

*Dejan Milenkovic, M.A.
Legislative Initiative Coordinator
Lawyers' Committee for Human Rights
Belgrade*

FREE ACCESS TO INFORMATION SURVEY AS A WAY TO STRATEGIC LITIGATION IN SERBIA

On the end of October 2004. Serbia finally adopted Law on Free Access to Information of Public Importance. Law constituted a new institution in Serbia - Commissioner for Information of Public Importance, as a central control/appeal body against of decision of Public Authority. But, till the August 1st, Government of Serbia didn't want to give budget and offices for the Commissioner. During this period, Serbia had many problems with implementation of the Law.

Within the framework of a regional project "*Monitoring the Implementation of the Access to Public Information Acts in Croatia, Bosnia and Herzegovina and Serbia by Public authorities, by Means of Carrying out a Survey and Sending Inquiries for Access to Information*", jointly implemented by the *Croatian Helsinki Committee for Human Rights, Access to Information Center Sarajevo, and YUCOM Belgrade* in early May 2005, an analysis of the implementation of respective freedom to public information acts in Serbia, Bosnia and Herzegovina and Croatia was carried out.

During May 2005 the partner organizations adjusted a common monitoring methodology and adapted it to all three countries' specifics. This methodology was based on the methodology the *Open Society Justice Initiative* applied in a similar survey carried out 2003 in five countries

In accordance with the common monitoring methodology, it was agreed that **100 inquiries** for access to information be sent to public authorities in each of the three countries. These inquiries were to be divided into **5 basic categories** and sent to **addresses of 20 different public authorities: 1) highest state organs, 2) ministries, administrative authorities within individual ministries and administrative agencies, 3) courts of law, 4) authorities in entities, provinces and local self-government units, depending on each country's specific setup, 5) organizations entrusted with the performance of public authority and legal entities established or financed wholly or predominantly by a state organ.**

According to the established methodology of the Croatian Helsinki Committee and the Access to Information Center Sarajevo, it is determined that June 22nd 2005 was the "D" day, when all of the 100 inquiries were to be sent.

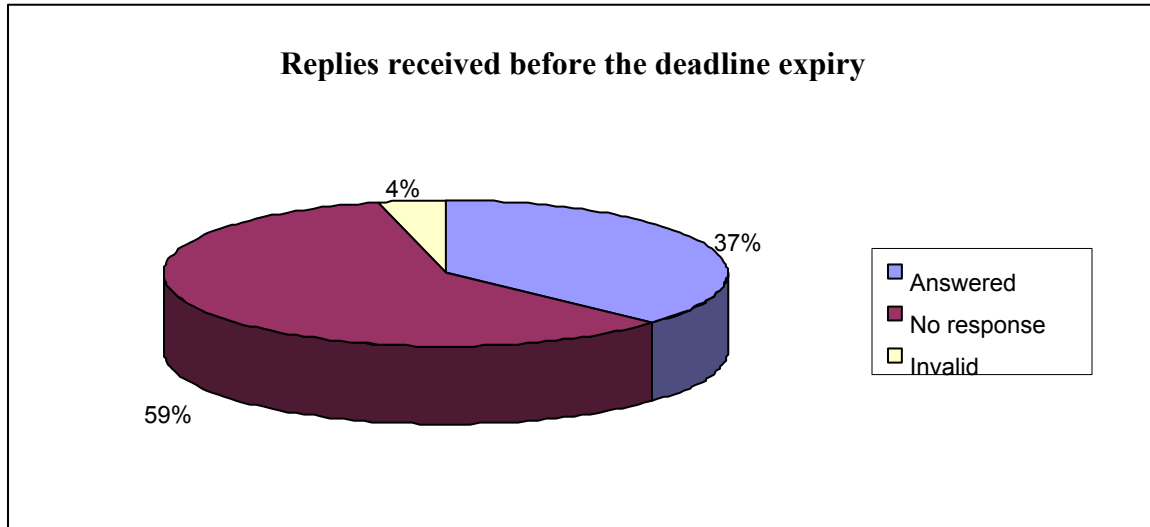
Representing its local partners, YUCOM had sent all inquiries, together with a return receipt, as a proof of receipt by the agency the inquiry was addressed to. All inquiries were received by the authorities between June 22nd and June 24th (as proven by the return receipts), which means that the deadline to process the inquiries and to reply the applicants, depending on the exact date of receipt, was July 8th 2005. However, during the survey we also considered those inquiries which were received 2 or 3 days after July 8th, having in mind postal delay.

