

**Report No. 15**  
**Human Rights Protection Program**

# **Implementation of Transitional Laws in Serbia**

**Date of publishing: December 5<sup>th</sup>, 2005**

**YIHR's Human Rights Protection Program is supported by the Swedish Helsinki Committee for Human Rights and the Netherlands Royal Embassy in Belgrade**



**Swedish Helsinki Committee**

**for Human Rights**

Youth Initiative for Human Rights  
Human Rights Protection Program  
Report number 15  
December 5<sup>th</sup>, 2005, Belgrade

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Report was supported by Swedish Helsinki Committee for Human Rights and the  
Netherlands Royal Embassy in Belgrade  
We are grateful for all the support

Design, layout and printing  
Premis, Belgrade

Circulation: 500 copies

ISBN 86-85381-04-5  
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## Introduction

During the period between December 2004 and November 2005, Youth Initiative for Human Rights (hereinafter: YIHR) conducted research on the implementation of transitional laws. YIHR oversaw the implementation of the Law on Cooperation of Serbia and Montenegro with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter: Law on Cooperation with the ICTY)<sup>1</sup>, Law on Protection of Right and Freedoms of National Minorities (hereinafter: Law on National Minorities)<sup>2</sup>, Law on Accountability for Human Rights Violations (hereinafter: Law on Lustration)<sup>3</sup>, Law on Public Information<sup>4</sup>, Law on Broadcasting<sup>5</sup>, Law on Free Access to Information of Public Importance (hereinafter: Law on Free Access to Information)<sup>6</sup>, Law on Organization and Jurisdiction of Government Authorities Prosecuting Perpetrators of War Crimes (hereinafter: Law on Prosecution of War Crimes)<sup>7</sup>, Law on Assumption of Jurisdiction of Military Courts, Military Prosecutor's Offices, and Military Attorney's Office (hereinafter: Law on Assumption of Jurisdiction)<sup>8</sup>.

In order to research the implementation of the eight mentioned Laws, different methodology was applied to each, due to their distinctiveness. Law on Cooperation with the ICTY was followed through media analysis, interviews with representatives of institutions responsible for implementing the Law, as well as through contacts with ICTY office in Belgrade. Law on National Minorities was monitored by talking to relevant individuals in areas inhabited by minority communities, thus through interviews with representatives of the National Councils of Minorities, non-governmental organizations dealing with questions concerning national minorities, and local authorities in multi-ethnic regions. Additionally, through systematic following of performance of public official bodies responsible for protection, and promotion of minority rights. Implementation of

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<sup>1</sup> Law on cooperation of Serbia and Montenegro with the International Tribunal for criminal prosecution of persons responsible for great violations of international humanitarian law committed on the territory of ex Yugoslavia from the year 1991, adopted on April 10<sup>th</sup>, 2002, came into effect on April 12<sup>th</sup>, 2002, Official Gazette of Federal Republic of Yugoslavia (FRY), number 18

<sup>2</sup> Law on Protection of Rights and Freedoms of National Minorities adopted on February 27<sup>th</sup>, 2002, Official Gazette of FRY, number 11/02

<sup>3</sup> Law on Accountability for Human Rights Violations, adopted on May 30<sup>th</sup>, 2003, came into effect on June 7<sup>th</sup>, 2003, Official Gazette of Republic of Serbia (RS), number 38/2003

<sup>4</sup> Law on Public Information, adopted on April 22<sup>nd</sup>, 2003, Official Gazette of RS, number 43/04

<sup>5</sup> Law on Broadcasting, adopted on July 18<sup>th</sup>, 2002, came into effect on July 27<sup>th</sup>, 2002, Official Gazette of RS, number 42/2002

<sup>6</sup> Law on Free Access to Information of Public Importance, adopted on November 2<sup>nd</sup>, 2004, came into effect on November 13<sup>th</sup>, 2004, Official Gazette of RS, number 120/02

