commissioner on occasion of the International Right to Know Day.

- the UNDP Office in Belgrade, relating to lending support to building and raising the capacities of the Commissioner's Office by funding the new Commissioner's Internet presentation; organizing a study visit of the employees for the purpose of exchanging experiences and acquiring new information from the Information Commissioner's Office and relevant institutions from the Republic of Slovenia. Cooperation is also established through material support to the Commissioner on occasion of the International Right to Know Day. Agreement on continued cooperation in 2009 has been reached;

- GTZ (German Organization for Technical Cooperation) through expert assistance on the implementation of the PLAC (Policy and Legal Advice Centre) project financed by the European Union, on the preparation of the Data Protection Strategy, making an estimate on the achieved degree of harmonization between the national legislation and the EU *acquis communautaire*, Directive 95/46 etc.;

- American Bar Association – Rule of Law for Central Europe and Eurasia, relating to support in organizing 8 seminars on free access to information intended for local-level authorities; support in organizing staff training for the Commissioner's Office, with the involvement of the experts from the Office of the Information Commissioner of the Republic of Slovenia; support on the occasion of the International Right to Know Day;

- The Commissioner has expressed interest to use EU IPA funds in the letter addressed to the Ministry of Finance and the EU Integrations Office. This would be especially significant to the exercise of new Commissioner's powers, of 2009, in the field of data protection, having in mind insufficient allocated budget resources. The EU Integrations Office has expressed general support to this initiative, but failed to forward any feedback.

In the course of 2008, the Commissioner had a number of meetings and talks with other representatives of European, international, and neighboring countries' institutions in connection with the exercise of human rights, including the freedom of information, such as for example: representatives of GRECO (Group of States against Corruption under the Council of Europe), HE Ambassador Urstand, head of OSCE Mission to Serbia, representatives of Council of Europe Human Rights in Belgrade in connection to the preparations for the Commissioner's first visit; representatives of USAID in Serbia on the results of enforcement of the Law on Availability of Information and the outline of the new Law on Personal Data Protection, and on prospective cooperation and support to the institution of the Commissioner.

The Commissioner has met Slovakia's Ambassador to Serbia, Mr. Igor Furdik, with whom he talked on the exercise of the right to access information of public importance, and on cooperation with relevant Slovak institutions responsible for enforcing this right as well. The Commissioner has also talked with Mr. Igor Solters, President of the Court of Auditors of the Republic of Slovenia on experiences and cooperation of independent institutions in the fight against corruption, the importance of transparency in operations of public authorities and allocation of financial and material resources.

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.

The issue of the Publication of the Directory of Operations of Public Authorities has also been 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, and in the seminars for the purposes of Ministries and other public authorities held in Belgrade.

In relation to the publication of the Directories and their quality, it is important to mention the Project "Free Access to Information of Public Importance" funded from the resources of NIP. Organization "Transparentnost Srbije" (Transparency Serbia) with the Ministry of Public Administration and Local Self-government, which has been awarded this task in the process of public procurement, has performed an analysis of 80 chosen Directories of Operations of Public Authorities, of Republic and provincial level, and their concordance with the Law and the Instructions on Publication of Directories, and made recommendations for quality improvement.

In addition to this, a Model Directory has been designed for the local self-government authorities based on the analysis of the Directories of the local self-government authorities. The process of presentation and distribution of completed analyses and materials will be finalized in 2009, which should significantly promote the citizens knowledge on the operations of these public authorities and their compliance with the obligations set out in the Law.

The effect of these measures and the measures taken thereupon, especially regarding republic authorities, will be discussed in more detail in other part of this report.

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

The official findings of relevant institutions, conclusions of the European Commission contained in its Annual SAA Progress Report for Serbia in the Process of Stabilization and Association for the past three years, then the conclusions and awards by OSCE, the Council of Europe and opinions of journalists' associations included in the monitoring report, confirm that significant results in the exercise and enforcement of the right of free access to information of public importance have been achieved.

The Commissioner for Information of Public Importance and Personal Data Protection, received the "Najevropljanin Award" for the most pro-European project and for his work as a Commissioner in 2008, which has been awarded by the First European House in Belgrade, since year 2000.

