CONFLICT OF PUBLIC AND PRIVATE INTEREST AND FREE ACCESS TO INFORMATION

TRANSPARENCY SERBIA

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PREFACE

In much the same fashion as other transition countries in the region, Serbia is facing tremendous challenges during its transition period. Even when the government is seen to be doing the "right thing", the success of the reforms to a large extent depends on whether the citizens believe that the adopted measures are justified. Naturally, if the significant part of the public sees the democratic institutions as corrupt, that trust is going to be eroded.

Therefore, the **Transparency International** believes that the government should win the public support by:

1) Ensuring that the citizens and the media have easy access to the information related to the government activities

2) Ensuring that state officials are not advancing their own private interests at the expense of a greater public good

In this manner, the government is compelled to be more responsible and serve the public interest, while reaffirming the value of the democratic institutions, thereby increasing the public confidence in them.

The first step in this process is the adoption and enactment of relevant laws. For quite some time now, the draft bills on the free access to information and the prevention of the conflict of public and private interest have been waiting their turn for adoption in Serbia. With the expectation that new and better legislation will soon be enacted, our organization has decided to conduct a thorough analysis of the existing regulations in these two areas. Through public mood surveys we have tried to ascertain to what degree are the citizens familiar with these topics and to gauge the public interest in them, as well as to see what kinds of problems they regard as the top priority along with the types of solutions they would deem to be adequate. The survey results will serve as a basis for our future activities. Likewise, we believe that they could also prove beneficial to the public at large, the state institutions and the international organizations that would like to see our country prosper.

The reports in this publication represent only one portion of the Transparency Serbia activities in the first year of the *Accountability in the Western Balkans Program.*

Moreover, the project has regional context as Transparency International national chapters in four former Yugoslav republics take part in implementing it. The goal of the project is to enable the civil society, in cooperation with others who are striving towards a society founded on openness and accountability, to win the adoption of quality legislation and subsequently monitor their implementation.

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Transparency Serbia

Belgrade, August 2003

CONFLICT OF PUBLIC AND PRIVATE INTEREST

Analysis of the regulations in the Republic of Serbia (September 2002 - August 2003)

What is the conflict of public and private interest and how does it happen?

People who carry out the duties of public interest have certain powers that make it possible for them to complete the work successfully. For the purpose of a greater work efficiency, the regulations do not completely specify the rules that such persons have to obey when making individual decisions, but it is partially left up to their knowledge and conscience to choose the best possible solution for the public good. These are "discretionary powers". In democratic societies, the tendency is to reduce the number of such powers, but a number of situations that Civil Servants and particularly high state officials may face, shall be impossible to predict, therefore it is necessary to give them a possibility to make the decision they consider best in the given situation.

It is important to ensure in all situations, and particularly in those when Civil Servants have discretionary powers, *that public works are directed towards the benefit of public interest.* In a broader sense, that is the starting point of a just and legal government organization. Since, however, there is no guarantee that state officials and Civil Servants will fully be devoted to public interest, there are various methods applied that are to eliminate all suspicion in their objectivity.

Therefore, the conflict of public and private interest is a situation in which a person performing a public function makes decisions influenced by private (personal or group) interests that he/she may have. Sometimes it happens that, although there has still not been a conflict of public and private interest, there is a possibility that such a conflict may arise, and then we are talking about potential conflict of interests. It also happens that a situation only resembles the one characterized by the conflict of public and private interest, without actually being one, and then we are talking about pseudo conflict of interests. The decisions made under the influence of private interest do not necessarily have to be detrimental for the public interest, although they often are. Therefore, in the course of prevention, two points are particularly being taken into consideration: first, regulations preventing the appearance of conflict of public and private interests are prescribed, and second, procedure rules in the cases when such a situation occurs, are specified.

When government authorities are open and responsible towards the citizens, the possibility of public interest being jeopardized in the conflict, is significantly reduced. On the other hand, it is still widely held that performing some public function is a good opportunity to achieve one's private interests. Namely, the earnings in the public sector are low, especially if bearing in mind the importance of performing certain functions and the fact that the decisions that state officials make influence many people's lives and the future of the country.

Even more noticeable is the difference in the earnings of certain field specialists, depending on whether they are employed with the public or private sector. The earnings in the private sector are usually considerably higher, but such situation can also be found in much richer countries than Serbia. The disproportion between the responsibility of performing state functions and the earnings that state officials are entitled to, only magnifies the citizens' suspicion that the motive people have when choosing political career, and the work in public sector in general, is the possibility to achieve their private interests.

Such a standpoint by the public makes it significantly more difficult for those government officials who do not intend to use the position they are in for their private benefit. They are in an unpleasant position always proving their innocence to the public, which is only too ready to pass general negative opinion. For the purpose of maintaining the integrity of such people, who are invaluable in forming a new behavior pattern and in developing a new understanding of public function, the following regulations are passed:

- The ones that reduce the possibility of the conflict of interests
- The ones that introduce the procedure and determine the authorities which are to assess if there is a conflict of public and private interests, and how to solve it in favor of public interest
- The ones that provide the public with sufficient information on the state officials' and Civil Servants' behavior and decision-making

The purpose of this analysis is to determine the content of current regulations in the Republic of Serbia, which refer or are related to the issue of public and private interest conflict prevention, most of all referring to the highest state officials. The following has particularly been analyzed: whether it is permissible to perform other duties and functions while public function is being performed, the obligation of declaring private interests, assets and gifts, action procedure, penalties for violating the rules, the question of declaring the interests of close persons, ethical codes and internal control mechanisms, as well as the limitations once the term of office, i.e. employment, has ended. This analysis does not cover the rules for preventing the conflict between two private interests (for example: the conflict of interests of a private company and those of an employee working in that company), although some standards that regulate this field have been mentioned.

In the Republic of Serbia, particularly while Federal Republic of Yugoslavia still existed[1], there was a complex structure of power and a great number of high state organs. A part of the works performed by the Republic was transferred in February 2002 to the organs of Autonomous Province of Vojvodina. The regulations on various authority levels were often full of discrepancies, starting with the Constitution of the Republic of Serbia (1990) and FRY Constitution (1992).

It should be pointed out right away that the question of preventing the conflict of public and private interest, has not so far in Serbia been approached in a unified manner. There is not a single general act based on which the rules could be developed for specific fields in which public interest is realized, and also the existing rules, passed in various periods of domestic legislation development, often have different contents.

A number of rules that should have an effect on the prevention of the conflict of public and private interest, can be found in the essential legal acts (Constitutions) of the Republic of Serbia and FRY. The regulations of the newly-formed state community of Serbia and Montenegro also contain a number of provisions on the prevention of conflict of its officials' interests.

[1] Federal Repulic of Yugoslavia existed in the period from 27 April 1992 (the day its Constitution was passed), until 4 February 2003, when the Constitutional Charter of the state community of Serbia and Montenegro was adopted.

Highest state officials with legislative and executive power

The President of Republic

FRY Constitution specified that Federal President could not perform other public functions or his professional occupation (FRY Constitution, Article 97). There is a similar rule in the Constitution of the Republic of Serbia, referring to the President of the Republic of Serbia (Article 86, paragraph 8). However, a mechanism was not foreseen for putting this provision into effect, meaning that the only way to solve a possible conflict of interest that the President of Republic may have, arising from performing other public functions or professional occupation, would be the recall mechanism, as specified in the Constitution. In order for the President of Republic to be recalled, 2/3 of the total number of the members of parliament would have to vote in favor of such a decision, and after that the majority of registered voters would make the final decision in a referendum. This issue has been approached in public many times, with reference to the fact that two federal presidents were at the same time the presidents of their political parties, just as one president of Serbia was, and one president of Serbia was a high party official. Although such an occurrence is not so rare in democratic countries, the provisions of the current Serbian Constitution as well as of the former FRY Constitution, leave little space for the interpretations that would support such occurrences. The provisions regarding the incompatibility of S&M State Community President's functions, are specified in the Law on Council of S&M Ministers (see the part on the state officials with executive power), considering that based on Article 19 thereof, the state community President is a member of that Council. S&M President may be recalled in case of violating the Constitutional Charter in accordance with the set procedure (Article 11-15 of the Law on Election and Termination of Mandate of the President of Serbia and Montenegro).

The Law on Specific Rights and Duties of the President of the Republic (Serbia) (1999) did not set any limitations to previous presidents regarding the performance of other duties upon expiry of their term. It only contains a provision (Art. 4) that a former president is obligated to keep the state secret even after the expiry of his term. In order for the president to have suitable conditions for performing the function during his term of office, in addition to the usual measures (security, transportation and the like), it has been specified that his spouse is entitled, in the course of the term, to dormancy of employment, funded by the Republic budget (Art. 10). Former presidents are, based on this Law, entitled to a pension in the amount of 85% of the presidential salary, as well as to life-time body guard, one administrator's services for administration works and to the state car, as required (Art. 11). Considering that there are no limitations regarding work performance upon the expiry of presidential term, it would appear that these privileges are exaggerated.

Members of Parliament

On the federal level, there was incompatibility between the function of a member of Federal Parliament and the function of a member of Government. In the new state community as well, it is not possible for members of S&M Parliament to be members of the Council of Ministers as well. On the other hand, it is not prohibited for the members of Serbian Parliament to be also the members of Serbian Government. Since the formation of state community Serbia and Montenegro, the members of its Parliament have practically been delegated representatives of deputy groups from republican parliaments and it has been planned to remain so in the next two years, i.e. until the first direct elections for

S&M Parliament. It is expected that the question of whether it would be possible (or not) for the members of Serbian Parliament to be, at the same, members of S&M Parliament, would be regulated by a law to be passed before these elections. The provisions in Article 11 of the Law on the Election of MPs (Parliament of the Republic of Serbia) from 2000, specifies that the members of Parliament may not perform judicial functions, or other functions whose holders are selected by the National Parliament, nor can they be "officials or employees in a republican organ performing activities referring to the competence of that organ" unless otherwise specified by the Constitution. When a person performing an incompatible function has been elected for an MP, the term of that function ceases once the MP term has been verified, and in case there is an incompatible employment, it remains dormant while the MP term lasts. MPs are not forbidden to perform other activities, including the ones in economy; they could have been, until 4 February 2003, officials of the former federal state (based on the provisions of the new state community regulation, they could not be members of the Council of Ministers); they can be officials of an autonomous province or local self-government. There is no regulation that would specify which of these functions has priority (e.g. in case an MP can not attend a National Assemblysession, because of another public function, or vice versa). In such a case, harm is obviously done to public interest, either in the part realized through MP's work, or in the part realized through some other public function.

The reasons for regulating the conflict of MPs' interests

It is certain that an MP (especially if a member of some major deputy group in the Parliament and if performing some important Parliament function) can have an effect on whether or how quickly a certain law or act will be passed, therefore it would be advisable to regulate their conflict of public and private interest. It is questionable whether it is possible to define accurately the subject of MP's conflict of public and private interest in terms of function performance. Namely, they are elected (at least theoretically) into a representative body in order to represent the interests of all Serbian citizens (Article 76 of the Constitution specifies that they are the representatives of the citizens from their electoral unit, and according to the Law on the Election of MPs, the territory of the entire Republic is one electoral unit). On the other hand, they come from various parts of the country and from various professions, therefore it is considered to a certain extent normal that they should represent the interests of their region and their profession. Finally, due to the nature of the electoral system, they are mostly elected as the representatives of their parties (proposers of electoral lists), and before the Constitutional Court made the decision in April 2003, all deviations from the party policy had resulted in MP's loss of term. If we focused on the first standpoint based on the Constitution, there could be a conflict of interests even in the situations when MPs vote for or against certain regulations, considering the interests of the place they are related to (e.g. the place of origin or residence) or the interests of the profession (e.g. medical, agricultural, legal) they belong to. It is, however, much more clear to talk about the conflict of interests when we deal with specific and visible interests of an individual MP to vote for or against a certain regulation. An MP who, due to an economic activity he performs, can clearly profit or suffer damage as a result of passing a certain law, is not in any way obligated to report such an interest, nor to exempt himself from the decision-making process (e.g. within the competent parliament board) on such a matter. Only the situation when an MP has been bribed (by providing or promising some profit) to represent the interests of a third party, is punishable for both parties that participate in such an activity. If there were criminal proceedings against an MP, it would be necessary to perform a standard parliamentary immunity revoking procedure

(there is no provision in our legal system, that in case of suspicion or accusation of corruption, an MP is not allowed to enjoy his immunity).

Just as they are not obligated to report their private interests in actual situations, MPs or MP candidates are not obligated to report their assets before they come into function or during their term of office, which is the key deficiency of the present legal solutions. MPs' files are kept in the Parliament, which contain some personal data, but not the above stated.

MPs' employment and earnings

Based on the provisions specified in the Labor Law (2001, Article 63), MPs have the possibility for their employment rights and obligations to remain dormant. The provision of the stated article leaves enough room for a different interpretation, because it has been specified that the employment rights and obligations remain dormant *if the performance of a public office requires that the employee temporarily stops working with the employer.* The Law on MPs' earnings in the National Assembly of the Republic of Serbia (1991), makes it possible both for MPs employed or unemployed at the time of their election, that based on the criteria established by the Committee for administrative and mandate-immunity questions, at the suggestion of that Committee and with the decision by the National Parliament, to obtain the status of MPs with full-time employment in the National Assembly (Article 3). Furthermore, those MPs who continue to earn their income from employment or otherwise have the right to compensation up to the full MP salary (Article 5). These earnings can be reduced in case of an unexcused absence from the Parliament sessions. The National Assembly internal regulations (2002) specify that an MP who does not attend certain parliamentary activities may lose the status of MP with full-time employment in the National Assembly(Article 217). Such a measure, since there are no stringent standards on the conflict of interest prevention, can make it impossible for certain MPs to put, in an obvious manner, their private obligations before the parliamentary ones, but its range ends there, when it comes to the conflict of interest prevention. Temporary internal regulations of the Parliament of Serbia and Montenegro (Article 16) specified that MPs are obligated to participate in parliamentary activities, i.e. to explain their absence, but there are no sanctions in case these provisions have been violated.

Accepting gifts

When it comes to the gifts that MPs accept, current regulations state no limitations, except for some general provisions stated in the Law on the Assets owned by the Republic of Serbia (1995) which specifies that the gifts received by the representative of the Republic from foreign states, organs or organizations of these states, international organizations or foreign citizens and foreign legal entities, are assets owned by the state (Article 38).

Holders of executive power

Republic of Serbia

In accordance with the provisions of Article 49 of the Law on State Administration (1992), a minister may not perform any public, professional or any other duty that is incompatible with the function of minister. Officials in the state administration organs may not work in another state administration organ, i.e. with another employer, nor may they

perform an independent professional activity that is incompatible with their status. The Government may approve for the officials who are scientists by calling, to work in research and educational institutions, if this does not jeopardize efficient operation of state administration organs. Ministers can, at the same time, be MPs in the Parliament of Serbia, but they can not be members of the parliamentary committees.

As there is no precise definition by which public, professional or any other duty could be considered incompatible with the ministerial function, the National Assemblycould give such an evaluation in a possible dismissal procedure of a specific member of the Government. In the absence of more precise legal regulations, the Government of Serbia made several decisions limiting the members of the Government in performing certain functions (for example, they can not be paid for the membership in managing boards of certain state-owned companies). On the other hand, based on the Government's decisions, its officials are obligated to perform functions in the Government-formed bodies.

The members of the Government are not obligated to report their assets and interests, which is one of the main shortcomings of the existing legislation in this sphere. When transitional Government of Serbia was formed in October 2000, some ministers reported their assets and interests voluntarily, and this has often been the topic of media interests, therefore it is not surprising that half of the citizens of Serbia believe that reporting one's assets is obligatory[2]. In terms of accepting and keeping gifts, there are only the previously mentioned provisions of the Law on the Assets owned by the Republic of Serbia. It should be kept in mind that, when talking about "gifts" that actually present bribe, there is criminal liability as a form of sanctioning mechanism; except for this one, there are no limitations regarding acceptance and keeping of the received gifts with respect to their type, value or the donor. Reporting the received gifts is also not regulated, except in the cases of foreign donors. There is no specified sanctions in the cases of violating the provisions of Articles 38 and 40 of the Law on the Assets owned by the Republic of Serbia (e.g. in case an official does not give the received gift to the Assets Directorate of the Republic of Serbia). It is specified in Article 38, paragraph 1 of the above mentioned Law that the stated gifts become state property, the moment they are received by state officials. The application of this regulation in practice is made even more difficult because no Government of Serbia, since the passing of the Law, has passed a decree based on Article 41 that would define "appropriate gift of smaller value".

Another important field of conflict of interest prevention is limiting, in sense of time and/or content, the possibility of performing certain jobs upon the expiry of public office. The purpose of this limitation is twofold: on one hand, it would prevent later payment of concessions made during the term of office, and on the other, it would prevent the use of advantages acquired in the course of performing a public office (e.g. acquaintances and information). In the Republic of Serbia, there are no limitations of the kind for the executive power officials, so that they are completely unrestricted in terms of their future employment and employer.

The rules on exemption when making administrative procedure decisions also refer to the members of the Government, which is dealt with in more detail in the section on Civil Servants.

Former Federal Government and S&M Minister Council

Based on the provisions of the former FRY Constitution, the members of Federal Government could not perform any other public function or professional activity. The Law on

[2] See the results of the public opinion analysis "Conflict of Interests and Access to Information", Serbia March-April 2003

Council of S&M Ministers (2003, Article 20) specifies that a member of the Council may not during his term of office, be a judge, an official in state organs and the organs of local self-government. Furthermore, they may not perform any honorary duties, unless otherwise approved by the Council itself. It can be concluded from this provision that the members of the Council may not be the state organ officials in certain republics, referring both to the organs of judicial, as well as of executive and legislative power. The members of the Council can not, in connection with the function performance, accept gifts, nor can they benefit from legal and natural persons, either domestic or foreign (Article 21). This provision, although introducing a strict prohibition, obviously can not be fully implemented in practice, most of all because the exception of accepting the usual "protocol gifts" has not been specified. The Law does not specify special mechanisms that would ensure enforcement of this provision (e.g. mandatory reporting of the offered gifts and the action to be taken in case it was impossible to avoid acquiring benefit), and for a possible violation of this provision, no specific sanctioning procedure has been foreseen (the provisions on the responsibility of the Council members are applied). The members of the Minister Council undertake to keep the state, official and professional secrets, regardless of the way in which they got acquainted with them, even after their term of office has expired (Article 22). They face no limitations regarding the performance of any specific job, upon the expiry of their term.

Courts and Public Prosecutor's Office

In the legal system of the Republic of Serbia, there are many similarities in the relevant regulations referring to the judges and prosecutors, and the legislation reforms have usually been conducted at the same time in both of these state institutions. The Constitution of the Republic of Serbia specifies in Articles 100 and 105 that the judges, i.e. public prosecutors can not perform duties or jobs that are established by law to be incompatible with the function of a judge, i.e. public prosecutor. Article 27 of the Law on Judges, i.e. Article 47, paragraph 1 of the Law on Public Prosecutor's Office (both from 2001), specify that judges/public prosecutors and assistant public prosecutors, may not accept duties in the organs that pass and execute regulations, be members of political parties, engage in any public or private business, or offer any legal service and advice, with payment. Other services, jobs and actions as well that are contrary to the dignity and independence of a judge (public prosecutor's independence) or that damage the reputation of a court/public prosecutor's office, are also incompatible with their duty. These actions are determined by the Supreme Court of Serbia/Republic Public Prosecutor.

With reference to the prohibition of performing other activities with payment, the laws have foreseen exceptions as well. For example, a judge may perform scientific and professional activity with payment, if approved by the President of the Court. Public prosecutors and their assistants may also perform scientific and professional activity with payment.

In order to resolve the situation when it is suspected that a certain service or job is incompatible with the function of a judge/prosecutor, the laws specify the obligation to inform the President of the Court, i.e. the Senior Public Prosecutor about every such service or job. The President of the Court informs the Grand Personnel Council, and the Republic Prosecutor informs the Minister of Justice. If incompatibility is established, a warning notice is issued and entered in the personal card kept for each judge/public prosecutor and assistant public prosecutor. This card, among other data, contains the information on the advancements in service, published scientific and professional papers and financial situation (Articles 28, 48, 49 and 50 of the Law on Public Prosecutor's Office; similar to Art. 69 of the Law on Organization of Courts, both from 2001).

If a public prosecutor or assistant public prosecutor continues performing the service or activities incompatible with his duty after the notice has been issued, the senior public prosecutor or the minister competent for justice may pronounce suspension from public prosecution in the duration of one month up to one year or initiate proceedings for his dismissal.