<sup>7</sup> Law on Organization and Jurisdiction of Government Authorities Prosecuting Perpetrators of War Crimes adopted on July 1<sup>st</sup>, 2003, Official Gazette of RS, number 67/03

<sup>8</sup> Law on Assumption of Jurisdiction of Military Courts, Military Prosecutor's Office, and Military Attorney's Offices, adopted on December 24<sup>th</sup>, 2004, came into effect on the January 1<sup>st</sup>, 2005, Official Gazette of RS, number 137/04

the Law on Lustration was researched through interviews with members of the Lustration Commission, and by analyzing articles by experts that hold different opinions on the subject. For the purpose of monitoring the implementation of this Law, in cooperation with *Quaker Peace & Social Witness* we organized a conference attended by delegates from the civil sector, authors of the Law and media representatives. Implementation of the Laws that regulate the media field, Law on Public Information and Law on Broadcasting was surveyed by gathering and analyzing relevant media reports and by following the performance of state bodies and institutions set by the Law itself. Research methodology on implementation of the Law on Free Access to Information consisted mainly of direct testing of whether to what degree and in what manner public authorities apply this Law. YIHR sent requests for free access to information to public authorities bodies, and analyzed their handling of submitted requests. Research sample was graded to cover the greatest possible number of institutions from all domains of public authority. Also tested was the performance of bodies instituted by this Law, such as the Office of the Commissioner for Information of Public Importance (hereinafter: Commissioner)<sup>9</sup>, through regular contact with this institution. Law on Prosecution of War Crimes was tested by monitoring trials in front of Belgrade District Court War Crimes Chamber, as well as by analysis of media reports, and through series of interviews with the spokesperson of the War Crimes Chamber. The interviews with the spokesperson of the War Crimes Chamber, together with the media report analysis, represented a part of a research on the implementation of the Law on Prosecution of War Crimes.

Law on Broadcasting regulates terms for allocating frequencies and supervision over electronic media. The Law establishes Republican Broadcasting Agency governed by a Council. The Council has extremely wide authority regarding granting work permits, control and punishment of media, and establishing standards that must be respected during reporting.

Law on Cooperation with ICTY foresees a set of measures for efficient fulfillment of the existing international obligation of the state that is derived from Security Council resolutions and the statute of the International Criminal Court for former Yugoslavia. Its implementation paints a picture of state's relationship towards international obligations in general, towards the past, and its aspirations towards integrations and developing an international position of the country.

Law on Prosecution of War Crimes establishes an institutional framework, which should aid prosecution of serious violations of international humanitarian law by domestic courts. Its implementation shows the relationship the state has towards establishing fully the rule of law and towards the principle that crimes should be punished regardless of whether they are committed during war or peace, or who committed them. Indirectly, its implementation can contribute to the process of facing the past and gradual liberation of entire society from moral burden of collective guilt.

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<sup>9</sup> Law on Free Access to Information, Article 30, *see above under 6*

Law on National Minorities regulates in detail the basic rights and freedoms guaranteed to the members of the national minorities in accordance with the accepted international standards. The Law contains concrete obligation of state bodies and institutions concerning the improvement of the position of national minorities in Serbia and Montenegro.

Law on Lustration prescribes sanctions for persons that violated human rights during the period they held important public functions. The objective of the Law is to restrict such persons from holding public office during a five-year period. This should result in reducing the threat that such persons can get an opportunity to endanger the democratic system of Government in Serbia.

Law on Public Information precisely states rights and obligations of journalists, editors and owner of media during the course professional conduct. Law also defines the right to public information, as well as possible limitations of that right. YIHR focused its research on prohibition of hate speech in the media, as it is defined by this Law.

Law on Assumption of Jurisdiction regulates the position of judges, prosecutors and public prosecutors at the court of appeal previously employed in the military judicial system, as well as the status of cases that were tried in these institutions. Military judicial system ceased to exist passing its jurisdiction to civil courts and becoming completely removed from the Army of Serbia and Montenegro (hereinafter: Army of SMN). This creates conditions for processing cases from this sector in accordance with contemporary principle of independent justice, and with full respect of the right to impartial trial.