It is a fact that 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 four 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 four 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. The Ministry has acted in some 14% 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 2008, the Commissioner submitted to the Ministry of Culture, as the authority competent for initiating infringement proceedings, a total of 1612 cases containing elements of infringements referred to in Article 46 of the Law, which require 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 238 petitions for institution of infringement proceedings with competent authorities (78 petitions in 2008). Of that number in 124 cases the authorities fined the perpetrators with RSD 3,000.00-25,000.00 which means that in neither case responsible person within the public authority received maximum penalty under the Law.

The information presented afore shows that about 7% 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 are already time-barred. 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 have not been launched. Some actions that constitute violations of the right to access information are not even covered by penal provisions under the Law.

In connection with the issue of enforcement, the Commissioner has on a number of occasions, both in writing and verbally, drawn attention of competent authorities, including the Government of Serbia and the Ministry of Culture, to the fact, which was even 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. Unfortunately the Ministry of Culture has not forwarded these amendments to the Law to the Government, including the amendment concerning monitoring.

4.2. Failure to enforce decisions of the Commissioner

The issues of unregulated enforcement of decisions of the Commissioner and nonexistence of government measures for providing their enforcement is once more addressed in this year's annual Report as well; since little has changed in this regard as of the day of the implementation of the Law.

The function of enforcement of decisions set out in Article 28 of the Law, under which the Government enforces decisions taken by the Commissioner, should be activated as a matter of utmost urgency, 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 initiatives that the Commissioner, exercising the powers conferred on him under Article 35, item 2 of the Law, presented to the Government of the Republic of Serbia back in 2006, requesting that the Government establish mechanisms to enforce decisions taken by the Commissioner, unfortunately, had no effect; nor did Commissioner's recommendations thereby in all annual Reports that he forwarded to the National Assembly. The Commissioner addressed even the Prime Minister on this question in 2008. The initiatives suggestion was to make relevant amendments in the Government Rules of Procedure or to 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.

The absence of Government support 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, has very negative consequences. It prompts one to conclude 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 statistical information on a great number of cases in which public authorities failed to comply with the Commissioner's orders.

The Report of the Government's Secretariat General shows that in 2008 there were only in 27 cases in which citizens and other entities addressed the Government seeking enforcement of Commissioner's decisions where other authorities failed to do so of their own accord. From the information provided it cannot be concluded whether the Government has intervened in connection with a single request for enforcement, or taken any steps thereon.

This problem has been addressed by rapporteurs of the competent European institutions in each of their reports, yet it remains unsolved. Also, 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 Reports from previous years 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 misdemeanors, 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.

It often happens 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. (e.g. Amendments of the Law on Taxation Procedure and Tax Administration of 2007)

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 the Law on Confidential Data Classification, complementary to the 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.

The Ministry of Justice has formed a working group to prepare a Draft of the Law on Classification of Confidential Data, which still hasn't been completed. It is also alarming that, the Model Confidential Data Classification Law, drawn up by an expert NGO group, joined by the Commissioner himself, and in the absence of initiatives from competent public authorities, hasn't been introduced nor discussed in parliamentary procedure, even though Model was supported by over 30 thousand citizens in a national initiative, and the relevant Bill was submitted to the National Assembly at the end of 2007.

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.

The Commissioner has faced many obstacles when trying to obtain even the barest of necessities for proper functioning of his Office. This is most evident in relation to efforts to obtain adequate office premises whereupon the Commissioner has addressed dozens of letters and held numerous talks with competent Government authorities and services highlighting the consequences.

Notwithstanding Commissioner's numerous interventions, premises allocated to his Office by Government Resolution 77 No. 361-1847/2005-002 of 27 March 2008 remained property of the Ministry of Justice for the whole of last year.

The Human Resources Plan under which the office was to hire 9 additional members of staff could not be realized in 2008. Thus, apart from the Commissioner, the actual staff of the Commissioner's Office included Deputy Commissioner and 6 other employees, which is, as afore mentioned, far below the actual needs and the caseload of the Office.