This issue, however, turned out to be crucial during the later evaluation of the received inquiries, because replies sent by some authorities, although dated before the deadline expiry, were received much later than the deadline specified.

Part of this Survey, which we present, was a good exercise how to deal with strategic litigation cases in Serbia during the 2006.

Replies Received Before the Deadline Expiry

Before the expiry of the deadline set out in art. 16 of the Free Access to Information Act, July 9th 2004, of one **100** INQUIRIES addressed to relevant authorities, **37** have been answered to, **59** were left without response and **4** could not be considered to be valid.



1. Government of Serbia	sent 5	received 0
2. President of Serbia	sent 5	received 4
3. People's Assembly	sent 7	received 1
4. Constitutional Court	sent 4	received 0
5. Ministry of Health	sent 5	received 5
6. Ministry of Science and Environment	sent 5	received 5
7. Ministry of Economy	sent 5	received 0
8. Interior Ministry	sent 5	received 0
9. Justice Ministry	sent 6	received 3
10. Ministry of Trade and Tourism	sent 5	received 4
11. Finance Ministry	sent 6	received 2
12. Defense Ministry of SCG	sent 5	received 0
13. Supreme Court	sent 4	received 0
14. District Court	sent 6	received 0
15. City of Belgrade	sent 5	received 0
16. Local self-government	sent 4	received 1
17. Belgrade University Law School	sent 3	received 3
18. Broadcasting Agency	sent 5	received 5
19. Privatization Agency	sent 5	received 4
20. JAT Airways	sent 5	received 0
TOTAL		37

Evaluation of Received Information

Authorities which responded before the deadline expiry. As seen from the previous data, it is obvious which public authorities gave a complete or partial response to the inquiries to free access to information. Those are: **Ministry of Health, Ministry of Science and Environment, Republic Broadcasting Agency, Ministry of Trade, Tourism and Services, President of the Republic of Serbia, Law Faculty in Belgrade, Privatization Agency.** Those public authorities have an established and adequate service for receiving inquiries, i. e. an **authorized employee**, a well developed internal organization and coordination which deals with the receipt of inquiries, so therefore a future **ignoring of inquiries** can only be considered as illegal conduct of the administration, i. e. as illegal “concealing” of information.

Authorities which only gave a partial response. Those authorities are the **Finance Ministry** and the **Justice Ministry**, whereby the type of inquiry wasn't fully expressed. It remains unclear whether this fact is due to slow procedure, inadequate internal organization and coordination or lack of personnel.

Authorities which gave no response or a partial response. Those are: the **Government of the Republic of Serbia, The People's Assembly of the Republic of Serbia, Ministry of Economy, Interior Ministry, the District Court, the Supreme Court, the city of Belgrade, local self-government authorities of the cities Nis and Zajecar and JAT Airways.**

As an authority of the State Union of SCG, neither the Ministry of Defense of SCG acts according to this Act, despite previous announcements.

Change of result. However, the situation drastically changed after YUCOM announced a presentation of the results in mid July. In the period between July 25th 2005 and August 1st 2005, **20 further replies** were received, so the total of responses climbed up to **57**, which is considered a good result, at least during this stage of the implementation of the Free Access to Information Act.