Law on Free Access to Information is one of basic transitional laws and it represents a step towards respect of citizen's rights, and establishment of a transparent and responsible government. Law acknowledges citizens' rights to discover everything of their interest concerning the performance of state and public institutions, except in a limited number of cases protected by a state, military, or business secret. Law establishes independent bodies, such as the Commissioner for Information of Public Importance in charge of supervising public authorities that should provide citizens with requested information.

**Through this research, YIHR wishes to find out the level of obeying the transitional laws, and implementation of the rule of law. Analyzed laws do not completely fulfill the international standards in areas they regulate, but regardless, it is necessary to abide to them fully in order to build a stable legal state. Respect for these laws by the government in Serbia would show that the rule of law really exists, and would enable a successful movement of the country through a period of transitional changes.**

**The report has been written based on information gathered until November 15<sup>th</sup>, 2005.**

## **Evaluation of the Degree of the Rule of Law in Serbia**

The authorities in Serbia do not abide by the laws they themselves adopted, and which should contribute to establishing a rule of law. Results of the research conducted by the YIHR on the implementation of eight transitional laws show that government representatives in Serbia do not fully abide by the laws.

Law on Free Access to Information is one of the principle transitional laws, and it represents an important lever in establishing transparent and responsible government. In addition, it facilitates building civic and democratic awareness. However, in practice, public officials that should be carrying out the Law often use various methods of obstruction or breaking legal provisions. The Commissioner shows interest and good will to put the Law into practice. Unfortunately, other government bodies do not provide enough support. Another great problem is that authorities of State Union responsible for passing numerous important decisions are, in fact, beyond the reach of this Law, so the possibility to access the information of public importance is left to readiness of government bodies of the State Union to recognize and accept contemporary tendencies, and recommendations of the international community concerning achieving of this increasingly important civil right.

Provisions of the Law on National Minorities are broken by both republican and local authorities. Members of national minorities in Serbia are denied numerous rights granted by the Law. The most violated are: the right to official use of language and script, right to education in native tongue, the right to be informed in national minority languages, and the right on participation in the local authorities. Members of Roma national minority are still exposed to discrimination in various areas, and are faced with lack of care from authorities concerning their problems.

Law on Cooperation with the ICTY is gravely breached by the institutions responsible for its implementation: Government of the Republic of Serbia and Ministry of Interior. Ministers negotiate voluntary surrender with persons accused of great violations of international humanitarian law. The acts of surrender are always given great attention by the highest state officials. In their statements as well as official government announcements, actions of the accused are characterized as patriotic and moral acts. By doing so, the state practically proclaims persons accused of murder, ethnic cleansing, and genocide honorable patriots and heroes. Ministry of Interior openly refuses to apply the provision of the Law that prescribes detention of all individuals on ICTY arrest warrants. The police did not act upon the injunction of the District Court in Belgrade ordering arrests of four military and police generals accused of war crimes in Kosovo in 1999.

Law on Prosecution of War Crimes represents an important step towards establishing the rule of law. Its tremendous importance essentially lays in an indirect influence the prosecution of great violation of international humanitarian law can have on society as a whole in facing the past and building new values that are opposed to those developed during the wars in former Yugoslavia. Despite the importance this Law holds for establishing the legal state, YIHR concludes that no real political will exists to implement

the Law, or to give adequate support to War Crimes Prosecutor's Office that would enable this judicial body more independence and hence increased quality of work. Currently, without the appropriate support, War Crimes Prosecutor's Office is reluctant to accuse top level Serbian or former Yugoslavian officials.

Law on Assumption of Jurisdiction was adopted with extreme delay, which constituted a breach of the Constitutional Charter of the State Union. Military departments of the District Courts were founded in March and April 2005, while first trials began as late as in June. The appointment of judges for military chamber was not conducted transparently, and it mostly came down to taking over Army of SCG staff. Such appointment of judges rose suspicion at the very beginning as to impartiality of the court, and its ability to try politically sensitive cases. The real appraisal of the adherence for this Law can only be made, once the most sensitive trials start, above all the Topcider case.