A direct consequence of this lack of any visible effort on behalf of the authorities to resolve this issue is that some 1000 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. Due to dramatic increase in the caseload, which is well beyond 100 cases a month, the Commissioner is forced to perform primarily those duties and responsibilities that cannot be delayed.

In the period intended for filing this Report the Commissioner's Office were finally given additional premises allocated under the afore mentioned Government Resolution and they are sufficient to accommodate about twenty employees, which is 3.5 times less than the number approved by the National Assembly, which means that the issue remains actual and burdening. Of course it is understood that this fact will significantly hamper exercising of the new powers conferred upon the Commissioner under the Law on Personal Data Protection of 1 January 2009.

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. The reports are available at Commissioner's Internet page.

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

6.1. Interest in requesting information

Commissioner's experiences with the implementation of the Law on Free Access to Information of Public Importance and the reports submitted by public authorities have revealed the following:

When it comes to exercising their right to access information held by public authorities, the citizens are markedly the least reserved. According to the information contained in some 630 reports submitted to the Commissioner, in 2008 citizens filed about 55.850 requests with public authorities, which is 6 times more compared to 9.000 requests filed in 2007.

Of course this information cannot be considered completely accurate having in mind the fact that a great number of public authorities have not submitted their report.

However, it can be compared to the information from the previous year and as such it is indicative of positive trends.

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, citizens are increasingly becoming interested in the operations of public authorities. Statistical information on the number of filed requests in 2008 seem to suggest that requests were filed predominantly by the citizens and their associations – around 71% of all requests, with the media as a distant second at 22% of all requests, followed by public authorities, political parties and other entities.

As regards the content of requests for information in 2008, 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 licenses 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 5.24% were ungrounded and 3.67% 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 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 7.68% of all complaints lodged with the Commissioner relate to 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 72.38%, complaint proceedings were terminated because the public authorities concerned immediately granted access to

information following interventions by the Commissioner – up by 8% compared with 2007. 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 and number 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.

In the course of 2008, and 2007 as well, 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. This happened very often subsequent to unanswered councilor's questions.

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 9% of the total of lodged complaints were refused or rejected by the Commissioner on the grounds of substantive law or procedural requirements.

In 300 public authorities (a bit less than 50%) of the total number of those that submitted reports, which is three times more than in the previous year, the head officer appointed an officer responsible for complying with requests for access to information, whereas none of the remaining ones did so. From the aspect of timely actions upon requests, it could be said that the authorities that have appointed an officer responsible for complying with requests, particularly larger agencies with many organizational parts, which are usually dislocated from the headquarters of the agency. From the aspect of responsibility, it is more realistic that such responsibilities lay with the head officer when an officer has not been appointed, and when the head officer is responsible for complying with requests under the Law.

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 2008, a total of about RSD 38.000.00 was collected from charges related to requests for information of public importance, which is RSD 12.000.00 higher than in 2007, and that only 21 authorities collected such charges for issuing copies of documents. Having in mind that this is republic level data, it is evident that these resources are negligible.

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 2008 amounted to RSD 15.000.00, which was more than RSD 23.000.00 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 a few individual cases less than in the previous year in which charges for issuing copies of documents were higher than the amount of necessary costs, and some authorities have collected stamp duty on requests for information in accordance with the regulations on administrative charges, which is incompatible with the freedom of information regulations.

Where the Commissioner learned about cases of collection or attempted collection of charges higher than those set by the law, he drew attention of the public authorities concerned to the malpractices inconsistent with the Law.

6.4. Organization of training and maintenance of information storage media

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 afore mentioned binding recommendation of GRECO (Group of States against Corruption, under the Council of Europe).

Regardless to the afore mentioned information, some 48% of the public authorities that submitted their reports specified they held staff education and training activities in 2008 in connection with the implementation of the Law on Free Access to Information of Public Importance. 30% of them stated they held no such training, while about 22% of authorities did not include any information in this regard. The value of these figures is 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.

As regards the requirement for public authorities to maintain regularly their information storage media (paper documents, tapes, films, electronic media etc.), around 50% of those that submitted their reports indicated that they execute this obligation, while 15 % of those that stated expressly they did not undertake any such measures; the remaining authorities that submitted their reports made no statement regarding this legal obligation. Even though there are some indicators of the move for the better 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 of authorities, 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.