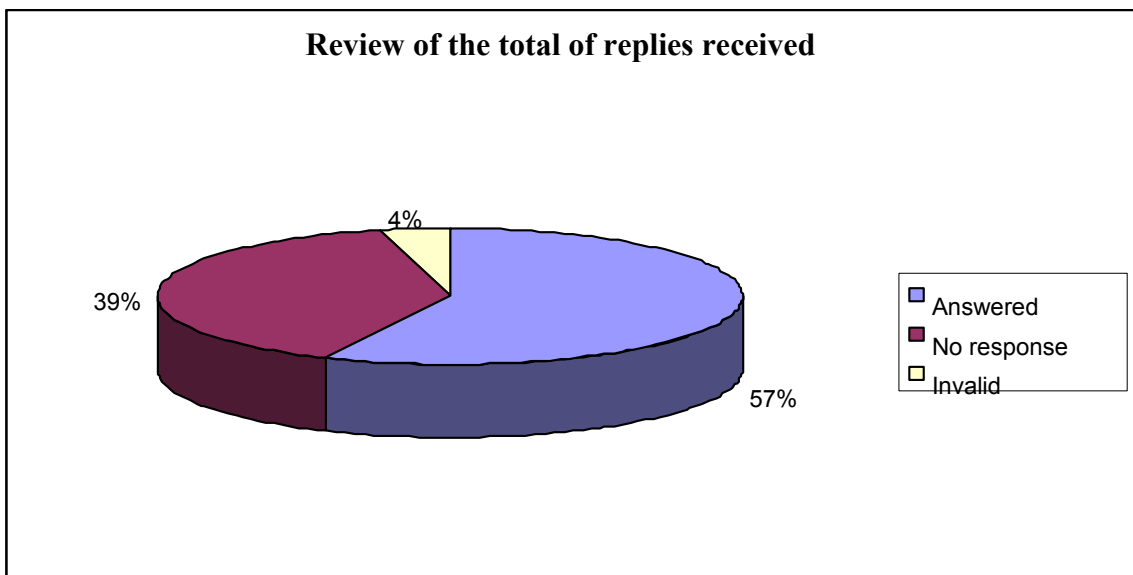
Conclusion.

This fact shows that *certain authorities still don't have a sense of importance of replying to their citizens' inquiries, i. e. it shows the level of their ignorance towards their legal obligations set out by the Free Access to Information Act.* A public campaign is still necessary in order to set in motion a more efficient carrying out of the Act, which is most notable in the highest public authorities – The Government of Serbia, People's Assembly of Serbia as well as the Supreme Court and the District Court in Belgrade.

Having this in mind, the survey showed that the role of NGOs in the implementation of this Act is still important and that the Ministry of Culture of the Republic of Serbia, as the ministry in charge of the implementation, is still not doing enough to successfully implement it within the public authorities.

Replies Received After the Deadline Expiry

After the expiry of the deadline set out in art. 16 of the Free Access to Information Act, August 1st 2005, of **100** inquiries addressed to relevant authorities, **57 have been answered to**, **39 were left without response** and **4 could not be considered to be valid**.



1. Government of Serbia	sent 5	received 5
2. President of Serbia	sent 5	received 4
3. People's Assembly	sent 7	received 6
4. Constitutional Court	sent 4	received 0
5. Ministry of Health	sent 5	received 5
6. Ministry of Science and Environment	sent 5	received 5
7. Ministry of Economy	sent 5	received 0
8. Interior Ministry	sent 5	received 1
9. Justice Ministry	sent 6	received 3
10. Ministry of Trade and Tourism	sent 5	received 5
11. Finance Ministry	sent 6	received 3
12. Defense Ministry of SCG	sent 5	received 0
13. Supreme Court	sent 4	received 3
14. District Court	sent 6	received 4
15. City of Belgrade	sent 5	received 0
16. Local self-government	sent 4	received 1
17. Belgrade University Law School	sent 3	received 3
18. Broadcasting Agency	sent 5	received 5
19. Privatization Agency	sent 5	received 4
20. JAT Airways	sent 5	received 0
TOTAL		57

STRATEGIC LITIGATION TWO HYPOTETICAL CASES IN SURVAY

1) The Government of the Republic of Serbia

The Government of the Republic of Serbia was addressed 5 inquiries, 3 of which belonged to the category of sensitive, 1 to the category of complex and 1 of a routine nature. Responses containing information were *complete* in 3 cases, 1 was *partial* and 1 was *unsatisfactory*. We would like to point out one most interesting questions which is also very good for hypothetical cases for strategic litigation in our investigations:

What is the total amount of costs of escorting indictees before the International War Crimes Tribunal to The Hague during the year 2005?

