



Youth Initiative for Human Rights
Inicijativa mladih za ljudska prava
Nisma e të rinjve për të drejtat e njeriut

*Intervention by the Youth Initiative for Human Rights
to the 2006 OSCE Human Dimension Implementation Meeting*

FUNDAMENTAL FREEDOMS I:

**Freedom of expression, free media and information
2006):**

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**Statement on the implementation of free access to information act in
Serbia**

Introduction

The right to free access to the information in Serbia is regulated by the Law on Free Access to the Information of Public Interest. The Law was adopted in the Serbian Parliament on November 2nd 2004, coming to effect on November 13th.

To natural persons and corporations the Law warrants unhindered access to all information of public interest possessed by public power bodies. Furthermore, the Law stipulates the establishment of an independent body – the Information Commissioner – to be in charge of resolving citizens' complaints concerning the state institutions' breach of this law.

As of November 2004 the Youth Initiative for Human Rights has been continuously monitoring the implementation of this Law, testing the practical application of all legal mechanisms by state institutions. The YIHR is currently handling more than 20 related lawsuits. More than 90% of complaints addressed to the Information Commissioner have been resolved to YIHR's favor.

The BIA Case

Within the said monitoring, on October 31st 2005, by virtue of the Law on the Free Access to the Information of Public Interest, the YIHR submitted a request to the Information Intelligence Agency (BIA) for the free access to the information. The said

request concerned the information on the number of wiretap warrants the BIA had received in the course of 2005, as well as the number of citizens wiretapped on the basis of these warrants. Hence, the YIHR's request concerned only the number, not the list of names of wiretapped citizens. The 15-day legal deadline for the submission of requested information or of the decision on the refusal of the request had passed without BIA's having submitted to the YIHR the refusal decision. Instead, the BIA sent a document in which the YIHR was informed that the requested record could not have been submitted, for this particular piece of information had been categorized as "classified", the disclosure of which would have caused grave legal or other consequences to the legally protected interests.

However, the Law stipulates that, in the case of authorities' refusal or failure to submit the requested record, the information-seeker may file a complaint to the Information Commissioner. On November 17th 2005, the YIHR filed to the Information Commissioner a complaint concerning the BIA's previous exposition, dated November 4th 2005. After reviewing the complaint and other case-related documents, the Information Commissioner on December 22nd 2005 issued a formal decision by which the YIHR's complaint had been accepted and BIA ordered to submit to the YIHR the requested data in three days' time. After the deadline, the BIA filed charges to the Supreme Court of Serbia against the Commissioner's decision. BIA's charges charge the Commissioner with having misinterpreted the Law on Free Access to the Information of Public Interest when requested that the said information was to be submitted to the seeker. At closed session of the Chamber, held on April 19th 2006, the Supreme Court of Serbia rejected BIA's charges, explaining that the BIA, as a first-degree administrative body cannot be a lawsuit party, i.e. cannot initiate administrative procedure.

The Supreme Court's decision was received by the YIHR office and the Commissioner's office on May 23rd 2006. By September 18th 2006 the requested information is still pending – BIA refused to obey the Commissioner's final decision. In this case the YIHR has exhausted all legal means at its disposal. The Government of the Republic of Serbia is due to ensure the execution of the Commissioner's decree. However, the Serbian Minister of Justice, Zoran Stojković Zoran said in his interview to the daily *Blic* that the Government considers the requested information to be confidential and as such it will not be submitted to the YIHR (*Blic*, June Zoran 5th 2006). In this way, the YIHR was left without any means of legal protection and stripped of any right to realize its legally guaranteed right.

Conclusion and recommendations

Having chosen to act passively in this case and having refused to act in accordance with its legal obligations, the Government of Serbia is directly hampers the rule of law in Serbia. The citizens are prevented from realizing their legally warranted right. Furthermore, grave violation of the law by a state agency is publicly supported by Serbian Minister of Justice. BIA's flagrant breach of the law, openly backed up by the ministers, seriously undermines the character of Serbia as a democratic country. For the purpose of urgent establishment of the rule of law mechanisms and their unconditional respect by Serbian authorities, the YIHR recommends the following:

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- The right to free access to the information must be warranted by the Serbian Constitution as one of the basic human rights
- The new Constitution of Serbia must guarantee absolute independence of the Information Commissioner
- The Parliament of Serbia is due to ensure unhindered implementation of the law. For this purpose, it is necessary to introduce stronger sanctions for the breaches of the law, as well as to ensure that courts' decisions be respected.
- The Government of Serbia must immediately prepare the Law on Classified Materials and the Law on Personal Information Protection. Without these two laws, the area of the Law on Free Access to the Information of Public Interest will remain narrow and the amenable to numerous misinterpretations.
- Any kind of officials' support to the breaching of the law must be politically punished and publicly denigrated through democratic procedures within political parties and state institutions.