The Commissioner addressed a letter in mid December last year to almost all public authorities covered by this legal requirement, in connection with the preparation and submission of annual reports, which was reinforced by public announcements, in which the Commissioner called on all public authorities to comply with this requirement by 20 January 2009, inclusive.

Reports on Implementation of the Law in 2008, as of the date of conclusion of this Report, were submitted by about 630 authorities, which is almost equal to the number in 2007. According to the information in the Commissioner's Catalogue of Public Authorities on the number of authorities required to submit reports for the purposes of the Law, the number of submitted reports was somewhat less than 4000 cases. This information cannot be deemed completely accurate as the category of organizations vested with public powers cannot be precisely defined without a relevant survey. The 16 % of those which complied with the requirement to submit reports should also be considered in the light of the information mentioned afore. Given that

these bodies are vested with public powers they are unquestionably required to submit these reports under the Law.

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 24 Ministries, three of them did not submit reports: the Ministry of Infrastructure, the Ministry of Foreign Affairs and the Ministry of Mining and Energy, two of these did not submit their reports in 2007 as well (Ministry for Infrastructure former Ministry for Capital Investments and the Ministry of Foreign Affairs).

At the provincial level, this requirement was not observed by the Assembly, by the Executive Council, by 17 of a total of 19 Provincial Secretariats of the Province of Vojvodina and by 62 % of other provincial authorities. Compared with the previous year, this percentage relating to judicial authorities has somewhat decreased. Thus, reports were submitted by all commercial and district courts, by about 82-87% of municipal courts and prosecutor's offices and by 77% of 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, 22 of them (76%) complied, which is about 13% more than last year. This is obviously the outcome of the keen interest of the citizens and the media in the operations of these bodies, which handle significant amounts of public resources and whose services are used by virtually all citizens, and also of the fact that the Commissioner has frequently drawn public attention to these bodies.

Compared with the previous year, there is a significant improvement in report submission of other Republic-level organizations that are also vested with public powers, including agencies, institutes, directorates etc., 74% of which have complied with this legal obligation.

The situation in the local self-government is still dissatisfactory. Although the Commissioner has addressed letters to all cities, city municipalities and other municipalities, reports were submitted by 90 municipalities, or 51.43%, which was even lower than in the previous year. Given that 2008 was the fourth year of implementation of the Law, and that all were called upon to comply with their legal obligation, 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	24	21	87,5 %	Reports not submitted by Ministries: - of Infrastructure, - of Foreign Affairs and

				- of Telecommunications
District courts	30	25	83,3%	
Municipal courts	124	101	81,5%	
Commercial courts	19	18	100%	The court in the town of Novi Pazar is non-functional
District prosecutors' offices	30	26	86,7%	
War Crimes Prosecutor's Office	1	1	100%	
Municipal prosecutors' offices	103	89	87%	
Magistrate's courts	162	124	76,5%	
Authorities of the Autonomous Province of Vojvodina	34	21	61,8%	
Cities	24	19	79,1%	
City municipalities	31	16	51,6%	
Municipalities	144	74	51,4%	
Public enterprises (Republic and Provincial level) required to submit reports	29	22	75,8 %	
Other public authorities		68		
Total		631		

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 organization, to 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 208 public authorities that published Directories on their Websites. This is a slight increase compared with 2007.

The requirement was also partially observed by further 237 authorities that produced printed directories (20 more than in 2007), 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	6	100%		
Ministries	24	22	91,6%	1 M. bepa	Not posted by Ministry of Infrastructure
Authorities of the Autonomous Province of Vojvodina	34	17	50 %	1	
District courts	30	11	36,7%	9	
Municipal courts	124	22	17,7%	46	
Commercial courts	19 (1 court is non-functional)	14	73,7 %	2	
District prosecutors' offices	31	3	9,7 %	19	
War Crimes Prosecutor's Office	1	1	100%	-	
Municipal prosecutors' offices	103	9	8,7%	47	
Magistrate's courts	162	8	4,9 %	68	
Cities	24	15	62,5%	1	

City municipalities	31	12	38,7%	1	
Municipalities	144	23	16 %	21	
Public enterprises (Republic and Provincial level) required to submit reports	29	16	55,2%	3	
Other public authorities		32		9	
Total		208		237	

Pursuant to Article 22 of the Law all highest authorities produced their Directories and published them on their Websites, but the National Assembly deserves special attention as it published an updated and comprehensive version of its Directory.