At this point, it should be noted that the mechanism for control of the data contained in personal cards, particularly of the data on property, is not clear, except that the legislator has stated that public prosecutor and the person who gave the data, are responsible for the accuracy of the given data. The law does not foresee sanctions for giving incorrect information.

After the amendments were made in the Law on Organization of Courts in July 2002, the data on judge's relatives by blood in direct and collateral line up to the fourth degree of relationship and on relatives by marriage in direct line who are engaged in jurisdiction, state administration or legal profession, the data on spouse's advancements in the service and on the members of his family, have all been removed from the judges' personal cards. Namely, it has been established that collecting such data, which could surely be of use in determining a possible conflict of interests, is unconstitutional. Without discussing whether the reasons that led to the amendments in the regulations on the content of the judges' personal cards are justified (the question of constitutionality), we would like to point out that the provisions of the Law on Organization and Jurisdiction of State Bodies in Fighting Organized Crime (2002), specify that it is obligatory to provide some data, the collection of which was deemed unconstitutional in case of the Law on Organization of Courts.

The provisions on function incompatibility can also be found in the part of the Law on Judges that refers to Grand Personnel Council (Article 39). It has been specified there that the function of the President of Supreme Court of Serbia is incompatible with the function of this body's member. A member of Grand Personnel Council is exempt from the proceedings, when proceedings "in connection with that member" are initiated. The Law on High Judicial Council also specifies the mechanisms that prevent the interested member from participating in the proceedings before the Council (precisely defined cases-Articles 15 and 16).

Article 75 of the Law on Judges specifies incompatibility of certain services and activities with the duty of a judge - juror. It has been specified that a juror can not be an attorney, or a person that offers legal services or professional advice with payment. The legislator has probably intended for the term "professional advice" to refer also to the field of law, although a purely linguistic interpretation would result in a broader application of limitation from this paragraph. Other services, jobs and activities that are contrary to juror's dignity and independence or are harmful for court's reputation, are also incompatible with the duty of a juror.

The basic method that should ensure objectivity of judges' and public prosecutors' actions, is specified in adjective law. For example, Criminal Procedure Code (2001) specifies in Articles 40 and 45 the reasons for the exclusion of the judge in charge, lay judge and prosecutor (the reasons for the exclusion of a public prosecutor and assistant public prosecutor are identical to the reasons for the exclusion of a judge). Some reasons are enumerated (if a public prosecutor/ judge is harmed by a criminal act, if the accused or the defender is his/her spouse or relative by blood in direct line, or collateral relative up to the fourth degree of relationship, i.e. up to the second degree of the relation by marriage, etc.) In such a case, as soon as the circumstances for compulsory exclusion have been established, the judges and public prosecutors must stop the work on the case and inform the President of the Court/Senior Prosecutor of the existence of the reasons for a

compulsory exclusion. In case there are optional reasons for exclusion, i.e. other circumstances which may question the objectivity of judges and public prosecutors, they may perform the activities that can not be postponed until the final decision regarding the exclusion. Basically, the Civil Procedure Law (1977) contains similar solutions.

Although these measures have been incorporated in our legal system for decades and have proven efficient in practice, they have still not been able to prevent the conflict of interest from ever appearing in particular procedures. For example, in the public prosecution organization, the principle of subordination is applicable, so that the republic and district public prosecutors are authorized to give mandatory instructions to municipal public prosecutors who are subordinate to them (which may refer to specific cases as well). Furthermore, Article 12 of the Law on Public Prosecutor's Office entitles senior public prosecutor to take over all the activities his subordinate is authorized for, as well as to authorize a subordinate public prosecutor to proceed in the case from the jurisdiction of another subordinate public prosecutor. The process actions taken and process statements given by a subordinate public prosecutor in a certain case, have before the court full legal effect, regardless of whether they are contrary to the mandatory instructions given by the senior public prosecutor. However, subordinate public prosecutors or assistant public prosecutors may be held responsible for their actions, if they have acted contrary to concrete and declarative instructions. There are no mechanisms for the exclusion of high-ranking public prosecutors in the procedure of giving compulsory instructions.

The Law on the Court of Serbia and Montenegro (2003, Article 22) specifies that a judge of that court can not perform another public function (it has particularly been emphasized that they can not perform the duty of an MP), or any professional activity. The exception is when a judge, upon the approval by the Court itself, may perform professional- scientific/research or educational activity. The judges may not be members of any political party. When incompatibility of a certain judge's function is being voted, the judge in question may not take part in the process. The limitation regarding the jurisdiction of this Court is specified in paragraph 3 of the above mentioned Article. A judge may not participate in the preparation of the constitution, laws or other regulations and general acts, whose compliance (with the Constitutional Charter, confirmed international contracts, etc.) is evaluated by S&M Court.

Provisions of the Law on Organization and Jurisdiction of State Bodies in Fighting Organized Crime

This Law specifies the formation of special state organs and departments within the existing state organs, for the purpose of successful stamping out of organized crime. In compliance with this law, Special Prosecutor's Office was established, headed by a special prosecutor, then specific departments within the District Court and the Court of Appeals in Belgrade, a special service in the Police Department and a special detention unit. Due to the fact that all the persons who implement this Law by working in special state organ departments, have significantly higher authorization than their colleagues from the other departments, and probably also because this Law was written at the time when the draft Law on the Conflict of Interests Prevention already existed, compulsory reporting of the assets was foreseen, which is unusual for other laws. Article 16 specifies that these persons are obligated to submit in writing the whole and correct information on their own financial situation, and the financial situation of their spouse, relatives by blood in the direct line, in the collateral line up to the third degree and in relation by marriage up to the second degree, before the start of their office. Safety checks and the checks of financial situation of these persons can be carried out without the knowledge of these persons,

before their term of office starts, during their term of office and a year after the expiry of the term. However, the provision stating that the data on assets be submitted "in accordance with the act passed by the Government of Serbia" may have significant implications on the application of this Article of the Law. It is not known whether such an act has been passed, and what exactly it should specify, i.e. whether it is the mere manner of delivery that is in question, more detailed information on the assets, the form appearance or something else. It is unclear, with reference to this, whether the provisions of Article 16 may be applied until the passing of this act by the Government.

Civil Servants

The term "Civil Servants" has still not officially been used in the regulations in Serbia (the Law on Civil Servants is being prepared), so the standards referring to their operation can be found in many laws and decrees. Some rules contained in the Labor Law, the Law on Employment in State Organs, the Law on State Administration, as well as many other laws and regulations, including the rules of the Law on General Administrative Procedure (1997) and of the regulations referring to specific administrative procedures, are of importance for this analysis.

Since the question of detecting and settling potential conflict of interests was not specially regulated, the existing rules that refer to Civil Servants only have partial character.

The Law on Employment in State Organs (1991) is applied to all the employees in ministries, special organizations, courts, public prosecutor's office, legal offices, magistrates and in the National Assemblyservices, the President of Republic, the Government and Constitutional Court, who are employed by the decision of the officials who manage these organs and services, and in part, which is not regulated by specific provisions, it is applied to the so-called elected (by the National Parliament) and appointed persons (by the Government or some other competent organ).

The employees in state organs, the elected and appointed persons, are obligated to perform their duty conscientiously, impartially and in accordance with the Constitution and law. The employees in state organs and appointed persons (not the elected ones), are prohibited, when performing their official duties, to be guided by their party, i.e. political beliefs and to express and represent them in performing the service. As an additional measure of ensuring political impartiality for the benefit of public interest, it has been specified that the employees in state organs and the appointed persons may not be the members of the organs of political organizations (they can be "regular" members). Article 6 of the Law on State Administration in this sense adds another prohibition of establishing organizational forms of political organizations in the organs of state administration.

In terms of incompatibility of Civil Servant's function with the other functions, there is no specific prohibition, except the one resulting from the actual impossibility of initiating another employment during the employment in the state organ. In paragraph 2 of the already mentioned Article 49 of the Law on State Administration, it has exceptionally been specified that deputy and assistant ministers, ministry secretaries, as well as the officials who manage special organizations and their deputies and assistants may not work in another organ of state administration, or with other employers; they may not perform independent professional activities either that are incompatible with their status of officials in the organs of state administration. The exception is when the Government approves for the ones who have scientific titles and work in scientific/educational institutions, to continue performing that activity "unless this jeopardizes efficient operation of state administration".

There are no provisions specifying the obligation of Civil Servants to report their property.

The Law on General Administrative Procedure (1997) in Articles 32-38 regulates the question of exclusion of the interested official and these are analogous with the provisions on the exclusion from a lawsuit. An official who is engaged in administrative matter or performs certain actions in the proceedings shall be excluded if he is, in that particular lawsuit, a party, a person under joint obligation / authorization with the party, a witness, an expert, a proxy holder or the party's legal representative; if he is with the party, the party's representative or proxy holder, a relative by blood in direct line, and in collateral line up to the fourth degree inclusive, a spouse or a relative by marriage up to the second degree inclusive, even when a marriage has been dissolved, i.e. if he is with them in the relation of a guardian, adopter, adoptee or foster parent; if he was engaged in the proceedings of first instance in heading the procedure or in pronouncing the decision. An official is obligated, upon being acquainted with any of these circumstances, to stop any further work on the case. An official is given a possibility to ask for his own exclusion due to the existence of a certain circumstance that has not been explicitly stated but may compromise his impartiality (e.g. friendship with some of the parties), but in that case, he continues to work until the decision on his exclusion has been made. The party may also point to the existence of such circumstances in which case no action could be taken in the proceedings, except the ones that can not be postponed. Violation of the exclusion rules is a reason for repeating the proceedings (Article 239 of the Law on General Administrative Procedure).

The method of making the decision on exclusion is left to be regulated by the republican laws, and it was done so. For example, Article 77 of the Law on State Administration (1992) specifies that the ministers in charge decide on the exclusion of Civil Servants from certain administrative procedures, while the Government decides on the exclusion of ministers themselves. Furthermore, the Law on Local Self-Government (2002) [3] specifies in Article 62 that the mayor decides on the exclusion of municipal government chief, i.e. the chief of regional government. The chief decides on the exclusion of the other Civil Servants ("officials") in the municipal administration.

There is no doubt that the present shortcomings of the system for the prevention of Civil Servants' conflict of interests, will be reduced upon adopting the new regulations that were announced in this field. In addition to the Law on the prevention of the conflict of public and private interests when performing public functions, the Code of Ethics for Civil Servants (based on an European Council document), as well as the new Law on Civil Servants, will also play an important part here. In the draft version of this Law (March 2003), which should undergo some serious modifications before the recommendation, there are among other things, declarative prohibition of the conflict of interests as well as the prohibition of accepting gifts (except protocol ones).

For the employees of the Ministry of Internal Affairs, a list of jobs incompatible with their official duty has been determined (By-laws on determining the jobs that are incompatible with official duties from 1992). This act prohibits the performance of economic or some other activity based on the personal work regulation (private enterprise, part-time work in companies and the like), except for scientific work of the officials who hold scientific titles, as well as in the cases of service contract referring to precisely defined fields (Article 1, paragraph 3). Service contract can still be approved by the relevant Ministry official (Article 3).

[3] The Law has specified a new structure of the local self-government organs of authority, which shall be applied in the whole country only after the first next elections for the board members and mayors.

Recommendation by the Parliament of Autonomous Province of Vojvodina

In the session held on 12 March 2002, the Parliament of Vojvodina made a Recommendation of the conduct rules for the elected, nominated, appointed and employed persons in the Province organs. By its nature, this Recommendation presents a kind of an ethical code, which does not include the sanctions for the violation of rules, nor does it specify the action mechanisms in case these provisions have been violated. In certain provisions of the Recommendation, some obligations are repeated that already exist in the laws. For example, Article 5 specifies that the elected officials in the highest positions "may not perform any other public function, *in accordance with the positive regulations*", and Article 8 that "they may not directly or indirectly, ask for or accept gifts, services or other benefits for performing their duty or in connection with performing the duty", which in fact is the description of a way of committing a criminal offence of accepting bribe. The Recommendation calls upon the elected persons to report their businesses, financial and other profit-making activities before they come into office, as well as to report to the competent parliamentary body (without stating which body that is) the property and debts for him/herself, the spouse and the dependants. Furthermore, Article 10 specifies that the persons who the Recommendation refers to "must always place the public interest before the personal in case there is a conflict or discrepancy between the two". Regardless of the obvious shortcomings, the mere fact that such a Recommendation has been made is important, because it points to the development of understanding among the organs who pass regulations, that this sphere needs to be regulated.

Public companies

The Enterprise Law (1996) contains several rules that should provide the protection of public interest in the public companies and the companies with socially-owned property. And so, Article 92 specifies the following:

"**(1)** ... members of management, supervisory board and executive board of directors.....of a socially-owned and public company can not be in that capacity, nor be employed, i.e. be managers in any other company, i.e. any other legal entity of the same or related activity or an activity that could present competition, nor can they be entrepreneurs who perform such an activity.

...

(3) Foundation act, i.e. the company statute may specify that the prohibition stated in paragraph 1 of this Article be valid even after the loss of the position from that paragraph, but not longer than two years.

(4) If a person from paragraph 1 hereto violates the competition clause, the company may:

1) terminate the employment or other contract;

...

3) ask for the competitive activity to be deleted from the register;

4) ask for indemnity.

(5) Instead of indemnity, the company may ask the person from paragraph 1 of this Article to do the following:

1) leave the transactions performed for one's own account as the transactions performed for account of the company;

2) transfer to the company the profit from the transactions concluded for somebody else's account as the transactions performed for account of the company;

3) assign to the company the rights from the transactions concluded for somebody else's account as the transactions concluded for account of the company.

(6) Company's claim for compensation expires within 90 days from the date of discovering the violation of this Article's paragraph 1 provisions and the offender, and three years from the date when the offence was made at latest."

Therefore, this article of the Law lists the functions and activities that can not be performed by the public company officials because performance of these functions and activities may present competition to the public company. Furthermore, efficient sanctions that are to cancel as well as possible the detrimental consequences of violating the competition prohibition rules, have been prescribed.

Besides, this law sets limitations for performing several functions in related companies (parent and dependent company - Article 68), as well as the limitation of the possibility for the same persons to be members of managing and supervisory boards of more than three companies, even when these companies are not engaged in the same or related activities. Article 70, paragraph 3 specifies that such an election is null and void (e.g, election into the managing or supervisory board of the fourth company). On the other hand, multiple "mixed" membership is not forbidden (e.g. in two managing and two supervisory boards).

Article 93 of the Law regulates the conflict of interest question in business operations. These provisions regulate the conditions for the conclusion of a number of legal operations between the public company officials and the company itself. It is particularly important that the approval is requested for the transactions concluded by other persons as well (not only by the official) if the official could be interested in the conclusion of these transactions. Therefore:

"**(1)** ... members of management, supervisory and executive board of directors... of a socially-owned and public company...may conclude with the company in which they hold that particular position, a loan, security, guarantee, surety and warranty contract, as well as some other legal transaction determined by the foundation act, i.e. by the statute, with the approval ... of the managing and supervisory board.

(2) Approval from paragraph 1 of this Article is required for a legal transaction concluded by other parties, which the parties from that paragraph are interested in.

(3) The interested party from paragraph 1 of this Article may not vote in the managing or supervisory board when the decision on the approval is being made.

...

(5) The foundation act, i.e. statute may specify that approval is not necessary for the transactions concluded under usual conditions..."

The exception allowed by paragraph 5 of this Article, in case it is used in the foundation act, i.e. statute of a public company, may significantly decrease the positive effects of the other provisions of that Article, because control over a possible conflict of interests is lost, which is to a certain extent ensured merely by the necessity to ask for the approval to engage in a certain transaction.

Public Procurement

A particularly important field where it is necessary to regulate the conflict of interest issue is public procurement, since it is through public procurement that large amounts of budget funds are being used. The new regulations on public procurement, starting with the Law on Public Procurement passed in July 2002, made it compulsory to apply the public procurement procedures that are based on the model applied in the EU countries. These procedures considerably reduce the possibility for those who are conducting public procurement to cause damage to the budget due to their private interests, although the rules that directly regulate the conflict of interest prevention are few. Article 6 paragraph 2

of the Law specifies that the persons who have been engaged in preparing the tender documentation or parts thereof may not appear in the role of bidders or subcontractors, nor may they cooperate with the bidders in the course of preparing their bids. It was the legislator's intention to prevent, in such a way, the experts who prepare the tender documentation from doing it in such a way as to make it possible for them to appear as the best bidders (e.g. considering the particular knowledge or technical equipment they possess), i.e. from participating in bid preparation of other bidders, since they have the "starting advantage" being acquainted with all the details of the requirements set forth by the tender documentation.

Article 146 specifies a fine (100,000-200,000 dinars) for the orderer who awards a contract to the bidder who has participated in the preparation of tender documentation. The Decree, the Decision on the criteria for the public procurement committee formation, specify that the persons employed in the legal entity that could be a bidder for that kind of public procurement, may not be nominated in the committee.

Article 17 of the Law was titled "Anticorruption regulations". The provision reads as follows: "The orderer shall reject a bid if there is **verifiable evidence** that the **bidder** has given or promised **a current or former employee** of the orderer **a gift**, be it a gift in money or a non-monetary one, or that the bidder offered employment or any other benefit **that may be expressed in terms of money**, in **an attempt to influence** the procedure, decision making or the subsequent course of the public procurement procedure." Article 17 specifies in fact that the bid shall invariably be rejected if there is verifiable evidence that the criminal offence of giving bribe, in any of its forms separately listed, has been committed by the bidder. The wording of this provision is narrower than the provision wording for the criminal offence of giving bribe, and we do not clearly understand why this is so. For example, the influence on the public procurement procedure by the persons who are not (current or former) employees of the orderer is not sanctioned in the same manner, although there is no doubt that other persons as well, based on personal power, may influence the orderer's organs that make the decisions on procurement; the given or promised benefit must be expressible in terms of money, although it is unquestionable that bribe can be performed by means for which it is impossible to determine monetary equivalent; finally, it is hard to suppose that verifiable evidence could be anything else but a final sentence, which due to the considerably longer duration of lawsuits than that of public procurement procedures, significantly reduces the possibility of this rule being applied in practice.

Far more efficient mechanism for sanctioning abuse in the public procurement procedure has been foreseen by the alterations of the Criminal Law of the Republic of Serbia from 2001, specifying an offence *corruption in public procurement* (Article 255g). For such an offence the offenders (official and responsible persons) may be punished with high prison sentences, especially if they make considerable profit by the abuse.

For the purpose of protecting the bidders' rights, the Law has foreseen the formation of a special Committee. The rules on the prevention of the conflict of interest in a procedure before the Committee have not been specified in the Law, therefore it is expected that the Committee itself will pass them, through the documents that regulate its operation. It is not clear if the provisions of the Law on General Administrative Procedure can be applied, and to what extent, to a procedure before the Committee.

Privatization

The privatization process that is underway in Serbia, has been regulated by several laws and decrees. In addition to the ministry in charge, some newly-formed organs also participate in the privatization process, such as the Share Fund and the Privatization Agency.

Some of the regulations in connection with the operation of these bodies, as well as with the privatization process itself, contain some rules for preventing the conflict of interests. For example, in the Share Fund Law (2001, Article 20) reference is made to the relevant articles 93 and 94 of the Company Law, when dealing with the clause on competition and the conflict of interests in business operations of the Share Fund, its organs' members and employees. Article 21 thereof prohibits the abuse of privileged information that could be acquired by the Share Fund employees, and also it provides an accurate definition of "privileged information".

A list of persons who may not participate in the public sale of socially-owned property and capital, has been defined. The Decree on the sale of capital and property by public auction (2001) in Article 18, specifies that the following do not have the right to participate in the auction:

1) natural and legal persons who have commitments towards the subject whose capital, i.e. property is the subject of privatization;
2) the Committee members;
3) the Committee members' relatives of the first order of succession;
4) the legal entity owned by the Committee members;
5) the legal entity owned by the Committee members' relatives of the first order of succession;
6) other entities in compliance with the law.

It was determined by the Decree on the amendments of the Decree on the sale of capital and property by public auction (Off. Gaz. RS 19/03) that the persons who "lost the status of a buyer" (because they refuse to sign the minutes or do not effect the payment on time) also do not have the right of participation, as well as the legal entities founded by them, both in the future auctions for the same subject of privatization, and in other auctions in the following six months. These amendments of the Decree, however, also limit the right of participation in an auction for such person's family members including descendants (natural and adopted) and the members of their families, parents, spouse (present or former), "de facto" spouse, brothers and sisters and members of their families. Such provisions of Articles 7 and 8 of the Decree amendments, have undisputably the purpose of ensuring that the participants in an auction are more serious, prescribing the prohibition as a form of sanction for their unconscientious behavior. They also, by extending the prohibition to the "members of family", have the purpose of preventing a person who has "lost his/her status of a buyer", from participating in an auction through a member of his/her family. However, since this prohibition has all the characteristics of a sanction, (although it has not, as such, been marked in the Decree), and it limits the rights of the persons who have not committed a tort, or are responsible for it, its constitutionality is called into question.