The response to this inquiry was *unsatisfactory*. The Government informed that the information related to this matter are **classified** and that the **Rules of Procedure of the Government** prevent the government from rendering that information accessible. In this particular case, although there is legal obligation to carry out the Public Interest Test, it has not been done; the Government claims that its Rules of Procedure protect **classified files** from disclosure, which points out that there are **no adequate legal regulations which would regulate the matter of classified information in a uniform way**.

Also, the respons didn't have a form of decision, which is necessary when state body don't want to give information. In accordance with the Serbian Law, we don't have right to complaint against this dismission to the Commissioner, but only right to administrative dispute compleint in accoradance with the Law on Administrative Court Procedures.

In accordance with this procedure, Court has several limitations in the field of access to information, similar to those in Czech Republic. If a court cancels a decision of a public authority (or other persons obliged to provide information), dismissing access to information, the case goes back to the public authority. The public authority may in fact repeatedly dismiss access to information if it only changes the reasoning of its decision. Courts usually cancel a new decision of the public authority and it starts all over again. The judicial control in the Czech Republic is based on a cassation principle. The court usually finds one reason to cancel the decision and do not check all circumstances of the case.

2) Ministry of Finance

The fact that the FOIA law itself, and these kinds of studies in particular, have importance and perspective in Serbia, have been outstandingly shown through the case of the answer of the Ministry of Finance given to the one of the requests sent out by YUCOM. Namely, we have asked the Ministry of Finance for the information on exact amounts, means of financing, and the names of persons granted envisaged financial assistance to indictees of the Hague Tribunal and their families in years 2004 and the first half of 2005. Final paragraph of the answer received (signed by the Minister himself and carrying the official stamp of the Ministry) stated that:

«In addition, we want to inform you that Budgetary Plans for years 2004 and 2005 do not predict financing to individuals indicted in The Hague and their families, but we want to state that, by the Conclusion No. 05 number: 06-621/2005 from February 1, 2005, and Instruction No.:401-685/2005 from February 3, 2005, the Government of Republic of Serbia have approved financial amount of 40.000.000 dinars to be taken from the current Budgetary Reserve, in order to provide necessary assistance to General Vladimir Lazarevic, for his voluntary surrender to the ICTY, which, to this date, have not been executed.»

This information represented a new discovery to the public, since the Government of Serbia and several of its ministers have, in March 2005, repeatedly demanted the information that special financial means have been allocated for voluntary surrender of gen. Lazarevic to The Hague. YUCOM has thus transferred this new information to the media in Serbia, which made headlines on July 20 and 21, on radio and TV stations, and in printed media (daily newspapers).

In what followed, during the 24 hours since the information was released by YUCOM, we received the apology and a demanty of the Minister for Finances Mr. Mladen Dinkića, who stated that the previously sent answer to our request for information have contained a technical mistake, and that the stated sum was approved for all the indictees (and their families) of The Hague that have voluntarirly surrendered, and not just for gen. Lazarevic, whose surreneder had just given grounds to come to this kind of decission. It is necessary to say here that the original answer to the same question have been sent to YUCOM four times in repetition: two times through fax, and twice by mail, which arises suspition in the demanty of original information, so that YUCOM has, on July 20, sent out another request, based on the FOIA law, to Government of Serbia, to provide documents on particular decissions (Conclusion No. 05 number: 06-621/2005 from February 1, 2005, and Instruction No.:401-685/2005 from February 3, 2005), in order to be able to conclude on the authenticity of received information.

In addition, the original answer have not just opened a question of exact financial means and ways of allocation from republican budget, but have also casted doubt on the legality of stated governmental decissions, since the Government have not had legal basis for such a decission, which by itself opens new questions and dilemmas, and, outstandingly illustrates how Freedom of Information and Free Access to the Official Documents *is* the Best Tool for Combating Corruption, and is a powerful tool in citizens' hands.