As regards Ministries, according to statistical information, the situation in 2008 was 20% better than in 2007. This is a direct result of the Commissioner's formal orders to comply with their legal obligation. These orders were not observed by the Ministry of Infrastructure. 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.

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 still unsatisfactory, because one third of all Ministries have been doing it periodically, or did not update their directories at all since they posted them. This goes on to prove that the certain authorities published their directories only to meet a formal requirement.

The quality of published Directories has improved in comparison with the previous year, but it is still uneven and it has not reached the expected and required level. This is evident from the analysis performed by the organization "Transparentnost Srbije" (Transparency Serbia) funded from the resources of NIP which has shown that there are Directories which contain only basic information on their organization, approved budget, and similar information which can also be found on the Website of the body, while there are also those which contain numerous useful information on the current operations of the body. Grades of quality (1-5) according to the analysis:

- Highest legal bodies category, whose grades rank from 2.57 to 3.78. The Directory of the President of the Republic of Serbia received the highest mark, and the lowest the Directory of the Government of the Republic of Serbia (note that the more comprehensive Directory of the National Assembly was published subsequent to the completion of the analysis performed in October and November 2008)
- Ministries category, whose grades rank from 1.78 to 3.74. The Ministry of Public Administration and Local Self-government received the highest mark, and the lowest the Ministry of Interior;
- Autonomous public bodies category, whose grades rank from 1.96 to 4.70. The Directory of the Commissioner for Information of Public Importance received the highest mark, and the lowest Republic Telecommunication Agency ;
- Provincial level bodies category, whose grades rank from 2.35 to 3.30. The Province of Vojvodina Provincial Secretariat for Regulations received the highest mark, and the lowest the Province of Vojvodina Provincial Secretariat for Finance;

- Republic and provincial level public enterprises category, whose grades rank from 1.59 to 3.17. The Directory of PE "Vojvodina Sume" (Forests of Vojvodina) received the highest mark, and the lowest National Park "Fruska gora".

The analysis will undoubtedly contribute to the quality of the directories analyzed, but it will also be of use to those who are yet to produce this document, with the help of others' experience. This relates especially to local self-government bodies which will receive Model Directory with no delay with the aim to promote the public interest to know.

As for the judicial authorities, even though they generally have problems with technological aspects of these actions, there has been a slight increase in the number of published directories on their Websites, and also in the number of printed directories in the absence of Internet presentation. The best results have been achieved by commercial courts, as in the previous year, lead by the Higher Commercial Court. The same is true also of Public Prosecutors' Offices, followed by magistrate's courts which have improved their performance markedly compared with the previous year.

As regards Republic and provincial level public enterprises, the situation in 2008 was almost equal to that in 2007. In terms of content of the published directories, much information, such as for example, information on salaries, important information on applicable procedures or public resources used, is still identified as confidential; however, this is typical also of other organizations vested with public powers, including agencies, institutes, funds, directorates etc.

As regards local authorities, the situation has slightly improved in comparison with the previous year. According to the information in their reports for 2008, of the total number of 199 towns, 50 municipalities have published their directories on Websites and 23 in print. Regardless to this slight increase, the information that only more than one quarter of the total number of municipalities made the effort to comply with this requirement in the fourth 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, we expect that the Model Directory, which will be distributed in cooperation with the Standing Conference of Towns and Municipalities, will aid these bodies considerably to comply with their legal obligation and thus promote the public right to know.