The Decree on the sale of capital and property by public tender (2001), specifies that an employee in the Privatization Agency, who has proprietary rights in the subject of privatization or in a company that participates in the tender, i.e. whose relative in direct line takes part in the tender, may not be engaged in that tender (Article 2, paragraph 3). Article 3 specifies the same limitations for the members of the tender committee.

A different approach in the management of public tender and public auction has been noticed, in terms of possible participation in the privatization procedure. Namely, while in the public tender procedure the starting point is the company which is the subject of privatization, i.e. the companies that participate in the tender, so it is prohibited for the Agency employees and the tender committee members in certain ways connected with them to be engaged, in the public auction procedure the starting point for determining the persons who do not have the right of participation, is who the members of the committee are (except in items 1 and 6, see above). In compliance with these provisions, and based

on the known list of participants in a public tender, the members of the Committee would be determined, i.e. which employees of the Agency would be engaged once the list gets to be known, while in public auction, participation would be made impossible for those persons who are in some of the specified connections with the Committee members. Since the names of the Committee members do not have to be known in advance to potential participants of a public auction, it is possible that a natural or legal person, who will not have the right of participation in an auction, will bear unnecessary costs before the names of the Committee members get to be known. Therefore, the provision should be interpreted in such a way as to make it obligatory for the Agency to replace the Committee member who is in an unlawful relationship with some of the registered participants of a public auction.

It is also obvious that the circle of related persons is not determined in the same way for both procedures. For example, while the rules for public auctions refer to the relatives of the first order of succession, the provisions on public tenders include all the relatives in direct line. In terms of relation based on ownership, the Decree on public tenders specifies prohibition when there are certain "proprietary rights" (to any extent), while in public auctions "ownership" is mentioned (unclear to what extent, so it could be interpreted in different ways).

The Privatization Law (2001) prohibits certain domestic legal entities from participating in the privatization process. That was specified in Article 12 stating that "the buyer of capital or property may not be a domestic legal entity that has more than 50% of socially-owned capital or a person that has outstanding liabilities towards the subject of privatization. Furthermore, the buyer of capital or property of parent/dependent company where privatization is underway, may not be its dependent/parent company."

Media

Particular attention was paid to the question of the conflict of interests in some new laws as well. Long-prepared Broadcasting Law (2002) contains such provisions. This law established a body with very important competences for future operation and development of electronic media in Serbia-the Broadcasting Council. Article 25 of that Law specifies that its members may not be MPs (in federal, republic or provincial parliament), ministers, their deputies, assistants, nor the managers of special organizational units under direct control of the Government and executive organs nor other Governmental officials on the level of the state community (Serbia and Montenegro), Republic or provinces, the officials of political parties, **nor the persons who, as shareholders, stockholders, members of management organs, members of supervisory organs, employees, contracted persons, and the like have an interest in the legal entities that are engaged in the production and/or broadcasting of radio and television program or related activities (advertising, telecommunications and the like), so that the membership of such a person in the Council could lead to the conflict of interests**. The members of the Council may not be married, relatives in direct line, collateral relatives up to the third and by marriage up to the second degree of relationship with the above listed persons. Before the elections, the candidates are obligated to submit to the authorized proposer a statement that there are no obstacles per this Article of the Law for their election into the Council. Since there is a period of a month from nomination to the election of the members to the Council, this period, among other things, may also be used by the public to point to the existence of incompatibility of functions. If there is a "later" incompatibility of function (e.g. if a close relative of the Council member gets employed in a broadcasting company), the Parliament may relieve from duty this member of the Council, at the sug-

gestion by the Council or at least 20 MPs; the proposal must be explained and this member of the Council must be allowed to give his explanation of all the circumstances. During this duty-relieving procedure the Council may suspend this member until the final decision by the National Parliament.

By the same Law, the organs of the broadcasting institution of Serbia have been established, and independence from the political influence on the operation of this body should be ensured by the provisions on the incompatibility of this institution general manager's and the managing board members' functions with the functions in legislative and executive power, the Broadcasting Agency Council and political parties.

In terms of the conflict of interests when editors and journalists are concerned, it is surely possible that it may occur, and it may have an effect on the quality of reporting and on the editorial policy (e.g. situation in which a journalist affirmatively reports on the operation of a company owned by his relative, on the initiative of the political party he is a member of, i.e. if he reports negatively on the competitive companies or political options). Such a behavior is surely unprofessional and as such, punishable by disciplinary measures within the institution itself and journalist associations, and in case of fulfilling the legal presumptions, in some other ways as well (responsibility for possibly made damage and the like).

Conclusion

It could be concluded from the previous text that the existing regulations offer the possibility of public interest protection, to a certain extent, in case there is a conflict of public and private interests. This protection system is mostly developed through the institute of exclusion, known in the legal and administrative procedure. On the other hand, the institutes that serve for the implementation of efficient control mechanisms by the superiors or general public, such as reporting of property and interests, of the received or promised gifts, are either in their beginning or unknown. The rules on the incompatibility of function and prohibition of performing other jobs are unjustifiably unequal when it comes to the highest state officials. The provisions on the limitations regarding the possibility of performing other jobs once the term has expired, i.e. the end of employment, only give the possibility to be foreseen in practice. In case there is a conflict of interests, the ways of its solution are usually not particularly specified, which makes it difficult to protect the public interest, as well as the position of those who wish for their possible conflict of interests to be solved in a way that shall not call into question the reputation of the official. Therefore, it is necessary for Serbia to obtain special regulations on the conflict of interest prevention that, with the application of the code of ethics, would intensify the accountability of the state officials, the possibility of control by the citizens and that would render corruption a high risk/low profit activity.

The list of relevant regulations:

The Constitution of Federal Republic of Yugoslavia - FRY, 1992
Constitutional Charter of State Community Serbia and Montenegro-S&M, 2003
The Law on Election and Termination of Mandate of the President of Serbia and Montenegro- S&M, 2003
Provisional Operating Procedures of S&M Parliament - S&M, 2003
The Law on Council of Ministers - S&M, 2003
The Law on the Court of Serbia and Montenegro - S&M, 2003
The Constitution of the Republic of Serbia - RS, 1990
The Law on General Administrative Procedure - FRY, 1997
Criminal Procedure Code - FRY, 2001
Civil Procedure Law - SFRY, 1977
The Law on State Administration - RS, 1992
Labor Law - RS, 2001
The Law on Employment in State Organs - RS, 1991
Broadcasting Law - RS, 2002
The Law on Public Procurement - RS, 2002
Privatization Law - RS, 2001
Share Fund Law - RS, 2001
The Decree on the sale of capital and property by public auction - RS, 2001
The Decree on the sale of capital and property by public tender - RS, 2001
The Law on Specific Rights and Duties of the President of the Republic - RS, 1999
The Law on MPs' earnings in the National Assembly of the Republic of Serbia - RS, 1991
The Law on the Election of MPs- RS, 2000
The Law on the Assets owned by the Republic of Serbia - RS, 1995
Operating Procedures of the National Assembly of the Republic of Serbia - RS, 2002
The Law on Public Prosecutor's Office - RS, 2001
The Law on Judges- RS, 2001
The Law on Organization of Courts - RS, 2001
The Law on High Judicial Council - RS, 2001
The Law on Organization and Jurisdiction of State Bodies in Fighting Organized Crime - RS, 2002
Recommendation of the conduct rules for the elected, nominated, appointed and employed persons in the Province organs - APV, 2002
The Law on Local Self-Government - RS, 2002
The Enterprise Law - FRY, 1996
Criminal Law of the Republic of Serbia - RS, 1977
By-laws on determining the jobs that are incompatible with official duties - RS, 1992

Abbreviations:

SFRY - the regulation was passed by the organs of Socialist Federal Republic of Yugoslavia
FRY - the regulation was passed by the organs of Federal Republic of Yugoslavia
S&M - the regulation was passed by the organs of Serbia & Montenegro state community
RS - the regulation was passed by the organs of Republic of Serbia, i.e. Socialist Republic of Serbia
APV - the regulation was passed by the organs of Autonomous Province of Vojvodina

FREE ACCESS TO INFORMATION OF IMPORTANCE TO THE PUBLIC

The analysis of regulations in the Republic of Serbia (September 2002 - August 2003)

Introduction

Many questions have been raised regarding the free access to information of public importance (or information in the public interest, as referred to in certain circles). The very definition of the public interest is only one of them. Another issue is what falls under the category of information. Thirdly, there is a question of the way the information is stored, which came about due to the latest technological advances. Thanks to the progress in the electronic field, the documents with information are no longer only traditional collections of words, sounds and pictures (hard copy), but also a variety of other objects and items that can be created and stored on a computer. When a piece of information is created through regular operations of state institutions, then there is a question whether the information in public interest includes that which is not related to a particular decision, but only represents working documents and opinions. In any case, it can be said that a free access to information in the public interest has become a standard in democratic societies, regardless of who requests the information, be it a company or an individual, domestic or foreign.

Free access to information is provided through:

- Giving information about state institutions that are in possession of requested material, their structure, along with the people in charge of certain work segments and their contact information
- Informing the public about the nature of the documents that relevant state institutions have, including the description of documented information; this issue is in connection to the rules of registering, keeping and archiving of available information
- Giving information about how somebody can access the information in the public interest

The other side of the coin with respect to actually accessing the information in the public domain is the protection of other fundamental rights and freedoms in this process. On one hand there is a right to privacy protection aimed at protecting the citizenry, but there is also a need to protect the state, its agencies, institutions and the civil servants, which is accomplished by treating certain documents as secret and labeling them as confidential. Finding the proper balance between these rights and not jeopardizing any of the fundamental rights and freedoms that are considered sacred in a democratic society should be the goal of any bill that aims to regulate the free access to information.

Since Serbia currently does not have a separate piece of legislation that regulates the free access to information, the following analysis takes into the account only those bills that were in full legal effect during the period that the analysis covers, and relate to: the transparency of the work performed in state institutions and organizations along with

state-owned companies, ways of informing the public, privacy protection and secrecy. The analysis did not take into the account individual rights to make submissions to state institutions, nor did it evaluate the procedures prescribed by the law for processing such submissions and requests.

Constitutional guarantees

The Serbian Constitution (1990) contains several articles that those who are seeking the information of interest to the public can invoke. First and foremost, it is the Article 10, which mandates that the work of state institutions is accessible to the public, meaning that the public can be limited or excluded from the process only in special cases as prescribed by the law. Furthermore, even though the Constitution left up to the legislators to determine what are the proper circumstances in which it would be wise to exclude the public or limit its participation, it also failed to make it compulsory for the government to adopt such regulations and make the work of state institutions truly accessible to the public.

There should be no dispute over what constitutes the work of state institutions. Still, some segments of their work are accessible to the public based on certain regulations and government decrees, but in practice, the implementation of these rules depends on the very state institutions that the regulations are supposed to govern. The Article 25 of the Serbian Constitution has prescribed that everyone has a right to restitution in accordance with the law, if the damage ensued as a result of illegal or inadequate work executed by a state official, institution or an organization that conducts activities on government's behalf. The Republic of Serbia or an organization that conducts activities on government's behalf must pay the damages. Considering that a right of access to information has not been clearly established in many areas, in the sense of a legal obligation to provide such information, the reach of this constitutional guarantee is fairly limited. Therefore, the provision for the payment of damages should be understood as a transfer of legal authority to the laws that govern compensation (such as the Law on Contracts and Torts), except when the law in question explicitly says different (for instance, the State Administration Law).

The constitution also makes basic references towards the freedom of information and the protection of privacy.

Access to information related to the work of the Parliament (National Assembly)

The regulations that govern the affairs of the Parliament also contain provisions for public access to the information related to the work of the Parliament and its bodies, access to information available to the members of Parliament, as well as provisions for storing the information that was created during regular work in the Parliament. All acts adopted by the Parliament are printed in the "Official Gazette of the Republic of Serbia", thus making it available to the public. However, informing the public in this manner has numerous shortcomings, thereby making it an inadequate tool for exercising the right of access to information. The price of the "Official Gazette" exceeds expenses incurred for printing and distribution, which makes it even more difficult for poorer citizens to obtain a copy. Aside from that, the register also publishes various government decrees, announcements and other material, which increases expenses for a citizen who is only interested in reading a specific bill.

The rules and regulations that govern parliament activities specify that its work is open to the public (e.g. Serbian Parliament Operating Procedures, 2002, Article 169, section 1). Parliament sessions may be closed to the public if the parliament so decides based on

a valid legal submission from an authorized representative (the government, 20 members of parliament or a parliamentary committee). Moreover, the government or the minister in question are afforded the option of proposing that the answer to a question from the Member of Parliament which represents a state, military or official secret, be heard without the presence of the public (Article 197).

On the other hand, when all other rules are taken into the account, the inevitable conclusion is that the transparency of government operations is achieved through the media. In addition, there is a possibility for other persons (non-governmental organization representatives, for instance) to be granted permission to attend sessions of the Parliament. The permission to be present is issued by the parliament secretary in agreement with the parliament president, and the sessions can be watched from the public gallery in the National Assembly. Naturally, all people present in the public gallery must abide by the Regulations Governing the Behavior and Order in the Serbian Parliament (Administrative Committee, June 1994). Based on the Manual for Implementing the Decree Governing the Behavior and Order in the Serbian Parliament (amendments adopted by the Administrative Committee on May 20th, 2002), the visits are approved after the authorized representative submits a request, in cases of associations and organizations, and strictly by invitation from the parliament's president or secretary, for individuals.

Journalists have free access to the Serbian Parliament sessions as well as to sessions of its various committees, provided they adhere to all current rules and regulations (Operating Procedures, Article 170). Likewise, they have a right to use the official session transcripts and the parliament office usually supplies them with relevant documentation in order to facilitate their understanding of the bills that are on the agenda. The National Assembly itself can also issue a press release (Article 173), and all members of Parliament have a right to hold press conferences in the Serbian Parliament building (Article 173). Members of Parliament are guaranteed to have greater access to information, as they have a right to be informed of all activities related to their functions. In connection to that, members of the Parliament are given access to parliament documents and they have a right to request information and explanations from other state officials and institutions which, in their view, are necessary to properly perform their own functions (Articles 220-224). The potential reach of this provision is most certainly limited, particularly since Serbian Parliament Operating Procedures cannot impose obligations upon other state institutions. Therefore, government's obligation to answer every question from the Member of Parliament (MP) aside, there are no other mechanisms that an MP could put in motion in order to get such information.

Information pertaining to government activities

Government of Serbia Operating Procedures (2002, Article 72) has established that the government informs the public about its activities, adopted acts, positions and issues it intends to take under consideration via press releases, press conferences, interviews, various publications and the Internet. In cases where sensitive matters are being discussed, the government makes a decision at the session how it will inform the public about what has taken place. Consequently, the government appears to be the sole judge as to what information and when will become available to the public, except when other legislation prescribes different behavior. Still, these exceptions pertain to the most important aspects of government's work, including the decrees adopted by the government or its ministries, government appointments and other decisions, which must be announced in the Serbian "Official Gazette". The obligation to publish certain decisions has been established by the State Administration Law (1992), too. That law authorizes the ministries and special organizations to issue legal procedures, orders, manuals, instructions and

explanations. Procedures, orders, and manuals are published in the Serbian "Official Gazette" (Article 67-68).

Government sessions are recorded on tape (Article 61) and official transcripts made, unless the government or the premier decides otherwise. Government members may use these transcripts and recordings, and the use by others is authorized by the government general secretary, with certain limitations that apply in cases of confidential documents. This information has the status of an official secret with strict confidentiality, unless the premier decides otherwise. At any rate, all government sessions are transcribed, and the General Secretariat ensures its safe keeping along with other documents.

Despite the fact that there is no strict legal obligation to do so, the government to a large extent publishes information on the Internet, where along with the latest news and opinion, one can find adopted laws and draft bills undergoing public debate, including additional material related to the issues that the government had discussed, as well as the listing of all government members complete with their contact information and other useful data, such as their salary range. This way of informing the public (started in 2001) shows goodwill on the part of the government. In order to provide firm guarantees that the published information is accurate, up-to-date and complete, and to guarantee the availability of information to citizens through the Internet, the existing regulations need to be amended.

State Administration

According to the State Administration Law (1992), the ministries are in charge of conducting the affairs of the state. The work of state institutions is accessible to the public, meaning that the public can be limited from participating or excluded from the process only in circumstances prescribed by the law. Also, the Law specifies that the work of the government is subject to criticism and control by the public as prescribed by the law (Article 5). Furthermore, the Article 60 mandates that government institutions have a duty to provide citizens with relevant information, thus strengthening legal guarantees for access to information of public interest. On the other hand, a firm guarantee for government efficiency is provided by the Article 62, whereby according to the Section 2, a citizen who fails to finish what he/she had set out to do in a state organization during regular working hours due to the inadequate work of government personnel, is entitled to the repayment of expenses incurred in the process. The requests that rely on this article are supposed to be handled by the state administration, and the process of determining the exact amount of damages to be paid is analogous to that of determining expenses for witnesses in administrative hearings. In cases where the plaintiff considers resolution to be inadequate, there is a possibility of lodging a complaint with the minister. Therefore, it is clear that the same organization, which the plaintiff is lodging a complaint against, has the jurisdiction to render a decision in regards to the submitted grievance. Still, further protection by the courts has not been excluded.

Other provisions in the State Administration Law do not lend support to the claims that a right of free access to information clearly exists. To further illustrate the point, Article 66, Section 1, explicitly lists ways in which the transparency of government work can be achieved. They are: feeding the information to the media, issuing official publications and "creating conditions necessary to freely inform the public about the affairs conducted by the state administration". The information considered a state, military, official or a business secret can be withheld from the public based on the decision by the minister or a manager of a special organization. Hence, a right of free access to information by citizens has not been clearly established by the Law, so the "public" to which the work of state administration is accessible according to the Law, is thought of in a narrower sense and

deemed to include various media outlets. In addition, the control of state administration by the public to which the Article 5 refers can only be described as passive and indirect. Basically, the citizens can control the state administration only based on the information provided to them by these same institutions through the media, official publications or ongoing administrative hearings. Conversely, if the Law on Free Access to Information were to be adopted, somewhat vague Article 5 provisions would gain clear and full legal effect.

This law also lays a foundation for office work by the state administration institutions, as well as other organizations to which the Law applies (departments in autonomous provinces, local government services and companies that are performing the work on behalf of the government). The articles pertaining to the office work contain provisions regarding registrars, keeping, archiving and classifying of relevant material, which are vital if one is to exercise his/her right of free access to information. The details of the office work regulations have been left up to the government to work out. Many regulations have already been adopted in this area, including the government Decree on Office Work in the State Administration ("Serbian Official Gazette" 80/92), Instructions Regarding the Office Work by the State Administration ("Serbian Official Gazette" 10/93 and 14/93), as well as the Decision on the Office Work ("Vojvodina Official Gazette" 9/01).

Informing the public

The state officials directly distribute one portion of the information that is in the public interest. However, the information that is useful or important only to certain individuals, citizens' groups or companies can only be obtained directly from the institutions, which are in the possession of appropriate documents. On the other hand, the information that is important to the wider public often becomes available through major media outlets, electronic or print. That is why regulations aimed at governing the media behavior, along with other uses, can play a vital role both in terms of the quantity and the quality of available information.

The Article 46 of the Serbian Constitution guarantees the freedom of the press and other ways of informing the public. As well, there is an obligation on the part of the media to issue a correction of previously reported inaccurate information, along with the possibility for the plaintiff to seek damages in connection to the incident. But, the court may ban publishing of certain information based on a legally valid decision if it determines that the information calls for a violent overthrow of the government, threatens the territorial integrity and independence of the Republic of Serbia, aims to abrogate guaranteed fundamental rights and freedoms or incites ethnic, racial or religious hatred. When compared to the Public Information Act (2003, Article 16), it can be seen that some reasons for the ban on publishing and distributing the information which are explicitly stated in the Constitution have been left out of the bill, thus making it unclear as to how a certain provision in the Constitution (for instance, such as the one relating to spreading of information that threatens the territorial integrity and the independence of the Republic of Serbia) could be implemented. On the other hand, the Article 16 of the Public Information Act, which can be used to prohibit the distribution of information that advocates war and outright violence, is in line with the Constitution. This is despite the fact that war and outright violence have not been explicitly cited in the Constitution as possible reasons for a ban, because they inevitably lead to the violation of the fundamental rights and freedoms.

Judging by content, the Article 16 of the Public Information Act (2003) is almost identical to the Article 30, Section 5 of the Charter of Rights and Freedoms of the State Union of Serbia and Montenegro (2003). Furthermore, the Article 38, Section 2, of the former Federal Republic of Yugoslavia Constitution (1992) was identical to the corresponding

provision in the Serbian Constitution (1990). This evolution in the dominant legal thinking, noticeable also in the new regulations compared to the ones that were adopted in the early nineties, partially stems from efforts to harmonize local legislation with various international treaties and conventions, as well as with established standards in different areas.

Moreover, the Article 46 of the Serbian Constitution represents yet another interesting norm, which mandates that government-sponsored media outlets have a legal duty to provide impartial and timely information to the public. This standard is not easily achieved, but it is reasonable to expect that with the help of the new Public Information Act and the new Broadcasting Act (2002) these media outlets will soon be closer to it.

The Public Information Act from 2003 has further affirmed constitutional and international standards in the area of free access to the information by the public. The Article 2 of the bill prescribes that informing of the public is free and in its interest. Furthermore, the process of informing the public is not subject to censure, nor can anyone limit the freedom to inform the public, especially through the abuse of state or private authority, or the influence over the print and the electronic media. Also, nobody should imperil the free flow of ideas, information and opinion, nor should anyone attempt to exert undue influence over a public broadcasting station or its personnel. Any violation in this regard is in the exclusive jurisdiction of the courts, and the matters are supposed to be discussed under the guidelines for processing an urgent request.

The Article 3 of the bill specifies that public media outlets freely publish information related to events and persons, which the public has a legitimate right to know about, except in cases as prescribed by the law, regardless of the way the information was obtained. The exception to the rule in this instance can only be created through additional legislation, and that increases the significance of this article since the government is prevented from introducing new restrictions by issuing decrees and other regulations that do not have the full legal leverage of the law. The Public Information Act itself does provide for certain exceptions, but it also leaves an option for other legislation to further rein in the freedom of informing the public by prescribing additional exceptions to the rule.

The issue of the quality of information that the media reports has been raised in many sections of the Law. Already in the Article 2, the law imposes the obligation of diligence and due attention upon journalists. When journalists themselves come into a possession of certain documents, they have a duty along with their editors-in-chief to check the source, the veracity and the completeness of acquired information. In cases when the media reports information, it must be done completely and truthfully, and the source of information should be mentioned as well. The Article 82 also expands the responsibility for damages (primarily in the purview of the Law of Contracts and Torts) arising from false or incomplete information reported by public media outlets. Namely, the author, the editor-in-chief and the founder of the company that owns the media will be held liable if prior to publishing the information, with due attention and care they could have established the inaccuracy or incompleteness of the information. Another contribution to the quality (truthfulness and completeness) of the information that the media reports on is provided courtesy of Article 83, which places the sole responsibility for damages stemming from false information given by a state institution on the government, regardless of the actual guilt. However, it should be noted that the majority of false or incomplete information on the part of government does not come from the institutions themselves, and that they usually represent statements given by their officials. Consequently, in terms of seeking the state responsibility due to misinformation provided by its officials, currently the state can only be held liable for actions of the Serbian President. But, in terms of the responsibility for damages caused by the state officials that represent certain government bodies, different interpretations are possible. The Article 25 of the Serbian Constitution that was already mentioned backs the idea of government responsibility.

In order to ensure the efficient distribution of information that is in the public interest, the Article 7 prohibits any kind of monopoly related to the process of informing the public.

Incidentally, the Law has established a certain number of cases in which the court may ban the distribution of particular information at the request of the district attorney, provided that relevant conditions specified in the Article 16 have been met. First and foremost, it must be information whose publishing would inflict serious and irreparable damage. Also, there must be no other way in which the ensuing consequences could be prevented from taking place. Moreover, in terms of content, only information that advocates war, incites ethnic, racial or religious hatred, or promotes violence, discrimination and general hostility can be prohibited from publishing. Finally, it is up to the court to determine that such a ban is necessary in a "free and democratic society", since allowing the information to be published would cause greater damage than having it restricted from the public.

The Article 37 has introduced the term "hate speech". This term is new in Serbia's legislative parlance, and its definition shows that the ban relates to publishing of the information, which promotes or sponsors concrete forms of discrimination, hatred or violence (towards people or groups because of their race, ethnicity, religious affiliation, gender or sexual orientation). As can be seen from the mentioned article, some forms of "hate speech" may be a reason to prohibit the distribution of particular information.

The Article 31 of the Law, which makes a reference to the journalistic secret, is important because, in a fairly limited and indirect fashion, it protects officials who leak information in the public interest, thus breaking the rules of engagement in state institutions that employ them. Namely, the journalist is not required to reveal the source of acquired information except in cases when the information is linked to a criminal act, which carries a minimum sentence of five years in prison, or its perpetrator. The reach of this provision is limited in more ways than one: the journalist carries an obligation to reveal the source of information related to serious crimes, the state official is not protected if he/she is found to be a source of information through other means, such as the investigation by his/her superiors, and the journalists themselves do not have an obligation (neither legal nor ethical - please see the NUNS Ethical Code), rather only a possibility, to keep the source of information secret.

The issue of accessibility of information previously reported in the media has been regulated in a special way. The print and electronic media are obliged under the Law to keep archived records for a limited time. One of the reasons for this provision lies in the obligation by the media (established via Article 35, Section 10) to submit copies of relevant records to the courts or the police for review within three days of the receipt of a written request. However, the Section 2 mandates that all media must also act in the same manner at the request of any person that has a legal interest to do so, provided the request is submitted in a written form and a down payment made for expenses incurred while processing the request. The law does not prescribe a procedure to determine what qualifies as an incurred expense, nor is anyone authorized to arrive at a judgment whether there is a compelling legal interest on the part of a citizen to gain access to requested documents, which could pose a problem to those interested in obtaining the information that was published by the media in the past.

The Privacy Protection

The protection of privacy is "another side of the coin" in the area of public information. The protection of private lives from the prying eyes of the public represents a unique way of limiting the right of free access to information, and it has been regulated through several acts. The guarantee of privacy protection comes from supreme legal documents,

such as the Charter of Human Rights and Freedoms of the Union of Serbia and Montenegro (2003), wherein the Article 24 claims that everyone has a right to have his personal and family life as well as his home respected, and guarantees mail confidentiality to all (with exceptions prescribed in sections 2 and 3 of the same article). The section 4 of the same article reads: "The protection of personal data is guaranteed. The law prescribes rules for data collection, their storage and use. Any other use of personal data except the purpose for which it was collected is prohibited and punishable by law. Everyone has a right to be informed about his personal data that was collected by the government, in accordance with the law". This text of the article was practically taken from the Article 33 of the Federal Republic of Yugoslavia Constitution (1992); the Serbian Constitution only guarantees the protection of personal data. Based on the constitutional guarantees, the Federal Parliament had adopted the Law on Personal Data Protection in 1998.

According to the Law on Personal Data Protection, personal data may be collected, processed and used only for purposes prescribed by the law; with the consent from a citizen it may also be used for other purposes (Article 2). The personal data represents collected information relating to the privacy and integrity of the person, as well as the information about family life and other rights that are linked "with the identified individual or a person that may be identified" (Article 3). The procedure for collecting personal data must not violate the dignity of the person.

In addition, a special care is prescribed for data related to race, ethnicity, religious and other affiliations, political views, union associations and sexual orientation, such that this information can only be used with the explicit consent from the person (Article 18). The same article contains a provision stating that data related to health and the criminal record may be collected, stored and used only in accordance with the law. The definition of this provision is rather vague, as all other personal data may be collected in accordance with the law, too. Probably, the reason for this specification was to highlight the fact that separate legislation regulates this field in more detail.

The manager of personal data collections has an obligation to maintain a catalog and furnish it for review to every citizen that requests to see it. The Article 6 allows the manager to hand over a portion of the collection to an authorized user and to others with the written consent from the person. The same article leaves open a possibility to use personal data collections for scientific, educational or similar purposes, but in such a way as to prevent the positive identification of the person.

The managers of personal data collections also have an obligation to establish security measures for the protection of data from destruction, loss, unauthorized use, altering or giving away the data, as well as to name people who are in charge of the collections. Furthermore, they have a duty to create a catalog register that should contain the title, legal basis for data collection, the type of information stored in the collection, the way it was collected, categories of citizens included in the collection, as well as the intended users of the data and limits to their storage and use, the purpose and description of collected data, along with the expiry date of the catalog.

The citizens have an inalienable right to find out which catalogs contain information about them, which information is being processed, who does it and on what basis, and who is using their personal data and for what purpose (Article 11). In order to exercise his right, a citizen can request a confirmation that a given catalog holds information about him from the personal data collection manager, or ask to review the collected data and have the inaccurate information changed and information that was illegally collected stricken from the record. Moreover, a person can request that others be prohibited from using inaccurate or incomplete information, and the manager is obliged to immediately process such a request (Article 12). An important limitation to this right applies through

exceptions listed in the Article 13. More precisely, the citizens do not have aforementioned rights in cases where the data is related to previous convictions and collected in accordance with the law, nor do they have those rights in such matters, which are related to the issues of security.

Citizens who believe that their rights have been infringed upon and those that have suffered the damage due to the illegal collection and use of personal data do have a right to seek restitution in the courts. For legal entities that are managing the collections, along with liable persons in cases where provisions of the Law have been breached, the Law has prescribed fines in the range of 5,000 to 50,000 dinars.

The Public Information Act also contains several provisions, which regulate the issue of privacy in the media, for state officials, political figures and other citizens alike. The Article 9 of the law has limited the right to privacy protection for state officials and political figures. This article did not define the scope of its effect, but it can be inferred that it includes a wide circle of elected and appointed officials, as well as the leading figures of political parties and other political organizations. At any rate, for these provisions to take effect certain conditions must be met. The information itself must be of public interest "considering that the person to whom it is related is a state official". The scope of limitation of the right to privacy protection is proportional to a justified public interest in a given case. It actually means that the information pertaining to a state official may be published depending on the circumstances from which the public interest to have access to this information arises. Also, similar information related to one state official may be insignificant to the public at large, but when provided in connection to another state official it could become important.

The information relating to the private life of "ordinary citizens", their records, photographs and other material may be published with the consent of the individual in question. A consent given in order to publish the information in one context or instance is not considered a blanket permission for repeated publishing, or use for other purposes altogether (more details in the Article 42 of the Public Information Act). This strict provision has been significantly watered down with exceptions provided by the Article 44. Among other things, it states that the consent is not required if the information is linked to an event or an individual of interest to the public, if the person in question through its behavior creates a need to publish such information; if publishing of this information is in the interest of justice, security or public order; if the person did not object to the collection of information, even though he/she knew that it was being collected for the purpose of publishing it; if publishing of the information is in the interest of science or education; if the information is necessary to warn the public of a certain danger (such as the prevention of a contagious disease, missing person search, fraud or something along those lines). In case of a privacy protection violation, the plaintiff has a right to seek restitution for moral damage and material loss.

Legislation related to secrets

The most concrete and precise legal definition of certain types of secrets in the legislative system of Serbia and the former Yugoslavia is given in the Basic Criminal Law (former Federal Republic of Yugoslavia Criminal Law) in articles which treat the revelation of such secrets as a criminal offence.

The Article 129 of the Law considers a state secret all data or documents, which have by law or through other regulations or rendered government decisions been proclaimed as such, and the revealing of which either had or could have detrimental consequences for political, economic or military interests of the country.

A similar definition can be found in the Article 183 of the Law (revealing official secrets) as well. However, the consequence of revealing the official secret is somewhat different: "*... and whose revelation had or could have had a harmful effect on the service.*"

In terms of consequences related to revealing military secrets, they are described in the Basic Criminal Law as: "*...and whose revelation had or could have had serious harmful consequences for the Yugoslav Military and its ability to defend the country* (Article 224, Revealing the military secret)".

Taking the current legal framework in Serbia into the account, a professional secret could be defined as any secret that a person became aware of in the process of performing his/her regular business duties (Criminal Law of Serbia, 1977, Article 73). The issue of professional secrets is also linked with regulations and ethical codes that exist for certain professions. The criminal, civil and administrative trial laws also regulate this field, by exempting members of certain professions from the obligation to testify because the information that they could reveal represents a professional secret (doctors and other medical staff, lawyers, priests that hear confessions, etc). The obligation to keep a professional secret is closely linked with the personal data protection. For instance, the Law on Preconditions to Perform Psychological Duties (published in the "Serbian Official Gazette" number 25/96), in the Article 4 prescribes that "personal data which could harm the reputation and integrity of the person, or is of a rather sensitive personal nature, that the psychologist learns in the process of doing his job remains a professional secret".

A business secret is defined in the Enterprise Act (more in the section devoted to Public enterprises).

The closer definition of certain types of a state secret has been given in the Decree on criteria to determine data, tasks, and special duties vital for the country's defense that should be protected as state or official secrets by special security measures (1994). The Decree stipulates that the state secret contains data whose revelation could create harmful consequences for the defense and the national security, which particularly relate to:

- Military, political, economic and other estimates that serve as a basis for the country's defense;
- General mobilization plan and the plan for the defense of the country;
- Analysis and status reports related to country's defense;
- Objects vital for the defense of the country;
- Information about decisions, orders, statements, tasks, and the ongoing activities pertaining to the country's defense.

The Decree also mandates that documents, which contain data that represent a state secret, should be labeled "defense" with a title "state secret".

The official secret, in the sense of the aforementioned Decree, represents data whose revelation could have a harmful effect on the security and the defense of the country. They could be strictly confidential, confidential or internal, and along with the mark of the official secret and the secrecy level, they carry a label "defense".

The Decree also has a description of documents that are marked with different levels of secrecy (Article 11-13). In terms of determining the type of the secret, the level of secrecy and the procedure for the protection of secret data, the Decree establishes a state institution master of sorts, i.e. a person in charge of the affairs in the company or organization in question (Article 4). They determine the type of secret and the level of secrecy, and they can request additional changes or even order the cessation of secrecy for a given document. But, it is important to bear in mind that the decision is made by the master of an institution that is a source of the information, regardless of other state entities that may be using the information in the process. Everyone who operates with secret data has a duty to ensure safekeeping of the data and to protect it in the way as prescribed by the law, until the relevant master decides that "there is no longer a need" to keep the

document secret. However, the obligation related to the protection of secret data cannot cease to exist (despite any possible orders from the master) if that would contravene vital state interests in the defense of the country.

The legislation is not always clear-cut when it comes to state secrets, but there is no doubt that for criminal wrongdoing in revealing a state secret to be established, certain conditions must be met. The law can prescribe what represents a state secret, whose revelation could be subject to the criminal prosecution, as can other regulations or decrees that have been introduced in accordance with the law. This actually means that any decision that aims to label certain data as a state secret would have to invoke relevant legislation, which provides the authorization to classify certain information as secret. The regulation would have to be in sync with the law not only with respect to the reasons for labeling a given document as secret, but also with respect to the prescribed procedure to do so. Besides, another necessary requirement is that harmful consequences, as defined by the Criminal Law, have or could have ensued.

The Article 10 of the Decree on office work in the state administration (1992) is very important when it comes to labeling the information as secret, and it reads as follows:

"Acts and documents that have been labelled as a state, military or official secret are registered separately.

If other regulations do not state differently, the state official who manages a particular state institution, in accordance with the law and other regulations determines which acts and documents are considered secret, what is the level of secrecy and confidentiality, and establishes procedures to handle and protect such documents."

Other regulations related to secrets

The criminal, civil and administrative trial laws stipulate that a witness who could compromise a state, military or official secret with his/her testimony cannot be questioned or compelled to testify in the proceedings until he/she has been relieved of the duty to keep the information secret by the relevant authority.

The Decree on security and the protection of information systems in state institutions (1990) regulates the protection of data which is labeled as secret and stored in a particular state institution in a pretty detailed manner.

The Security Agency Law (2002) has given the Agency the right to process, store and use collected data and documentation, and the way in which the information will be registered and its secrecy protected is decided by the Serbian government (Article 11). The obligation to keep the information secret is somewhat broader than in other state institutions. Specifically, the employees are required to keep secret not only the actual data, but also methods, measures and activities that represent state, military, official or business secrets, and other information whose revelation could cause damage to individuals or companies alike, or have a detrimental effect on the Agency. This duty survives even after the employment with the Agency is over, and only the Agency's director has a right to exempt a person from the obligation to keep the information secret. Also, the obligation to keep the information secret exists for the people who control the Agency's operations (Articles 19 & 23).

For purposes of this analysis, the Law on collecting and submitting the data about crimes against humanity and international justice (published in the Serbian Official Gazette numbers 37/93; 44/99) has an interesting provision. It mandates that all persons who are in possession of evidence related to the war crimes that were committed in the former Yugoslavia in the 1990s must submit relevant information to the Committee that is in charge of collecting such evidence. The Article 5 explicitly stipulates that such information is accessible to all under the same conditions, except for the data that represents a

state, military, official or a business secret. The reach of this provision is limited because there are no guarantees for right of access to the information in the Law itself, and giving the right of access to information with clearly defined exceptions in such an explicit fashion is rare in domestic legislation.

The rules that cover document secrecy can be found in numerous other regulations, such as the State Administration Law, the National Bank of Serbia Statute, the Attorney Professional Code of Ethics, the Customs Law, the Law on Administrating Sentences in Criminal Trials and others.

Unclear definitions in legal chapters that cover document secrecy, both in terms of the prescribed procedures for labeling a document as secret and the reasons for the justification of such action, and the explicit or implicit transfer of authority to persons that manage different state institutions to determine which information should be held as secret, allow information in many areas to be declared as secret, thus opening the doors to the abuse of power and hiding illegal activities from the public.

Free access to information from the Public Prosecutor's office perspective

There are many aspects to consider when discussing the matter of access to information in the justice system. First of all, there is information, which is in the hands of state institutions, companies, or individuals that should be accessed only by those who are appointed to relevant judicial posts. Secondly, if the public prosecutor is to successfully conduct his activities, no data or information should be withheld from the public prosecutor when he is trying to prosecute a case against suspects in criminal cases. Also, in order to help the public prosecutor properly perform his duties, the Criminal Procedure Code has imposed an obligation to report all criminal activities related to the state administration, authorities in the autonomous provinces and state companies, while pointing out the moral imperative of reporting a criminal act that the public prosecutor has an official duty to prosecute. It practically means that state institutions have no discretion whatsoever in determining whether to report a criminal act, rather they have an explicit duty to do so, while citizens retain a right to "self-determination". The duty of state institutions and organizations that are the subject of this discussion is not exhausted simply by the obligation to report a suspected criminal act, as there is a concomitant obligation to submit supporting evidence, if available. Therefore, these state bodies and institutions are required to provide the complete information about a given criminal act and its supposed perpetrator. The act of reporting a crime involves the filing of charges, but its submission is not a prerequisite for prosecution. Basically, in order to initiate criminal proceedings, it is enough for the public prosecutor to obtain sufficient information regarding a particular crime (mostly through the media). Aside from the prescribed legal obligation imposed upon the state institutions and organizations, and especially the Serbian Ministry for Internal Affairs, to submit all pertinent information and the incriminating evidence in order to successfully prosecute a case, additional information may become available through other channels, but it is often hard to come by.

The internal rules governing the organization and functioning of the public prosecutors contain a provision mandating that certain data and information must be kept secret, but such secrets cease to exist in proceedings before a court. This is because the criminal investigation eventually results in an indictment, which is a necessary element for the trial itself and sentencing. As one of the fundamental principles of any trial, is its openness to the public, it appears sensible that only during the trial itself can its active participants raise a question whether certain information that carries an associated level of secrecy should be discussed out in the open, or perhaps in closed chambers without the pres-

ence of the public. The legislation offers such an option, although plaintiffs, defenders and their respective legal representatives may not be excluded from the proceedings. However, in cases like that all of them would be warned by the presiding judge that from that point on, they would have to keep all acquired information secret, and that revealing secret information constitutes a criminal offence.

So, the public prosecutor as part of the prosecution process must have access to the information that is considered a state, military, official, professional, art, business or any other secret that enjoys legal protection, because such access leads to the realization of a greater goal that had been set through the criminal law, which along with fundamental rights and freedoms protects the security of the country and the rule of law.

The Public Prosecutor Law (2001) has legislated that the public prosecutor informs the public about the state of the crime in the country, including other phenomenon observed over the course of performing his regular duties. Additionally, if certain information is of a greater public interest and does not harm an ongoing criminal case, the public prosecutor may even provide information related to that case. In essence, the Law entrusts the public prosecutor with the duty to inform the public about the crime in the country, but the public prosecutor retains a discretionary power over deciding whether to go one step further and provide information in an ongoing case. The actual means by which the public prosecutor will inform the public is more clearly defined by the Operating procedures for the public prosecutor's office that were adopted in 1981. It states that the public prosecutor or one of his deputies issues official statements or uses other ways to inform the public that a criminal case, which is of public interest, has been initiated. While issuing the official statements, utmost care must be taken not to compromise any secret information and to provide complete and accurate information related to the case. The State Public Prosecutor, if he so chooses, may issue a list of guidelines for communicating with the public.