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 four 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, according to the Law
3. expedite the procedure of enactment of the Amending Bill to the Law on Free Access to Information of Public Importance, as well as Confidential Data Classification 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. ensure that the competent Ministries and the Republic Secretariat for Legislation in the drafting procedure, and the Government and the National Assembly in 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;
6. ensure that the competent Ministries and services of the Government of Serbia take necessary measures to comply with their obligation toward the public, i.e. to publish more documents concerning Government operations, proactively on the Internet, even without special public interest in it;
7. ensure that the competent services of the Government of Serbia provide additional premises to enable exercise of the new powers 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 and the Law on Personal Data Protection.

8. PLAN FOR 2009

Content of the Plan of Activities and Measures of the Commissioner for 2009 will considerably depend on the realization of the Commissioner's suggestions. If the National Assembly enlists the Amendment Law to the Law on Free Access to Information of Public Importance into parliamentary procedure and enact it, conditions for full enforcement of the Law and more quality exercise of the right to free access to information will be created.

When it comes to processing complaints for the violation of the right to access information, the Commissioner will do his best to avoid delays, and pass a decision timely in accordance with the Law. For this purpose the Commissioner will fill the capacities of his Office, i.e. hire a certain number of executives in an open competition. This will be a small number of executives for whose operations the necessary conditions will be provided by furnishing additional office space at the first floor of the building in 42 Svetozar Markovic Street, which has been recently put at the Commissioner's disposal.

In order to provide better conditions for exercising the right to access information and timely operations of public authorities, the Commissioner's priority in 2009 will be to promote this right and to help public authorities enforce the Law, by lending expert advice in preparation of their Directories.

The Commissioner, in collaboration with the Supreme Court of the Republic of Serbia, will do his best to ensure harmonization of standards in exercise of the right to access information and common stands on the protection of this right in complaint proceedings before the Commissioner and in administrative proceedings before the Supreme Court of Serbia.

The Commissioner will continue to promote his collaboration with other independent and government institutions that have considerable powers in the field of protection of rights and fight against corruption, especially with the Ombudsman. The Commissioner will continue to promote his collaboration with the media and the civil sector as well.

It is very difficult to plan activities regarding new powers on protection of rights on personal data processing. The Commissioner will strive to do everything within his powers which could yield any results in this field, especially having in mind that this issue is also significant for achieving certain foreign policy priorities of our country, i.e. for liberalisation of visa regime. Nowadays the Commissioner is preparing *A Guide on the Law on Personal Data Protection*, with the aid of foreign subjects and in collaboration with Information Commissioner of the Republic of Slovenia. The Guide should be of considerable help for citizens and public authorities in interpreting and enforcement of the rather abstract matter of the Law. Similarly, by using experiences of other countries, the Commissioner is preparing the Draft of Strategy for the Implementation of the Law on Personal Data Protection which he will forward to the Government of the Republic of Serbia. The Commissioner will also do his best to act upon the most prominent cases of violation of the right to personal data protection.

However, considering Commissioner's resources such plan is highly ambitious. Namely, even though, according to the decision of the National Assembly, the number of employees in the Office of the Commissioner for Information and Personal Data Protection should be 69, the existing working conditions allow a maximum of 20 employees.

In addition, even with all reminders sent by the Commissioner, the Government of the Republic of Serbia and the Ministry of Finance would not allow correction of HR

Plan of the Commissioner of the previous year. This means that the Commissioner's Office, which is currently operating with only 7 employees, cannot hire more than 15 additional civil servants, which is only 20 % the total number of posts envisaged. As the Commissioner's HR Plan will remain as the one he had last year when his powers only covered free access to information, it means that he will be unable to hire any new staff for the operations on personal data protection.

The Commissioner deems that it is his duty to warn the National Assembly that, if the situation remains the same, it will be very difficult to resolve the issue of some 1000 cases of violated right to access information pending resolution. Their resolution will be compromised due to the increase in the caseload, as there are more and more citizens and the media filing complaints to the Commissioner to protect this right, regardless to his ability to accommodate them. In addition, it is evident that, in unchanged circumstances, it will be practically impossible to ensure enforcement of the Law on Personal Data Protection, and hence the compliance with international-legal obligations undertaken in relation to this issue.

COMMISSIONER

Rodoljub Sabic (signed)