In terms of informing the public about criminal cases that involve aspects of organized crime, it should be noted that pre-trial information may be published only with the explicit written consent from the public prosecutor in charge, and the data stemming from the criminal investigation only with the approval of the investigative judge and the prosecutor in charge of the case.

The Operating procedures for the public prosecutor's office also govern registry information (the registry of known criminals, the registry of unknown perpetrators of criminal acts, the registry of confidential data), the period during which the registry is to be maintained, the rules that determine which material should be considered an official secret as well as its confidentiality level (strictly confidential, confidential) and the general rules for the public prosecutor's office. According to the Public Prosecutor Law and the Operating procedures, every public prosecutor should within the scope of his/her legal authority adopt an act on the internal organizational structure in his/her office. In order to increase the efficiency in the public prosecutor's office and facilitate faster access to the required information, the justice information system is undergoing a profound change. To be exact, a new system is in the works with the aim of speeding up the transfer of documents and related data between the public prosecutors' offices, the ministry for internal affairs and the courts. What has already in large measure contributed to that goal is the computerization of public prosecutors' offices and the introduction of database management systems that store all regulations in Serbia and Montenegro, along with the registry of all conventions and treaties ratified by our country (most of which are not accessible to average citizens). The state fulfills its legal duty to inform the public and potential candidates about openings for the position of a public prosecutor through announcements in the "Serbian Official Gazette".

Access to court information and the transparency of court operations

The laws that regulate court proceedings also determine which parts of the proceedings are accessible to the public and which are to be conducted behind closed doors. For instance, deliberations and voting are always conducted away from the public. Despite the fact that civil case proceedings and criminal trials are open to the public in principle, the public may be excluded during certain stages of the proceedings based on the decision by the Council of Judges. Criminal Procedure Code (2001, Article 292) has prescribed that the exclusion of the public may be ordered for the remainder of the trial or only during a part of it, at the proposal by the plaintiff, defender or the Council of Judges, but only after the parties to the case have been heard. The reasons for the exclusion are explicitly named and they relate to the need to keep certain information secret, maintain public order, protect the moral fiber of the nation, protect juvenile interests or protect the life and families of plaintiffs and defenders. By formulating reasons for exclusion in this way, the state has left the council of judges enough space to maneuver and exclude the public in just about any case, if it deems such action necessary. For purposes of this discussion, the exclusion includes the general public, as well as friends and relatives of those who are party to the case. The defenders, plaintiffs and their legal representatives including the defense attorney, all have a right to be present. The Council may grant a motion by the accused to have close relatives and the person he/she cohabits with (by way of marriage or a similar lasting union) present at the proceedings. Also, official court personnel and scientists may be present with the approval of the Council. After the council renders a decision to remove the public from further proceedings, explains and announces the decision, the presiding judge admonishes all present parties that they have a duty to keep everything they hear during the proceedings behind closed doors secret, and warns them that revealing such information constitutes a criminal offence (Articles 293 and 294).

In terms of viewing, transcribing and copying court documents, the Code makes a clear distinction between the parties to a case (the accused, the prosecutor and a private individual that brings charges forward, the plaintiff and the defender) and other persons. Speaking of the latter, there is only a possibility, but not an obligation on the part of the court, to provide access to available information. The assumption is that there must be a "justified interest". If the court case is ongoing, the authority that conducts the proceedings (the council of judges, for example) approves the use of court documents, and if the case has been finalized, the presiding judge or the official authorized by him may consent to the use of documents by other people (Article 170). If the information is in the possession of the public prosecutor, then he has the jurisdiction to provide access to the requested documents. If the public was excluded from the trial, or if in the view of the person in charge the right to privacy would be seriously infringed upon, the permission to use the documents could be issued with the prohibition of public use of the names that appear in the documents. The examination of Section 3 of the aforementioned article under the assumption that the justified interest to use the documents exists, leads to the conclusion that the access to information may be treated as a right, and not simply as a possibility that depends on the view of the court. Namely, the section states that viewing and copying of documents may be denied for fear of privacy violation, but at the same time it offers the possibility of complaint in case of refusal, thus in effect upgrading what was only a possibility in the Section 1 to a full-fledged right in the Section 3.

Civil Procedure Law (1977) and the Law on General Administrative Procedures (1997) govern the access to information with provisions that contain very similar rules compared to the regulations already described in the criminal trial section.

The Court Operating Procedures (2003) describe in more detail the issue of transparency of court activities. The Article 34 prescribes that cases which command significant public interest should be tried in larger premises. Additionally, the tables in front of every courtroom state the times and the cases that are scheduled for that day. The court president is authorized to provide information to the media. He may further authorize one of the judges to furnish such information, or grant a right to the presiding judge in the case to inform the public about that particular case (Article 35). The judges and other court officials who choose to write or speak in the press and other media about legal, social and other issues as they relate to concluded or ongoing court cases, have a duty to explicitly state that they are voicing their own opinion or view (Article 36).

Access to information in public and other companies

The activities of public companies are regulated with the general Enterprise Law, the Law on state companies and work of public interest, and the company statutes and general regulations (for instance, Rules for internal organizational structure of the company, Operations Systematization Procedures, Accounting Manual, Collective Agreement).

There are various ways in which public company activities may be open to the public. First off, the Article 86 of the Enterprise Law (1996) mandates that state companies must inform its members and shareholders about their activities. Furthermore, employees and shareholders have a right to review bookkeeping records and other official company documentation including the balance sheet reports, and they have a right to request answers in writing from the board of directors about any outstanding questions that they may have.

The board of directors has a legal duty to inform the employees about a range of issues, while the Law emphasizes the need to present future development plans and their effect on the economic and social situation of the employees, and provide accurate information about changes in salaries, work safety, measures to improve work conditions, dividends distribution, changes in the ownership structure and other related issues. The actual way of informing the employees is defined in the statute (Article 89).

The statute or another official company document identifies ways in which the transparency of the state company activities will be accomplished. The Article 87 leaves a lot of leeway to companies to determine which information about their work should be made public, with few notable exceptions provided by the Law. The data listed in the founding documents of a company are accessible to all members of the public (those that are interested). The Law has prescribed that the Official Company Register must contain information about the name of the company, its activities, the headquarters, legal representatives, the initial company capital and other data about the company (Article 95).

The Enterprise Law provides a clear definition of a business secret. The Article 90 states**:**

(1) A business secret is represented by documents and data **declared as such by company management**, whose revelation to an unauthorized person would be against the company policy and could harm its interests and business reputation.

(2) A business secret cannot be comprised of documents and data that must be public according to the law, nor can a business secret include documents and data related to violations of the law, good business ethic and professional morals.

(3) The information about a decision rendered under the Section 1 must be provided to the company **founders, members, shareholders, members of the board of directors and the employees**.

The obligation of keeping business secrets binds the founders, members, shareholders, members of the board of directors and the employees, but also out-of-company persons if they were aware of the data secrecy due to the nature of the documents that they came in contact with. There are no time limits on the obligation to keep the business information secret and it survives the termination of employment or membership in the management structure within the company (Article 91).

The law has left it up to the company to prescribe the rules for declaring company information as secret, in accordance with the Article 90, as well as regulations for storing confidential information. Based on a review of selected companies, we have established that in most cases the general company act regulates the field (for instance, the Railway Transport Company Statute states: "The general company act describes procedures to determine which information should be treated as a business secret, defines the body in charge of making such decisions, and imposes a duty upon the employees to keep the business secret and related information to themselves").

Access to information in the process of privatization

The transparency of the privatization of state-owned companies and real estate is achieved through different stages.

When the company initiates privatization, it is required to submit a written act to the unions and all of the employees are informed about it (the Article 16 of the Privatization Law, 2001). In the initial phase, the company prepares a booklet that contains all relevant information about the company that is scheduled for privatization. The Article 18, Section 3, of the Law has obliged the Privatization Agency to publish this booklet in the press, on the Internet or television, in a bid to attract as many qualified investors as possible. Based on the collected information, the Agency decides which privatization method will be used (a tender or an auction), and informs the subject of privatization of its decision.

Public tender

The Agency has a duty to issue public invitations to tender, which must include the company information vital to the participants in the privatization process (Article 28).

The Decree on the sale of company capital and related property via a public tender (2001) prescribes norms that are supposed to ensure that tender participants can obtain all relevant information about the company being privatized, as well as the general tender criteria with a clear procedure for ranking the bids, along with a draft contract that will be signed with a prospective buyer. Besides, the tender participants must sign an agreement binding them to keeping confidential information about the company under privatization secret (Articles 6-8 of the Decree).

The information about a public tender must be announced in a timely fashion. The minimum requirement is the announcement in one daily newspaper and on the Internet. The public invitation to tender may be published in the foreign press as well, if the Agency so decides (the Article 7 of the Decree).

Persons and companies that express interest to participate at a tender have a right to purchase the tender documentation (the Article 8). The minister in charge determines the price of the tender documentation, but no criteria to arrive at such a decision have been prescribed. This issue is further regulated by the Rules on privatization expenses payable by companies and other commercial entities, which have established the lower and upper limit for the price of the tender documentation. Therefore, despite the lack of guidelines, the minister can set a price only within the prescribed price range in any given case.

Another important provision to future tender participants mandates that the price of the tender documentation must be listed in the public invitation to tender, which reduces the space available for arbitrary decision-making. This charge is intended to partially cover expenses for a fairly expensive process of preparing the tender documentation. Compared to them, expenses for making such information available to the public through copying or sending by mail are negligible.

The Decree also stipulates that tender participants must be informed in a timely fashion of the time and place for opening of the bids (the Article 15). Also, they have the right to be present when bids are opened or send their legal representatives or authorized persons. The Decree does not offer an option for the public participation at this stage, and the reason for that is the protection of company secrets, as they relate both to the privatization subject and the prospective investors. The possibility of subsequent control is left to dissatisfied tender participants. The Privatization Agency examines and ranks all the submitted bids, and then informs the participants of the results (Articles 19 and 32 of the Privatization Law). Even though the Law does not mandate that this information must include a detailed explanation of the decision, from the behavior of participants at tenders it can be inferred that they are quite capable of gathering enough information when the bids are opened to perhaps lodge a substantive complaint.

After the tender is complete, the tender commission created by the minister in charge, puts together a special report for the Privatization Agency. The Agency submits the report to the minister, who in turn informs the government about the privatization (the Article 29 of the Law). Any additional control and supervision over the privatization process is achieved through the submission of periodical reports to the parliament.

Public auction

The Agency has a duty to issue public invitations to auction, which must include the information about the auction and vital company data, as well as any associated duties of a prospective investor (such as the obligation to take over the existing staff, conform to ecological standards, or ensure the continuity of business operations) (Article 28). This invitation can be issued via the Internet or through the media as determined by the minister in charge. The Decree on the sale of company capital and related property provides more details for issuing a public invitation to auction, in that it mandates that the public invitation may be announced in the media a maximum of 30 days prior to the auction (Article 5 of the Decree). However, the Decree has not prescribed a minimum requirement for the announcement of a public invitation to auction. Nevertheless, an indirect limitation arises from the Article 17, which states that the public invitation to auction must be announced a minimum of 2 working days before the scheduled auction. The Decree also contains other provisions that govern various activities that must be undertaken prior to the auction, but do not list any particular deadlines.

The Article 7 of the Decree stipulates that the Agency and the Commission must provide equal and unfettered access to the important auction information to all interested parties. This short provision, due to its flexibility, could represent a solid foundation for the protection of rights of the auction participants. However, in practice, it would be difficult to imagine how the Agency or the Commission would go about providing equal access to information if the source of such information resided outside of the Agency or the Commission. This deficiency has been rectified with the August 1, 2002, amendments to the Decree which have replaced the word "Commission" with "the subject of privatization".

Another issue, which arises from the aforementioned provisions, that requires further examination, is the definition of "interested parties". Basically, the Article 7 of the Decree

has not limited the scope of "interested parties", so it practically means that average citizens and journalists could access the information related to the auction. In similar fashion, the Article 20 states that the auction is open to the public and all interested parties. On the other hand, the Article 10 of the decree that governs the auction documentation content defines the term in a somewhat different light. Namely, it states that the documentation will be sold to "persons who express interest to participate in the auction" (Section 2), i.e. the "interested parties" (Section 4). Therefore, it appears that the two definitions are contrasting each other, as one relates to the general public, and the other refers to the potential auction participants.

As in the case of the tender privatization, the minister in charge determines the price of the tender documentation, and there are no guidelines on how to do so. In contrast to the tender privatization, the price of the auction documentation has been fixed at 25,000 dinars by the Rules on privatization expenses payable by companies and other commercial entities. Furthermore, even though it could be inferred from the title that these charges only affect the companies, they do in fact apply and to the individuals who decide to partake in the auction. As in the case of a public tender, the price of the auction documentation is higher than the cost of copying and document delivery, thus aiming to recover some of the expenses incurred in the process of preparing that documentation.

The Article 43 of the Decree additionally safeguards the transparency of the decision-making process, by prescribing that the Agency announces the auction results in the same media where public invitations to auction were announced.

State institutions in the privatization process

The Privatization Agency and the Share Fund, which have been established in order to facilitate the privatization process, have devoted parts of their statutes to provisions that aspire to ensure even greater transparency of their work. Therefore, their activities are open to the public, and the transparency is achieved "by submitting reports on the activities of the board of directors and the supervisory board and publishing general organization documents and work programs" (Articles 31 and 32). The Privatization Agency and the Share Fund have adopted identical rules to deal with activities that involve business secrets (Articles 32 and 33 of the Statute). The Statute defines a business secret as "the documentation and data, revealing of which to unauthorized personnel could harm the reputation and wider interests of the Agency/Fund and its clients. It has been left up to the general acts of the organizations to clarify which specific documents and data should be treated as business secrets. In principle, this provision seems like a reasonable solution in terms of the transparency of their operations because it regulates what type of documents and data carry a certain level of secrecy, and does not relegate this responsibility to the discretion of the manager, as is often the case in domestic legislation.

The privatization model that has been prescribed by the Law offers the possibility of transferring a portion of the shares to the citizens of Serbia (under certain conditions) without charge. In addition, the information related to shares that can be used for such a purpose is noted in the Privatization Registry (the Article 8 of the Privatization Law). The Rules on Privatization Registry (2001) content and management specifies in detail what information should be written in the registry, but it does not delineate a special procedure for accessing the registry information. Hence, based on the cited documents it is practically impossible to conclude whether access to these documents is at all possible, and if so, in what way.

Access to information in the process of public procurement

The area of public procurement has been regulated in a rather distinct fashion as compared to other legislative documents. Many different parties play an important role in this process: purchasers in the sense of the law (a wide circle of budgetary users along with state and public companies), service providers, work contractors, special state institutions (the Public Procurement Agency and the Commission for the Protection of Suppliers), as well as the general public. Here we have listed provisions that pertain to the information that purchasers should provide access to (to all interested parties or certain categories of people), along with possible ways of actually obtaining such access. Also, we have noted some problems that have arisen in the implementation of certain sections of the Law.

One of the requirements to initiate a public purchase, according to the Article 24 of the Law, is that the procurement be part of a procurement plan. These plans, if properly designed, enable purchasers to make the purchases in a timely fashion and allocate adequate funding from the budget for that purpose. Such plans may be announced, but there is no legal obligation to do so.

A previous announcement for public procurement is still rarely used as an advertising mechanism in practice, despite the fact that it could shorten the required procedure. On the other hand, in cases where the procurement exceeds the value of 50 million dinars, a previous announcement is mandatory (Article 71 and others).

The announcement of a public procurement advert is mandatory, thus ensuring transparency (Article 70). The Law has mandated that purchasers are obliged to make such announcements in the "Serbian Official Gazette" and at least one daily newspapers distributed across the country. This provision ensures greater transparency of the process and guarantees that a wide circle of interested suppliers will be informed.

In practice, this obligation also represents a burden, as advertising prices are too high for many purchasers and the "Serbian Official Gazette" cannot guarantee the day of the publishing. Therefore, purchasers are liable to, through no fault of their own, break the regulations that govern deadlines for submitted bids, as they can unwittingly set a deadline in the advert based on the assumed date of the publishing, which may or may not be correct.

The Law has also prescribed the obligation of the purchasers to provide immediate access to the bidding documentation to all suppliers, with an option for suppliers to request a special delivery of the documents on short notice. The Article 28, Section 2 of the Law has granted a right to purchasers to recover costs incurred through copying and shipping, in cases where a special delivery was requested. A provision like this is in sync with other regulations that govern the procedures for access to information. Still, in a clear violation of the existing regulations, some purchasers set unreasonably high prices for the purchasing documentation, and request a full payment prior to providing the documentation to suppliers. While it is understandable that purchasers strive to recoup the expenses incurred in the process of making the documentation that is sometimes created by specialized teams, the Law does not allow for such activities. Requests of this nature could be disputed before a Commission for the protection of suppliers, and the article 146, section 1, paragraph 8, of the Law prescribes fines from 100,000 to 200,000 dinars for committed offences.

In order to ensure better access to information, the public procurement invitation must contain contact information of the person in charge (Article 72).

The regulations stipulate that the process of opening the bids is open to the public, in principle. The Article 76 of the Law offers the possibility to the purchaser to conduct the

procurement process away from the public for reasons of keeping business, official, military or state secrets, but such a decision must be administered before announcing the public procurement and the information must be added to the public invitation advert. These issues have been dealt with in detail in the Procedures for opening the bids and maintaining adequate records (2003). The Article 2 of the Procedures states that the open process should be open to the public along with the second phase of the restricted process. The public access in the first phase of the restricted process and in the bargaining process may be allowed, but the final decision rests with the purchaser.

There is also a justifiable distinction between the general public and authorized representatives of the suppliers in the eyes of the Law. The persons in the latter category have a right to raise objections to the process of opening the bids (Article 6 of the Procedures). As there is an official record kept of these proceedings, all present parties are able to hear the basic elements of the submitted bids. This measure ensures public control and the protection of suppliers' violated rights. In practice, one of the frequent problems is that purchasers fail to open the submitted bids immediately after the deadline has expired, as mandated by the Article 2 of the Procedures.

The Public Procurement regulations offer another unique solution in that the deadline relates to a specific hour of the day by which the bid must be received, as opposed to the criminal, civil and administrative processes where the relevant information is the date a given submission was sent on. This rule has a strong anti-corruption effect, as it prevents suppliers from colluding with members of the commission, doctoring postal seals and sending more competitive bids at a later date. The issue of timing and deadlines with respect to submitted bids is regulated in the following fashion: the Article 3 of the Law states that "a timely offer is the one which was delivered to the purchaser by the hour of the day as noted in the public advertisement"; the Article 61 states that "a timely offer is the one which was submitted to the purchaser by the hour of the day specified in the public advertisement". Obviously, there is no confusion when the offers are submitted in person, but problems may arise if the offer is submitted by mail, as sanctioned by the Law (Article 59, Section 5 of the Law). In essence, there is a discrepancy in the definition of a timely bid, as Article 3 refers to the "giving or delivering" of an offer, and Articles 59 and 61 refer to the "submission" of the bid. From the point of view of the suppliers, the moment of submission is the moment that the bid was dropped in the mail. However, the regulations (The Procedures for opening the bids and maintaining adequate records) leave nothing to interpretation as they clearly state that bids should be opened immediately after the deadline to do so has expired, thus mandating that only offers which have arrived by the specified date should be taken under consideration. On the other hand, the lack of clear legal regulation may create problems in the implementation of the Law and question the prudence of using decrees to modify the existing laws. So, it may be a worthwhile effort to revisit the legislation, and prescribe clear and unambiguous behavior in the field with adequate amendments to the Law. For instance, instead of "... offers submitted by the hour of the day cited in the advert" saying "offers that the purchaser has received by the hour of the day cited in the public advert."

After the purchaser has decided which bid to accept, he has a duty to inform all suppliers about it (Article 82). Also, the purchaser is obliged to publicly announce with whom they have signed a viable contract (Article 81). This latest obligation is often ignored in practice, which weakens public control of the public procurement process. The issued statements are typically brief without details or reasons as to why that particular offer was accepted. At the request of the supplier whose bid was not accepted, the purchaser must provide the detailed explanation of the decision. Even though the dissatisfied suppliers are the ones who truly require such an explanation (in order to protect their rights, pro-

vided they were violated), but the "general public" undoubtedly has a justifiable interest to gain a better understanding how the budgetary funds are being used.

Conclusion

The general right of access to information does not exist in Serbia. The Serbian Constitution does not provide guarantees for access to information, although it does contain provisions that could be used as a solid foundation for further legislation to establish such rights.

Still, many important documents and information are accessible to the public. There is an obligation to publicly announce adopted legislation and other regulations, election results, and appointments of various state officials. Also, some steps have been taken to ensure greater transparency in different levels of government, by publishing the information that is not required by law either through the Internet, brochures or other means. Moreover, separate legislation in some areas further regulates this matter and provides better public access to important information, as in the cases of privatization or public procurement.

However, even in areas where the access to information has been clearly established, there are significant limitations. The access to information related to the legislative, executive and judicial branches of power is most often achieved in indirect fashion, through the media. In other areas, it is subject to the existence of a "justifiable interest" that has not been clearly defined. On top of it all, the available legal remedies in cases where the right of access is guaranteed in one form or another are either non-existent or inefficient.

The regulations that govern secrets do not afford sufficient protection from the arbitrary decision-making in terms of declaring specific items as secret, which opens the door to the abuse of power. In regards to the privacy protection there is a clear distinction between the state officials and average citizens, at least with respect to the information that can be published about them.

The regulations related to the media have laid a solid foundation for their free and responsible operations, but achieving quality standards is contingent upon the proper implementation of these regulations.

Due to the lack of proper legislation in this area, there is a need to change the way the access to information is treated. The adoption of the Law on the Free Access to Information in the Public Interest that has been submitted by the Serbian government to the parliament would represent a first step in that direction. Aside from this legislation, in order to improve public access to information, numerous other laws that govern secrets and state institution operations should be amended or completely changed. Also, the new tools for the protection of citizens from inadequate activities by the state administration should be established (Ombudsman). Finally, considering that the new Serbian Constitution is being prepared, it seems like an excellent opportunity to clearly acknowledge the right of access to information with this supreme act of the land.

The list of relevant bills and regulations:

The Constitution of the Republic of Serbia - RS, 1990
The State Administration Law - RS, 1992
Government of Serbia Operating Procedures - RS, 2002
Serbian Parliament Operating Procedures - RS, 2002
The Public Information Act - RS, 2003
The Protection of Personal Data Law - FRY, 1998
Basic Criminal Law - RS, 2003
Criminal Law of the Republic of Serbia - RS, 1977
The Enterprise Law - FRY, 1996
The Decree on criteria to determine which data, tasks, and special duties vital for the country's defense should be protected as state or official secrets by special security measures - FRY, 1994
The Decree on the protection of state information systems- RS, 1990
The Security Agency Law - RS, 2002
The Law on collecting and submitting information about crimes against humanity and the international law - FRY, 1993
The Law on requirements for conducting psychological activities - RS, 1996
The Law on Public Prosecutor's Office - RS, 2001
Public Prosecutor's Operating Procedures - RS, 1981
Criminal Procedure Code - FRY, 2001
Civil Procedure Law - SFRY, 1977
The Court Operations Procedure - RS, 2003
The Law on General Administrative Procedure - FRY, 1997
The Enterprise Law - FRY, 1996
The Railway Transport Company Statute
The Privatization Law - RS, 2001
The decree on the public tender sale of company capital and property - RS, 2001
The decree on the public auction sale of company capital and property - RS, 2001
The Share Fund Statute- RS, 2001
The Privatization Agency Statute- RS, 2001
The Procedures for opening the bids and maintaining adequate records - RS, 2002
The Law on Public Procurement - RS, 2002

Abbreviations:

SFRY - the regulation was passed by the organs of Socialist Federal Republic of Yugoslavia
FRY - the regulation was passed by the organs of Federal Republic of Yugoslavia
RS - the regulation was passed by the organs of Republic of Serbia, i.e. Socialist Republic of Serbia

CONFLICT OF PUBLIC AND PRIVATE INTEREST AND FREE ACCESS TO INFORMATION

- Results of Field Research -

Introduction

In the last decade of XX century, a distorted form of transition was taking place in Serbia.

Many circumstances were in favor of this process. One after the other, there came the fall of "self-governing", socialist political and economic system, disintegration of the former community of Yugoslav (South Slavic) peoples, devastating wars in the surrounding area and on the territory of Serbia as well, and almost complete political and economic isolation of the country. These led to many decades of stagnation in the country's economy and therefore the citizens' standard of living as well.

In the same period, formal institutions of multi-party democratic system were established and ownership transformation of the former socially-owned property was commenced. However, neither of these two reforms was being carried out in an acceptable manner. While the ruling party's political power was maintained by their manipulation with public resources (financial and propaganda), the ownership transformation was slow, controlled and limited, and its positive effects on the country's economy were poor.

Such circumstances were extremely favorable for the general development of crime in this society (the development of black economy), for the relativization of moral values and the strengthening of criminals and criminal groups that have often been directly connected with certain parts of the government, and the state itself often robbed the citizens and companies, instead of protecting them. At the time of drastic impoverishment of the majority of citizens, a number of people has, based on criminal activities or connections with the authorities, acquired great economic power that, for the sake of its preservation, was striving to find its political equivalent.

After radical changes in the political leadership of the country (in the events of 5 October, i.e. in parliamentary elections in December 2000) the reform has been started, and now we are in its third year. In many spheres the reforms have given positive results.

In others, they were less intensive or successful, and often could not meet the accumulated citizens' expectations. The attempts to correct, to a certain extent, social injustices of distorted transition from the 1990's and to suppress the power of organized criminal groups, are among them. A very important moment in solving the problem of organized crime was the police action that took place after the assassination of Mr Zoran Đinđić, the Prime Minister of Serbia, on 12 March ("Sabre" action). This action stamped out a great number of organized criminal groups. Furthermore, it was at the very beginning of this action that the connection between crime and parts of the government was discovered (special police squad and individuals in prosecutor's office and police).

Reforms were initiated in the corruption-fighting sphere as well. Among the most important measures was the work on the preparation of the regulations aimed at the increase of confidence between the authorities and citizens and at the adequate mecha-

nisms of the public sector operation control by the citizens. Among these, very important is the work on the preparation of the regulations that should prevent the conflict of the state officials' public and private interest and that should ensure a free access to the information of public importance**.** The public has, since the beginning of 2002 to this day, been exceptionally interested in the work done on the passing of these regulations and in the issues that these regulations refer to. This is not surprising, since the problem of corruption is one of the problems most emphasized by the citizens of Serbia.

In the past few years, several public opinion researches, with the topic of corruption or authorities-citizens cooperation related questions, were conducted in Serbia. None of these, however, contained the analysis of the citizens' standpoint on all the important issues regarding the **conflict of state officials' interests**[1] **and free access to information.**[2] In order to get to know these standpoints, *Transparency Serbia* has ordered a comprehensive field research, in the first phase of the regional project it is implementing.

The research included four fields:

- concept of public interest,
- conflict of public and private interest of state officials,
- right to a free access to information,
- citizens' action potential in the struggle against the conflict of interests and for achieving the free- access- to- information right

The research was performed on the stratified, multi-stage sample that represents the entire adult population of Serbia. The sample comprises 993 valid questionnaires that were filled in by the citizens in 19 municipalities in Serbia. The sample is representative with respect to nationality, sex, age, education, and the place of residence (village or town).

Field work was performed in the period from 24 March to 4 April 2003. At that time, the state of emergency was in force in Serbia, due to the assassination of the Prime Minister, Mr Đinđić. As reported by the pollsters, this resulted in a greater number of citizens not wanting to participate in the poll. This number is bigger by about 25% than the number of the citizens who usually refuse to take part in the polls. However, the pollsters believe that the citizens who did take part in the poll, gave honest answers. The poll was anonymous.

Many activities related to this research, including the preparation of questionnaires and samples, field research, data entering and processing, as well as writing the preliminary research report, were performed by research-analytical centre "Argument" from Belgrade, headed by Stjepan Gredelj, PhD. Transparency Serbia took part in the designing of questionnaires, compared and interpreted the obtained answers.

When preliminary results of this research[3] were presented to the public for the first time, great interest was aroused. This publication presents the answers to the majority of given questions (there were 50 in total, and most of them had several subquestions), as well as the indicators of deviation from the average, obtained by comparing the answers to certain questions, i.e. by comparing with the subject demographic data.

Public interest and political community

When a certain term is used frequently and becomes generally known, the understanding of that term's meaning is taken for granted. Since "public interest" is one of these terms, we tried to find out two things:

[1] Still in the form of working paper (version).

[2] Government of Serbia proposed the draft to the Parliament.

[3] Press conference was held on 15 May 2003 on the premises of Transparency - Serbia, www.transparentnost.org.yu

- Whose public interest of Serbia is it really?
- What is the content of public interest in Serbia today?

In order to obtain the answer to the first question, we offered the subjects to choose from civil, democratic, dominantly - national and state definition of public interest.

It could be said that there is, among the citizens of Serbia, a high degree of agreement in terms of what public interest presents. Namely, somewhat more than a half of the subjects believe that **public interest presents the interest of all citizens** regardless of their ethnical, religious, social or any other origin.

Democratic definition of public interest, according to which it is the interest of the majority of members of Serbia as a political community, is supported by 15% of the polled. And finally, 12% of subjects believe that public interest is equal to the state interest, and the same percentage believes that the public interest of Serbia is equal to the interest of Serbian people as the major one.

It is interesting that the reply structure to this question does not differ much even when observed in terms of certain demographic groups. The subjects both from cities and villages, women and men, people of various education, age and material situation, reply in almost identical way.

There is no doubt that civil definition of public interest is something that more than half of the population recognizes as "ideal solution". Of course, in practice it is almost impossible to determine what presents the interest of all the citizens of a country. In life, the content of public interest in each specific case should be determined by somebody, either by institutions or some other influential factor. The citizens were offered to mark three such institutions and more than half of them chose the Parliament (61%), i.e. the Government of Serbia (50.5%). Somewhat less than half of the subjects was in favor of giving the citizens themselves the key role in this. It is interesting that almost a fourth of citizens believe that expert and professional associations should have an important role in the forming of public interest. Far behind these remain the institutions such as judiciary, army, police, church, university, trade union (5-15%). Almost the same, small number of citizens, wanted to see political parties and non-governmental organizations as the most important factors in public interest forming (1/7 of subjects per each).

Even clearer picture regarding the citizens' attitude on this matter is obtained by the answers to the question regarding the content of public interest in Serbia today. The content of public interest is, first of all, shown in the priorities which should be insisted upon in the development of a society, so that the citizens in such a society could fulfill their rights and requirements.

Among the first three priorities, the subjects have stated the following*:*

- struggle against crime, for 77% of the polled
- a greater care by the state concerning social system (health, education and employment) - 56%
- 54% of the subjects has opted for a greater possibility of exercising the civil rights.

The second group of priorities includes:

- economic development (52%),
- development of market economy (36%),
- reduction of the differences between the poor and the rich (35%),
- and joining the EU (32%).

The least important priorities for the citizens, among the offered answers, were the following: independent state of Serbia (16%), becoming a NATO member, integration in the Balkan area and decentralization of Serbia, 5% each.

It is noticeable that the highly educated subjects have, more than the others, opted for the priorities related to the observing of civil rights and to the economic development (the

development of market economy, economic development, joining the EU). One of the possible explanations is that the highly educated are less susceptible to approaching the problem in light of the current events. Namely, a number of subjects surely chose struggle against crime as a priority due to the events that were taking place at the time (police action against organized criminal groups was in full swing at the time of the field research). It is interesting that when determining priority public interests, the age, and even material status of the subjects had no influence. This clearly indicates that in Serbia there are still priorities about which a consensus could be reached in the society, although based on the conflicts on the political scene, often arising from the essential state issues, it could be concluded that consensus would be hard to reach.

At the time of the poll, it was the Government that contributed most to public interest being understood in the above-described way (according to 43% of subjects). All the others received far less "votes", including the Parliament (11.7%), political parties (7.6%), media (5.3%), and even 12.7% of the people replied that none of the offered institutions or groups contributed to the public interest.

It is interesting to point out here that absolute majority of citizens believes that state officials should represent public interest even when it opposes the program of the political party they are members of, the business interest of the company where they have interest, the interest of religious or national community they belong to, or the interest of their basic profession.

Based on the answers from this part of the research, it could be concluded that among the citizens, there is a high degree of **agreement that public interest should present the interest of citizens**, as a whole or as majority. Consensus is also evident in terms of the public interest content, and these are **struggle against crime and a greater exercise of rights**, including the social ones as well.

When these findings are compared with the results of the other public opinion analyses, they only present another confirmation of the conclusion that the citizens of Serbia can not adequately fulfill their basic requirements and the rights guaranteed by law. Giving priority to struggle against crime and a greater possibility in exercising civil rights, including the social ones, indicates that the citizens do not feel safe either in terms of physical and mental maltreatment by the criminal groups or individuals, or in terms of (non)exercise of their rights, at present the most important being the right to health care, employment and education. The consequence of this situation is an increased frustration of the citizens who are, in order to "survive", ready to accept all "lucrative" possibilities to fulfill their requirements and exercise their rights. On one side, they are willing to be corrupted, but also to corrupt in compliance with their abilities.[4]

By comparing the results of this research with the findings of other researches dealing with the question of corruption, it can be seen that they indicate in an indirect manner, to the existence of social circumstances in which citizens' private and personal interests are placed before the public good. This means that survival strategy makes citizens think in "day-to-day" terms, agreeing even to fulfill their requirements by corruption. Such an attitude towards the reality makes the subjects believe that, probably state officials as well, are governed by the same logic.

At the time of poverty, egoistic interests come to the surface. It is only upon fulfillment of basic needs and rights that present priorities of the citizens will give way to the priorities

[4] (See the results of comparative research in seven countries of southeastern Europe from 2002, regarding the citizens' attitude on corruption. To the question "When is bribe justifiable?" 40% of the subjects answered that it is justified "if that is a way for a person to fulfill his/her interest", and 58% "if that is a way for a person to fulfill his/her family's interest". Cf. *Instructions for the use of corruption*, Argument, Belgrade, 2002, page 33, graphs 1 and 2)

non-egoistical and non-material in nature. That is also the time when citizens, regardless of their role in the society, will have more understanding for the public and common good.

Conflict of Interests

It could be said that the questioned citizens believe that **conflict of interests presents the basis for non-ethical and unacceptable conduct** of the state officials.

When given the opportunity to define themselves the conflict of state officials' public and private interests, the citizens gave the answers that were grouped in several classes. One fifth of the citizens polled believes that the conflict of private and public interests actually means giving priority to private over public interest (22%). The replies of the remaining part of the sample range in the following manner: from making material profit, misuse and illegal accumulation of wealth (45%), abuse of power and political profit (11%), to corruption (9%) and performing several functions (4%).

It is noticeable that the citizens are highly capable of recognizing the situations of conflict of state officials' public and private interests.

Offered situation	%
1. When a state official accepts a gift from a person that might ask for something in return	86.7
2. When a minister is the owner of a private company related to this ministry's field	77.8
3. When a state official presents the standpoints of his political party at a press conference, where he is in the capacity of a state official	74.6
4. When a state official gives information on a company that is undergoing the process of privatization, to a party interested in purchasing this company	72.8

It is interesting that many subjects have categorized the following behavior as conflict of interests, although such behavior in itself is not conflict of interests:

1. When a state official represents the interest of his/her own party	59.7%
2. When a state official starts to build a house during his/her term of office	48.4%
3. When a high-ranking state official uses personal guard and official car for the needs of performing state business	23.6%
4. When a state official brings criminal charges against somebody	21.5%
5. When a state official engages in scientific or artistic work after regular working hours	13.7%

The answers of the subjects to these two questions do not show statistically relevant deviations with regard to the average depending on the demographic factors (education, age, material status, etc.)

Such answers by the citizens can only in a smaller part be attributed to their unfamiliarization with the regulations or ethical standards related to the conflict of interest prevention (that have not yet been fully promoted in our country). It could rather be said that they are the consequence of the citizens' negative attitude towards politicians and their nonconfidence in the existing mechanisms of control within the system, due to which

a suspicion was developed that behind the actions that are neither illegal nor morally unacceptable, there is some abuse hiding. Furthermore, situation number 3 stated in the table above, indicates that a considerably large number of subjects has an aversion towards officials in general and this aversion has reached absurd proportions. On the other hand, great majority of citizens (including the "uncompromising ones") does not have anything against the officials performing scientific or artistic work, which is the standard accepted worldwide in the regulations dealing with the conflict of interests.

Assessment of overlapping between public and private interests

The subjects show a very high level of perception regarding certain "crossing" forms between state officials' public and private interests.

The citizens recognize, i.e. consider the following situations harmful:

The incidence of state officials also being:	observed %	assessed as harmful %
1. Party officials	85.3	37.2
2. Owners or co-owners of private companies	73.3	73
3. Managers/members of state companies' managing boards	68.4	67.8
4. Managers/members of private companies' managing boards	64.9	72.2
5. MPs in several parliaments	49.8	63.3
6. Managers of non-governmental organizations	37.2	57.4

The citizens believe that overlapping between the state and economic functions is most harmful, and two thirds of them have recognized various forms of this overlapping in case of some state officials. There is no doubt that such citizens' attitude was influenced not only by their natural suspicious character but also by the negative experience from the period up to 2000, when many members of the Government of Serbia were also managing big socially-owned companies. The citizens also find the performance of several state functions harmful, as well as simultaneous performance of state functions and the functions in non-governmental organizations, although it was only a small number of citizens that noticed such an occurrence in practice. Only a little more than a third of citizens believe that it is harmful for public interest that state officials should simultaneously perform their political party functions, about 30% of them believe that it is useful, while the others have no opinion on the matter. It is interesting that the subjects who are members of some political parties (about 10% of the total population) do not have the tendency, or at least not more than the other citizens, to characterize such an overlapping of functions as useful.

The people with university education have, generally speaking, recognized the stated occurrences more often. Particularly significant difference in answers compared to the average, has been noticed in terms of the occurrences that the state officials are at the same time advisers in some companies or institutions, owners or co-owners of companies and party officials, which can be explained by the fact that the people with university education are better informed. In terms of the assessment of the stated occurrences' harmful effect, there are no significant differences with respect to the level of education.

Should state officials be prohibited to be the following?	Yes %	No %	I don't know %
Holders of several state functions simultaneously	85.5	11.2	3.3
Managers/Members of managing boards of state-owned companies	77.5	16.7	5.7
Political party officials	39.1	54.5	6.4
Managers/Members of managing boards of private companies	77.9	18.1	3.9
Officials in trade unions	69.5	22.4	8.2
Officials in non-governmental organizations	63.5	27.1	9.4
Officials in sports associations and clubs	48.6	44.4	6.9
Managers of health, educational and cultural institutions	56.8	36.9	6.3
Officials in professional associations	45.3	46.2	8.5
Officials in citizens' associations	45.5	45.3	9.2

The citizens mostly believe that the performance of several functions simultaneously should be explicitly forbidden. While an overwhelming majority of them supports the prohibition of performing several state functions and simultaneous performance of state functions and business activities, the citizens are almost equally divided with respect to their opinion on the prohibition of performing the functions in the institutions financed from the budget (e.g. health, educational, cultural institutions), professional associations and sports clubs and associations.

In some cases, the subjects are willing to justify the overlapping between the state and other functions. Only one fifth of the citizens believes that such a situation is absolutely inadmissible, while the others are ready to approve of an exception, especially in the cases of eminent experts whose assistance is necessary.

State officials' harmful actions

State officials' forms of behavior considered incompatible with the public interest, which have been recognized by the subjects in Serbia, are ranked as follows: **giving priority to the members of one's own political party when giving employment** in a state agency - 65% of subjects replied that this occurrence was frequent - then **nepotism** (giving priority and helping the members of family and friends to profit from the state - 60%) and finally, **abuse of discretionary powers and willful decision-making** (interpretation of laws and regulations as convenient 55%). On the other hand, citizens recognize as somewhat less frequent the existence of abuse that may bring to state officials or related persons direct material profit. In any case, when all the answers are taken into consideration, both the ones stating that these actions are frequent or that they are occasional, a negative impression is obtained regarding the citizens' confidence in the honesty of the holders of political functions as a group.

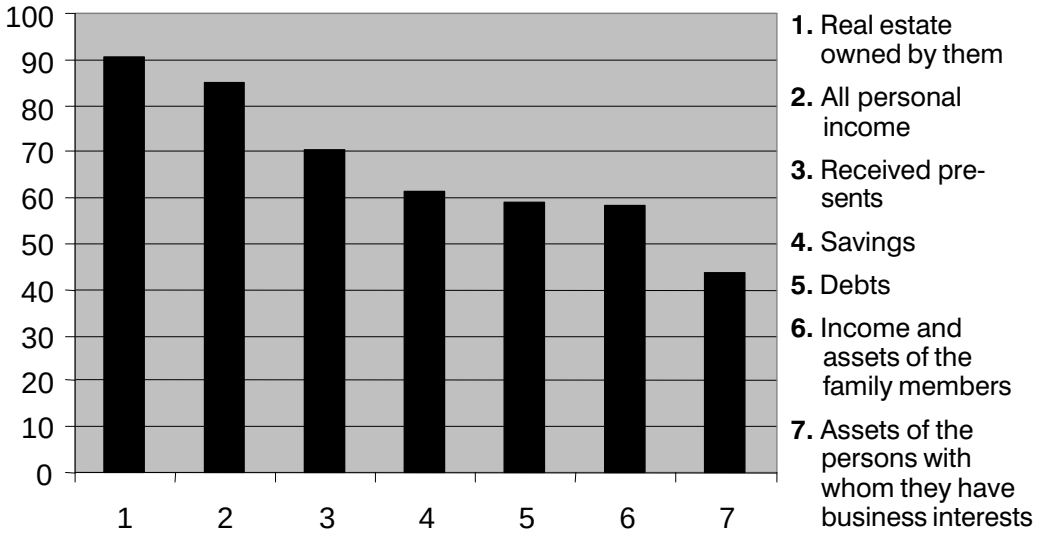
State officials' actions	frequent	occasional	total
1. Giving priority to the members of their own party for their employment in a state organ although there are more qualified candidates	65	28.9	93.9
2. Giving priority to the members of their own family and friends for their employment in a state agency although there are more qualified candidates	60.4	30.5	90.9
3. Assisting the members of their party in entering contracts with the state	55.8	34.5	90.3
4. Interpreting the laws and regulations as convenient to them	55	39.9	94.9
5. Assisting the members of their family and friends in making deals with the state	54	34.4	88.4
6. Accepting gifts from the people and organizations that may, in the future, expect a favor in return	47.8	35.3	83.1
7. Providing members of their party an access to the information that may ensure material and non-material profit	46.1	39.7	85.8
8. Using the state function as a means of achieving illegal benefit	43.8	44.8	88.6
9. Providing members of their family access to the information that may ensure material and non-material benefit	42.2	38.6	80.8

List of state officials' assets

The public is very interested in the data regarding the state officials' assets. The subjects (**four fifths** of them) believe that **ALL** relevant state officials should make public the data regarding their assets. It is very interesting that **NOT A SINGLE** subject believes that it is not necessary for the officials to have their property made public, and only every fortieth subject has no opinion on the matter.

To the question what should be made public by the state officials, we received the following replies:

The assets that officials should make public



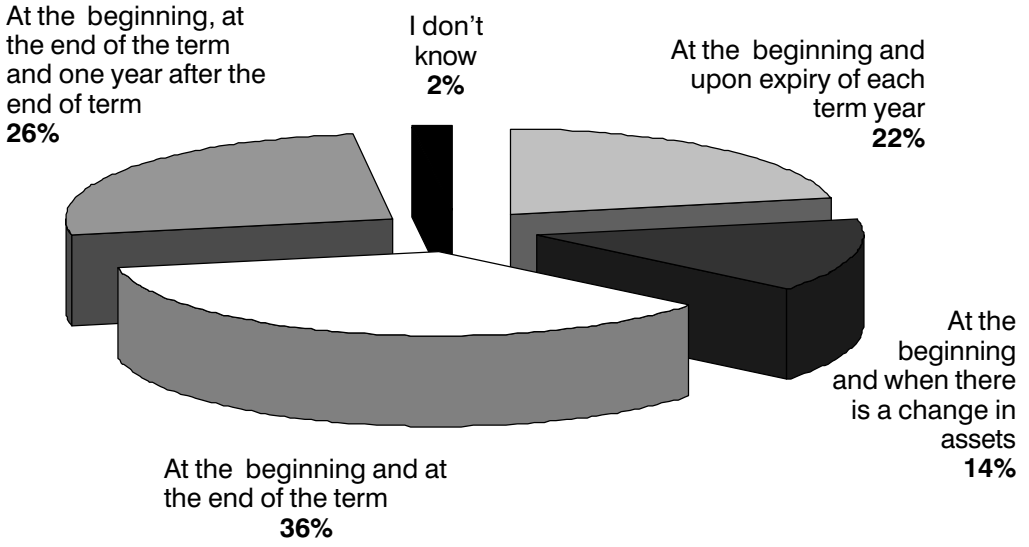
It is important to point out here that the citizens are usually not acquainted with the regulations in this field. Namely, only a fourth of subjects knows that, according to the present regulations, state officials **are not** legally bound to report their assets.

On the other hand, even 45% of those polled believe that such an obligation already exists! The citizens' replies indicate on one hand, that there is a **need of such a regulation** that is to control the conflict of interests, and on the other, that they are used to laws not being applied, believing that it is the case in here as well.

Being familiar with this regulation depends on the education and profession of the subjects. A positive answer to the question "Do state officials, according to the present regulations, have to report their assets and interests?" was given, more than the average, by highly qualified workers, technicians, and in general, employed persons; specialists more frequently answered with "no", while the students and farmers showed the tendency towards the answer "I don't know". The tendency to give a correct reply also depends on education: subjects with university education are more familiar with the regulations, the ones with high-school education make more mistakes, while the least educated are most ready to admit their ignorance of the regulations. It is noticeable that the subjects who had attended high-school or college, but did not complete it, show increased tendency to reply with "I don't know".

It seems that the confusion, which exists in the public regarding this matter, has been reflected on the subjects as well. Since this topic has extensively been covered in the media, and since certain state officials have reported their assets, many people, especially the ones who follow political events superficially, are under the impression that such an obligation has already been prescribed.

To the question when the assets should be reported, the citizens gave the following answers:



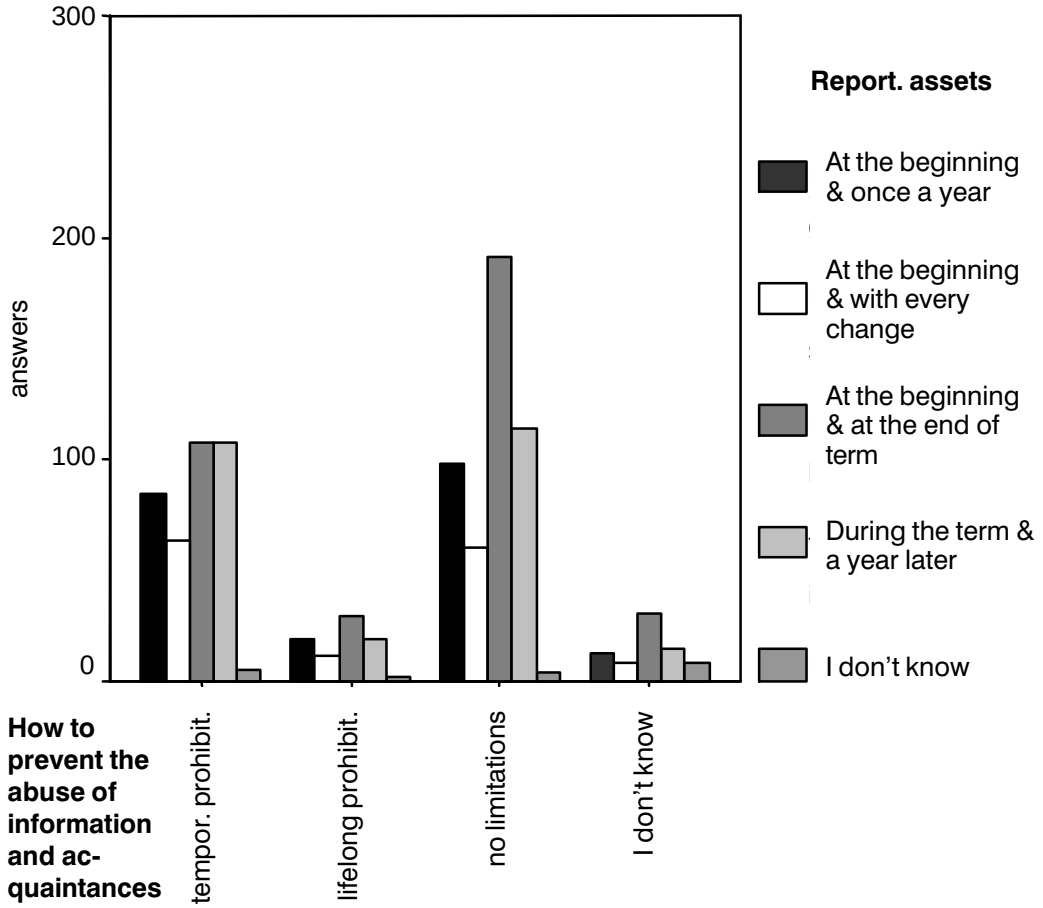
People in public office have the opportunity to acquire valuable acquaintances and to get to know the information not accessible to everyone, during their term of office.

It is well-known that people can be corrupt in various ways, and one of them is to be rewarded with a good position by the party which they did a prohibited favor while they were in position to do so (e.g. in certain function). In order to prevent such occurrences, 38% of citizens suggest prescribing a work prohibition to former officials in the spheres where they can use the privileged information in a limited period of time. Most citizens, however, oppose such prevention of the conflict of interests. With these answers, there are significant deviations with respect to age and education. While people with university education, younger and middle-aged subjects oppose establishing the limitations more than the average, the older subjects are in favor of their introduction. The subjects with elementary school education, as well as those who are between 18-25, are mostly in favor of the most radical solution, lifelong prohibition of performing other works, but with the ensurance of adequate material security for them on account of the state budget.

Public opinion becomes more clear when the answers to this question and to the question when the property should be reported, are compared (see picture above). Namely, the subjects who would prohibit the officials from working in the spheres where they could use the acquired information were mostly in favor of an increased control of the assets and interests during the term of office. It could be said that these subjects are more resolute and energetic in their fight against corruption. On the other hand, the most frequent answers are also the most simple ones (reporting the assets only at the beginning

and at the end of the term/total freedom in the selection of employment after the term of office), and the subjects who give them, show little tendency to become engrossed in the solution of this problem.

Use of the acquired acquaintances and information upon expiry of office



Attitude towards gifts

For a great majority of citizens (between 80 and 90%), it is unacceptable that state officials should accept and keep presents in the form of money, jewelry, forgiving a debt or free summer vacation.

When an official in the course of his/her term accepts a gift or a promise of a gift, in addition to reporting the value of the gift and the name of the one who gave it to the authorities (35%), the citizens believe that it is his/her obligation either to refuse the gift (20%), or to give it to a humanitarian organization (26%).

The subjects are most tolerant towards accepting honorary titles (three fifths). Most of the citizens accept the gifts that could be characterized as a "treat": lunch, souvenir, health services, but on one condition- that the value of the gift does not exceed 100 Euros.

When answering this question, a group of citizens with exceptionally negative attitude towards the politicians, was noticeable once again. Namely, more than 30% of the subjects would prohibit the officials from accepting gifts, even the less valuable souvenirs, during their term of office.

The citizens believe that the question of gifts received by the persons in some ways related to the state officials should also be regulated. Majority of subjects believe that the regulations should include the members of their families and also the persons they are in business relations with. There is a noticeable difference in attitude of the subjects depending on their education; university educated people are less in favor of controlling the gifts of the persons who are in business relations with the officials. Probable reason for this is better knowledge of the civil rights regulations that do not support such control.

By comparing the answers to the questions related to the gifts that the state officials accept, there is an interesting tendency of the subjects in favor of reporting the received gifts to the authorities only, that when certain gifts and privileges are concerned, they are very tolerant towards the state officials. Accepting a free lunch, art objects, souvenirs, titles and free health services, for majority of them does not present potential bribe.

Should the state officials be permitted to receive and keep the following gifts?	**May accept and keep %**	**May accept and keep the gifts of up to 100 Euros %**	**May not accept nor keep the gifts %**	**I don't know %**
Money and securities	5.1	4.6	87.5	2.7
Free lunch in a restaurant	50.4	9.1	37.6	3.0
Forgiving a debt	9.4	3.8	81.8	5.0
Free health services	21.3	4.3	69.8	4.5
Art objects	22.4	17.6	56.0	4.0
Souvenirs	45.4	19.6	31.8	3.1
Jewelry, gold objects, precious stones	6.7	6.1	84.3	2.8
Free education for children, scholarships	7.7	2.4	85.4	4.5
Free trips, summer and winter vacations	9.0	2.9	84.3	3.8
Honorary titles	62.8	4.6	28.2	4.3
Objects of use value	13.2	17.9	60.5	8.4

The subjects in favor of donating the gifts to humanitarian organizations are also tolerant towards the state officials when free lunches are concerned, but oddly enough, also about forgiving a debt. Finally, the group of subjects believing that the state officials should refuse all the offered gifts is consistent in its answers to both questions.

Ways of struggle against the conflict of interests

The citizens believe that **the state officials' conflict of interest can be prevented most efficiently by the methods that include the possibility of dismissal, i.e. recall**. This means that the citizens wish to have mechanisms for the recall of a state official who places private interest before the public one.

This method is assessed as the most efficient by three fifths (58%) of the subjects. Another fifth believes that state officials should have extremely high income and a ban on performing other jobs. The third, "aristocratic" model implies that only the people who have enough money and time should go into politics and that they should receive no compensation for their work. Such a system would be acceptable according to 9% of the subjects.

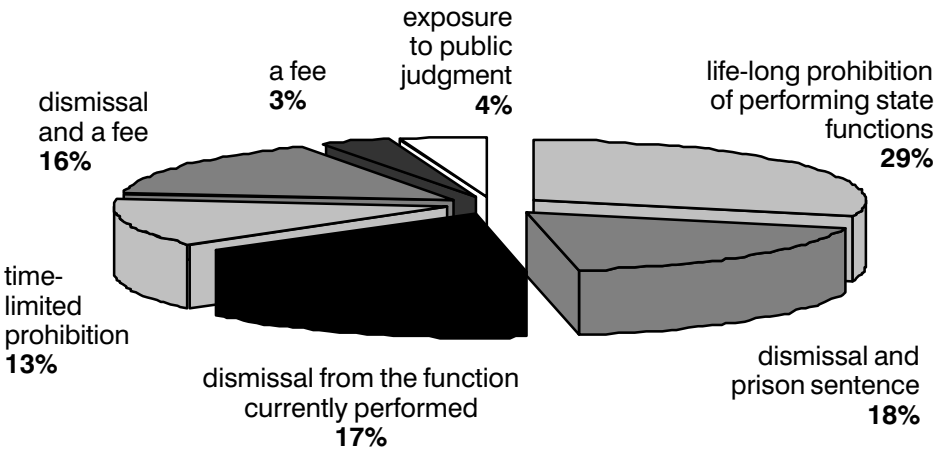
It is noticeable that the people with university education and urban population, show greater tendency than the average, towards the solution implying control by the citizens that may result in a dismissal or recall of a state official, while the rural and less educated population shows greater tendency towards the preservation of the status quo.

The citizens in favor of efficient civil control methods, i.e. absolute prohibition of performing other jobs, have more than average expressed their critical attitude towards various forms of conflict of interests, especially those resulting from the overlapping between the functions in state and economy.

Sanctions in case of conflict of interests

The citizens believe that penal mechanisms towards the officials in case there is a conflict of interests, should be very stern. Almost all subjects consider dismissal from the function necessary. One third believes that in addition to it a prison sentence or a fine should be pronounced, while 40% believe that such an official should not be allowed to perform any state function, for some time at least.

Only 4% of our citizens believe that mere exposure to public judgment would have sufficient effect on the state officials not to use the situation that presents the conflict of interests, which shows that the citizens give little significance to the political sanctions that are the main penalty for corrupt politicians in the developed democracies.



Since the issue of the conflict of public and private interests will be better regulated in the future than is the case now, we were interested in the public opinion on which organ should have the supervisory role in implementing the state officials obligations in that sphere. The citizens mostly opt for a state organ, but there are very different opinions on which. Almost half of the subjects would give this role to a body that still does not exist, while the other half saw in the existing institutions suitable doers of such actions.

Majority of citizens saw the tax administration in the role of this future control organ, which is the consequence of recognizing the conflict of interests most of all in the possibility of position misuse in terms of financial malversations. Furthermore, a significant number of citizens was in favor of forming a special committee that would deal with this question only. The opinion that such a committee should be nominated by the National Parliament, is predominant among them.

The solutions supported by the citizens and future regulations

We had the opportunity to check the congruence between the citizens' attitudes and some of the solutions recommended in the working version of the Law on Prevention of Conflict of Public and Private Interest in Performance of Public Functions (the version of October 2002 that was discussed at the meeting organized by OSCE Mission and the Government of Serbia).

In terms of incompatibility of functions, the solutions from working version would meet the expectations of the majority of citizens. In the situations when the opinions are equally divided, e.g. regarding the possibility of performing the functions in budget-funded institutions, associations and unions, the regulation would be in accordance with the wishes of "strict" citizens. There is also congruence regarding simultaneous performance of a party and state function, supported by a smaller part of the population, and the working version does not foresee such a limitation either.

The citizens are absolutely in favor of the solution according to which the state officials would be obligated to report their property. A significant number of citizens is far more benevolent regarding the frequency of that reporting than the solution from the working version which specifies reporting the property at the beginning and the end of term, once a year during the term, a year upon its expiry, and in certain cases, when changes occur. In terms of what should be reported, it could also be said that majority of citizens would be in favor of the solutions from the working version.

The working version does not specify the limitations regarding the performance of jobs upon leaving the public office, which many citizens are in favor of, nor does it regulate the level of state officials' income during their term of office, but it contains the provisions that make income and property control possible two years upon expiry of the term, and in such a way, they reduce the risk of abuse.

With regard to the possibility of keeping the gifts received by the state officials, the attitudes are partially congruent. However, it is noticeable that the citizens do not find it important if the gift value is less than the specified (100 Euros in the poll, i.e. half of the average salary in the working version), since the majority of them, except in terms of special kinds of gifts, are against the possibility of keeping them. The recommended solutions are congruent with the standpoint by the majority of citizens that the possibility of bypassing the regulations by giving the gifts to the members of state officials' families, should be limited.

In terms of controlling how far the limitations are observed, it could be said that the solution from the working version (establishing a special body elected by the Parliament that would only deal with this question and be supported in that by the other state organs) would be supported by a significant number of citizens, even those who used to look on the prevention and settling of conflict of interest in a narrower sense, most of all bearing in mind the control in financial sphere.

The citizens' attitudes regarding the sanctioning methods when a conflict of public and private interests has been discovered, are not totally comparable with the recommended solutions. The reason for this is that the citizens have not particularly been ques-

tioned if they are in favor of sanctioning even when abuse of official position has not been committed, but only a situation has arisen that causes objectivity to be doubted. However, the impression remains that the citizens' expectations exceed the solutions from the working version, where exposure to the public judgment in case of non-existence of offence elements presents the only punishment. What could be concluded from the citizens' standpoint is the need of more efficient mechanisms of public interest protection, most of all through the possibility of dismissal and recall, as well as the prohibition of performing public functions in the future. Meeting these wishes would require not only the passing of more radical regulations in the conflict of interest prevention sphere, but also alteration of numerous regulations specifying the election and recall of state officials.

Free access to information

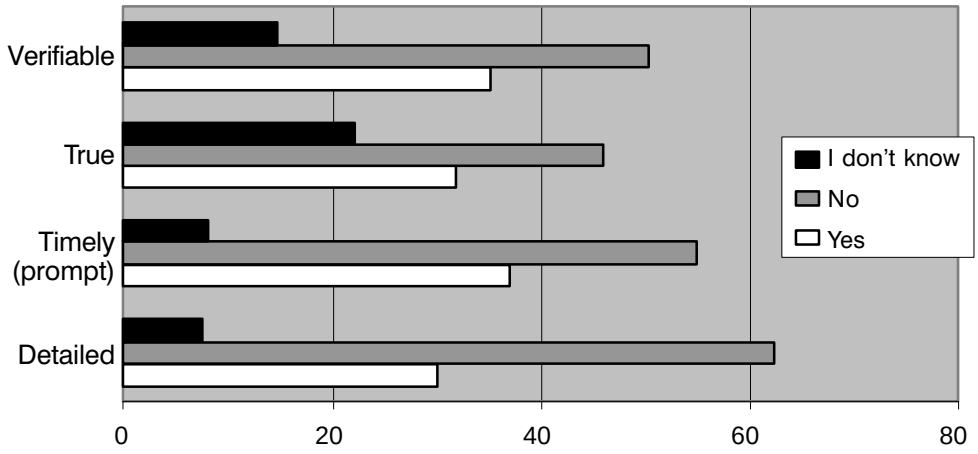
The transition period in our society implies the **democratization of the state administration and its officials**. The transparency of their work is one of the most important segments of that process. The information about their activities cannot be in the exclusive jurisdiction of the media, rather a citizen must have a right to request and obtain the information he/she is interested in, regardless of where the current media attention lies in that respect.

Means of informing the public

The research has unequivocally established that 80% of the public relies on the media to obtain relevant information about the state administration and its activities. Also, the stories and reports from their well-informed friends and acquaintances represent another major source of information, cited by 15% of those surveyed. Only every 50th individual claims that he/she has requested the desired information directly from the relevant state institution.

In terms of the quality of the information related to the state administration provided to the citizens, we have received numerous complaints and negative assessments.

Citizens consider the information related to the state administration to be:



As seen from the answers to the previous question, the assessment on the quality of information at the same time, to a large extent, represents the assessment on the source of the information as well, in our case mostly the media that reports the information to the citizens.

The citizens, in general, hold a majority view that the information obtained about the state administration is neither complete, nor detailed, nor timely, nor true nor confidential. This view is shared, albeit in somewhat smaller numbers than the average would suggest, by those that are loyal readers of the Belgrade dailies Politika and Blic in terms of the truthfulness of the information, by those who watch RTS and BK TV in terms of completeness and how detailed the information is, as well as its timeliness and truthfulness, and by the citizens loyal to the B92 TV in terms of the timeliness and truthfulness of the information. On the other hand, those that choose to read Vecernje Novosti or watch TV Pink show a greater inclination to negatively assess the truthfulness and the timeliness of the presented information.

In addition, citizens most often use the TV stations to obtain the information related to the state administration activities with RTS leading the pack, followed by B92 and BK, and to a lesser extent some local television stations and TV Pink. Among the daily newspapers, Blic and Vecernje Novosti are read most often, followed by Politika, while no other newspaper was cited as a major information source by more than 10% of those surveyed.

The right of access to information

Considering that there is no universal right of access to the information related to the state administration and its institutions in Serbia, but only a limited access to the information in specific undertakings and processes, the lack of public knowledge of these rights should come as no surprise. The majority of citizens do not know what kind of information they can obtain from the state institutions, and only 6.5% is completely aware of this possibility. Another worrying data is that 44% of surveyed citizens have no idea which state institution holds the information relevant to them, while a further 42% is only partially apprised of it. The number of uninformed citizens in terms of exercising their right of access to the information increases in cases where the information can be withheld, or there are specific procedures and deadlines for obtaining such access.

Still, 80% of the citizens believe that the information in the public interest should be accessible to everybody.

The view of surveyed individuals	Agree (%)	Disagree (%)
1. All information in the public interest should be accessible to everybody	81.4	18.6
2. Without the proper information the citizens cannot exercise their rights	75.3	24.7
3. Anyone who restricts access to the information that the public has a right to have should be punished	75.2	24.8
4. The process of declaring certain information as a state secret should be controlled in a special way	71.8	28.2
5. The secrecy of the information related to the state administration opens the door to the abuse of power	66.5	33.5
6. The state institutions should ensure the accessibility of information related to their activities	65.9	34.1
7. The citizen has a duty to inform himself as much as possible about the state administration activities	49.8	50.2

The interest of citizens to obtain the information, in practice

Despite the fact that the large majority of citizens emphasized the importance of free access to the information and the maximum transparency of the state administration activities, in practice, they have shown significantly less interest in obtaining access to the relevant information. In other words, even though they may never request the relevant information, they believe it is important for such a basic right to exist as a means of ensuring the public control of the state administration. The following answers further illustrate the need of citizens to obtain the information, and in large measure, their view of various public services.

Have you requested any information from the state institutions or companies in the last year?	%
Yes, I obtained the requested information after a long wait and administrative problems	11.9
Yes, I obtained the requested information without problems	8.9
Yes, but I never obtained the information	3.9
No, I am not interested in the information that they have	6.4
No, because I do not believe that they would furnish the information I am interested in	8.6
No, because I do not believe that they would provide the correct information	6.4
No, I did not need such information	42.6
No, because I did not know who to contact to obtain the information I was interested in	7.7
No, the expenses to submit such a request for relevant information were too high for me	1.2
I do not know	2.4

So, almost the half of those surveyed had no particular need to get the information from state institutions and companies in the last year! A further quarter of surveyed citizens did not request the relevant information due to various reasons, while those who opted to ask for the information usually obtained it, albeit often accompanied with long waits and administrative problems.

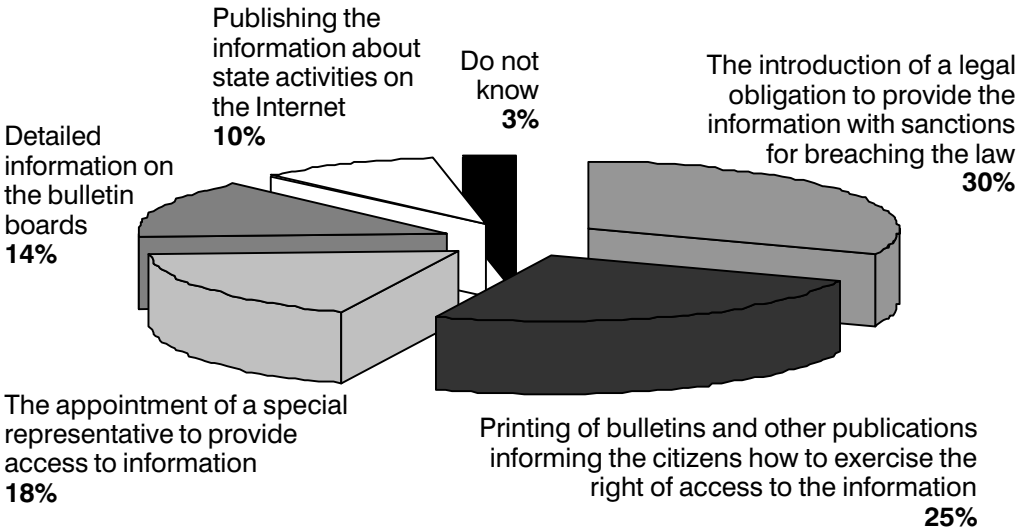
A better picture of the citizens' interest in the information can be deduced by comparing their answers to a series of questions in this area. Namely, the citizens who requested and obtained the information have, expectedly, more often than others, been interested in all available information. Among those that have expressed the interest in the information related to the society at large (the taxes, budget, privatization revenues and the like), there was a greater than average suspicion of the veracity of that information or the availability of the correct information. The largest group, the ones who have refrained from requesting the information from state institutions citing the lack of need or interest, has shown a greater interest, in principle, in the information pertaining to the urban planning, local infrastructure and the contents of the products they purchase.

How interested are you in the information about	Interested %	Somewhat interested %	Not interested %	I do not know %
Government policy and the ministries	51.7	36.2	11.6	0.6
Adopted laws and their implementation	54.5	34.9	9.7	0.9
Tax policy	46.6	36.1	16.1	1.2
Budget revenues and expenses	35.9	43.2	18.5	2.4
Adopted municipal regulations and their implementation	44.4	40.3	13.9	1.4
Local budget revenues and expenses	44.1	38.1	16.1	1.7
Municipal urban plans	46.2	36.0	15.9	1.9
State of the municipal infrastructure	48.0	35.0	15.5	1.4
Ecological situation	63.0	26.8	8.7	1.5
Contents of the products you purchase	67.2	22.8	7.8	2.3
Signed international treaties	34.5	45.8	18.5	1.1
Signed loan arrangements that increase country's indebtedness	41.5	39.8	16.3	2.4
Donations received by our country	41.7	40.1	15.7	2.5
Methods of privatization and associated revenues	48.8	34.9	13.8	2.4

How to create adequate access to information?

The government can provide access to the information in various ways. As the best guarantee for such access, one third of those surveyed cites the adoption of relevant legislation that would **oblige the state institutions to make the pertinent information accessible** to the public and impose sanctions for breaches of the law.

Others have chosen one of the offered models that would increase the state administration efficiency in providing access to the information to the public. One quarter of those surveyed believes that the printing of bulletins and other publications informing them how they could exercise their right of access to information would be a satisfactory solution. Moreover, one sixth of the populace would like to see every state institution appointing a special representative who would be in charge of providing access to the requested information. A full 14% would be content to have the information published on the "classic" bulletin boards, while one tenth thinks that publishing the information on the Internet is the adequate solution.



State Secrets

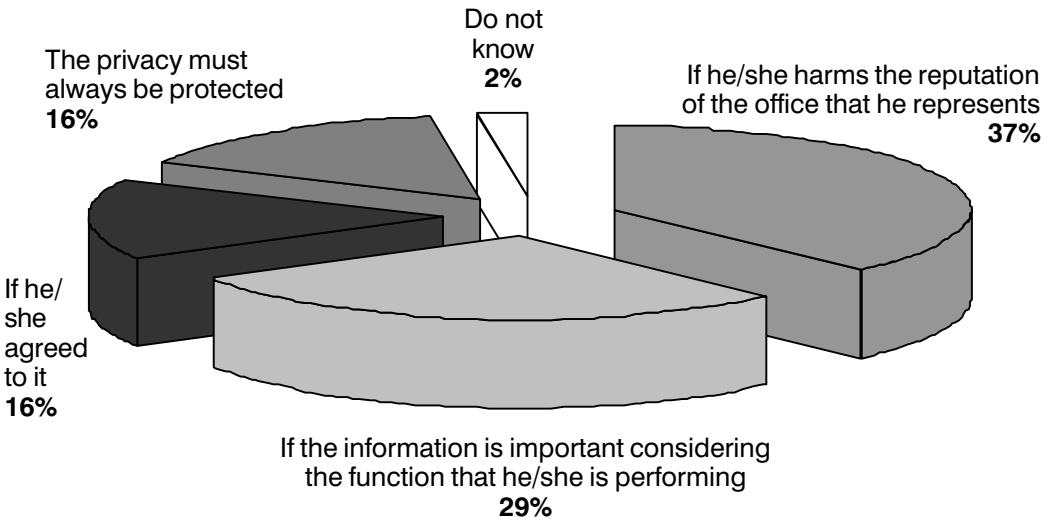
The citizens are aware that there are certain types of information that should be restricted from the public. As justifiable reasons to declare the certain documents as secret, the citizens have most often cited security concerns, the defense of the country, the swift tracking down of suspected criminals and efficient trials.

In terms of the authority to make decisions with respect to the secret documents, the vast majority of citizens has opted for the solution contrary to what has become a custom in the domestic legislation. Basically, they would like to see a special legal body within every state institution or perhaps on a wider state level in charge of such affairs, while the smaller number of surveyed citizens would grant the authority to the managers of state institutions, albeit under some kind of the supervisory power.

The issue of State officials' privacy

The privacy of every individual, including the state officials, must be protected. However, considering the greater social interest stemming from the functions that the state officials are performing, **the privacy of state officials could be limited in the interest of the public**.

In which case should the information related to the private lives of state officials be made public?



According to the above replies, there is a noticeable desire by citizens to limit the right to privacy protection of state officials, in cases where a justifiable public interest exists. The citizens believe that it needs to be done primarily to protect the state office in question. In answers to the other two questions regarding the state officials' privacy protection, there is a tendency to offer the greater privacy protection to those who are higher up the ladder (for instance, 75% would grant the privacy protection to the president, while only 49% would bestow the same right upon the local government officials), as only 41% approves of the view that the state companies' directors should enjoy the privilege. In terms of the private data that warrant state protection, the situation stands as follows:

What should be the subject of the state officials' privacy protection?	Yes %	No %	I don't know %
Family background information	46.5	50.9	2.6
Family data	58.2	39.2	2.6
Political biography	11.9	85.9	2.2
Material assets prior to taking over the state function	16.7	81.1	2.2
Current material and financial situation	15.2	81.4	3.4
Sexual orientation	55.2	39.8	5.0
Religious affiliation	32.9	63.2	3.8
Nationality (Ethnicity)	28.7	67.8	3.5
Health condition	38.2	58.1	3.7
Psychological situation	22.4	73.7	3.9
Married and family life	62.8	33.5	3.6
Who his/her friends and acquaintances are	53.6	41.4	5.0

It is clear that citizens want to know the material and financial status of people who are taking over the state office, which is connected to the issue of controlling the potential conflict of interest, as noted in the text above. Also, the availability of the information related to the political biography, nationality and the religious affiliation is implied, although there is a slight discrepancy with the current regulations governing the secrecy of the general health and psychological data. Even though this information is covered by the existing privacy protection regulations, it is obvious that a significant portion of the populace believes that this information is pertinent and important in determining who to vote for and establishing the competence to perform a given state function. On the other hand, the majority of citizens take the view that the information related to the family life, friends and sexual orientation should enjoy the state privacy protection. The universal standard of protecting these and similar rights around the world (including our country) notwithstanding, a large portion of surveyed citizens still thinks that this information is also relevant in the process of choosing our political leaders. When it comes to the family tree and other background data, the majority view, albeit a slight one, is that the information should not enjoy the state privacy protection.

However, it should be pointed out that the individuals with higher education have a tendency to offer greater privacy protection to the state officials only with respect to their sexual orientation. In contrast, people who have completed only elementary school tend to offer greater privacy protection in the area of health and psychological information, and even in areas related to the material and financial status, as well as the political biography.

The accessibility of regulations

It is widely known that ignorance is no excuse for the law. Precisely for that reason, the state has a duty to provide unfettered access to the citizens to all relevant regulations, especially the ones that govern their behavior. The surveyed individuals have shown their discontent with the current situation in this area. Almost half of those surveyed believe that relevant regulations are not accessible in the right way, and the number of discontented individuals rises in cases where the information pertains to the government decrees that regulate commercial and economic activities in the country.

The personal information

The majority of citizens is aware (or at least believes that to be the case) which state institutions collect their personal data (56%), but in large measure (52%) they also believe that collected information is not properly protected from abuse. A larger number still has no idea how to go about checking the completeness and the truthfulness of collected information, not to mention how they would control the way the state actually uses it.

Following state administration activities

Being present at various government bodies' sessions is lately often cited as one of the ways to enforce public control of the state administration. The vast majority of surveyed persons has expressed no interest in the matter, and further believes that average citizens should not even have an option to do so. The exception is afforded to the local government institutions.

Should citizens be allowed to be present at the sessions of:	YES (in %)
Serbia and Vojvodina Parliaments	35.5
Serbian government and the committee of ministries	25.0
Joint Chiefs of Staff and military leadership	8.1
Police top brass	9.5
Constitutional and Supreme Court of Serbia	19.0
RTS Editorial Board	29.4
Board of Directors of state-owned companies	37.2
Local government bodies	57.0

Solutions advocated by citizens in regards to current and proposed regulations

The upcoming amendments of the existing legislation that should establish a universal and inalienable right of access to information, will gain wide support among the citizenry.[5]

In terms of providing access to the information, a combination of several models suggested by citizens will be used. First of all, the access to the information will be guaranteed, and there will be fines and sanctions for those who choose to flout the law. Additionally, the state administration will be "exempted" from the obligation to provide the information in certain cases, if the information has already been published in the appropriate and adequate fashion (for instance in publications, on the internet and the like), but with an associated duty to direct the citizen that requests such information to the source where it can be obtained.

As far as the scope of the information that would be accessible to the public is concerned, most citizens would probably find the solution to be adequate as the obligation to provide the requested information refers to the state administration on the central, provincial and local level, as well as to the organizations that perform activities on their behalf, including the state companies, institutions and authorized individuals.

The reasons that have been cited as justified to withhold the requested information is to a large extent compatible with citizens' expectations. One of the provisions in this area

[5] See the draft bill on the free access to information in the public interest on the Serbian government web site, www.srbija.sr.gov.yu

allows for the possibility to even provide access to secret documents, but under very specific conditions[6]. In that way, at least in a limited fashion, the options for abuse stemming from the rules that govern document secrecy would be constrained, as apparently called for by the populace.

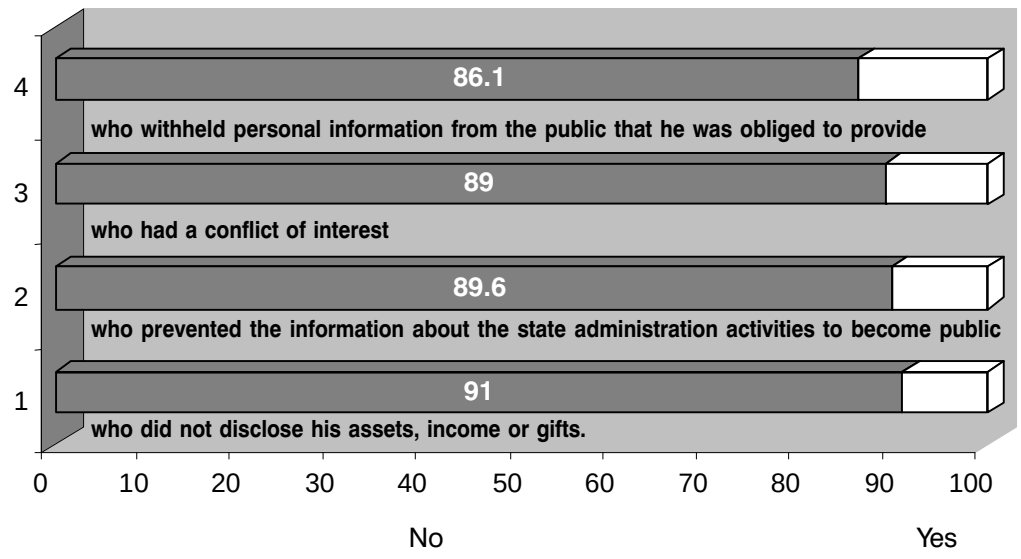
Another provision that aims to limit the right to privacy protection for state officials under certain conditions also appears to have the public approval. The adoption of the proposed bill on the free access to information would in large measure be in sync with the views taken by surveyed individuals. However, some problems pointed to by the citizens are outside of the reach of that document. Besides not being properly informed, the citizens are rather unhappy with the regulations that govern personal data collection and the way a person can access the adopted legislation and other regulations, and believe that the process whereby a document or information is declared secret should be a controlled one.

What are citizens prepared to do?

Two thirds of the surveyed people in Serbia believe that **the conflict of interest of state officials in various levels of the government is a major problem. A full 50% further believe that not having all information about the state administration activities is also a problem**.

Since one of the most efficient ways of to ensure clear public control of state officials is their direct or indirect political accountability, we wanted to know how much could breaches in the areas that we have been discussing so far, influence the elections.

To the question "Would you vote for a politician?", the respondents have answered as follows:



[6] Unless revealing such a secret "could seriously harm a legally protected interest that supersedes the right of access to information"

From this information we could draw an encouraging conclusion that through political accountability we could create a climate where state officials would be more responsible in advancing the public interest. However, as people's voting habits tend to rely on a multitude of factors, with the behavior of a politician being only one of many, it seems that a more realistic picture of the readiness of citizens to fight for a more responsible government comes from the following table:

How would you join:	the fight to prevent the conflict of public and private interest among the state officials %	the fight for free access to information %
Acquaint myself with the problems	26.0	25.9
Lead by example	11.4	9.9
I would join a non-governmental organization that takes action in that area	6.0	7.6
Join the campaign	12.5	16.3
Report any breach of the law	19.1	15.1
File charges	6.9	6.5
Don't know	18.0	18.7

Summary

The results of this research could, to a certain extent, describe the current situation, but they could also offer valuable suggestions and recommendations to the citizens, media, state institutions and the politicians.

The view of the populace on the conflict of interest, taking bribes and gifts clearly affects the way they assess the politicians. Nonetheless, there is a noticeable displeasure with the current regulations and the overall state of the society. The citizens appear to be rather strict in suggesting preventive and restrictive measures towards the politicians, as a consequence of their growing mistrust in the state officials, accumulated over the decades of communism and the subsequent flawed transition.

The transparency of the state administration activities must become a rule, rather than the exception. The monopoly over the available information creates power that begets itself. The absence of information prevents us in evaluating and validating the work of elected officials, thus leaving their responsible behavior solely in the hands of their character.

The research also tells us that **it is necessary to further familiarize the citizens with their fundamental rights**. The transparency of the state administration activities cannot be achieved with the mere adoption of the law on the free access to information nor with the adoption of the law on the prevention of the conflict of public and private interests, rather the citizens must be informed about their provisions as much as possible. That implies not only the information about the new citizens' rights and obligations of state officials, but also the practical consequences that will ensue in our society. Most of all, this relates to: **the increased risk of corrupt behavior, the greater accountability of state officials, the transformation of state agencies into true public services and a rising interest among the citizenry in the matters of public interest**. The citizens must be

aware of their own rights, but also ready to become active, that is invest additional effort in finding out about those rights and actually exercising them.

The results of this research could help the politicians to correct their behavior on time, but they could also serve the society at large to find the mechanisms to bind the citizens and the state institutions closer together.

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