Despite the provision of Law on Public Information prohibiting hate speech, it is still widely spread throughout media, and there are no examples of it being sanctioned. Media in Serbia lead organized attacks on representatives of civil society and campaign to diminish the importance of crimes committed on the territory of former Yugoslavia. Public Broadcasting Agency, in spite of its legal obligation, failed to pronounce a single penal measure to the media for spreading hate speech.

Law on Broadcasting, although publicized as one of the principle mechanisms in the battle against the policy of media control and abuse, was very quickly forgotten. Republican Broadcasting Agency Council under whose authority is the regulations of the media sphere, before starting to perform its duties become burden with problems of illegalities in appointment of its members, and changes of the Law made to satisfy parties in power. Transforming RTS into a public service, high on the list of priorities of all post October 5<sup>th</sup> governments, has not begun yet. Instead, directors of RTS and RTV NS participate in public conflicts, use verbal abuse and break minority rights.

Implementation of the Law on Lustration in Serbia never began. Lustration Commission ceased to exist by the end of 2003, while The National Assembly of Serbia failed to hold its legal obligation and elect new members of the Commission. The highest legislative body in the Republic did not succeed in granting Commission with minimal acceptable working condition, starting from securing premises to providing skillful assistance staff, all of which it was legally obliged to do. Not in a single case was the lustration process carried out, although large numbers of people were reasonably suspected of breaking human rights in the past.

Generally, a bad attitude of authorities to implementation of transitional laws shows reluctance seriously to work towards building of the state ruled by the law. Competent state authorities should urgently take serious measures to prevent further infringement of these laws, by punishing responsible individuals. Without radical change of behavior of public officials, development of democratic and responsible society in Serbia cannot be expected.





## 1. Implementation of the Law on Free Access to Information

From December 5<sup>th</sup>, 2004 to September 19<sup>th</sup>, 2005, the researchers from YIHR analyzed the implementation of Law on Free Access to Information. This Law, along with the Law on Prevention of Conflict of Interests in Discharge of Public Office<sup>10</sup>, Law on Public Procurements<sup>11</sup> and Law on Financing Political Parties<sup>12</sup>, constitutes a set of so-called „anti-corruption laws“.

By exercising the right of free access to information of public importance, the citizens should be enabled to enjoy other human rights, such as the right of being informed and the freedom of thinking<sup>13</sup>. The function of this Law is also to include citizens actively as individuals into political processes and control of work of those whom they entrusted with performing public functions. The Institute of free access to information is an irreplaceable lever and driving force in the process of building a democratic social structure and establishing Serbia as a legal state.

The intention of the YIHR was to check the functioning of legal system in Serbia by testing the relationship of the state agencies towards the implementation of the enacted laws. On the basis of conducted research a conclusion could be made that in Serbia many laws are not being implemented as well as that hardly anyone is held accountable for that. By failing to observe the Law the governmental agencies undermine the authority of legislative power and promote the concept of non-compliance of the Law and notion of the untouchable public officials.

A segment of this research, added to it in its later stages, is the analysis of the work of the Office of the Commissioner<sup>14</sup>.

According to the research results, the Law on free access to information was not observed by **69.08 %** of tested state bodies. Such a high percentage of non-compliance

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<sup>10</sup> Law on Prevention of Conflict of Interests in Discharge of Public Office, adopted on April 20<sup>th</sup>, 2004, Official Gazette of RS, number 43/04

<sup>11</sup> Law on Public Procurements, adopted on July 4<sup>th</sup>, 2005, Official Gazette of RS, number 39/02

<sup>12</sup> The Law on Financing Political Parties, adopted on July 18<sup>th</sup>, 2003, Official Gazette of RS, number 72/03

<sup>13</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on November 4<sup>th</sup>, 1950, became effective on September 3<sup>rd</sup>, 1953, supplemented by Protocol 11, which came into force on November 1<sup>st</sup>, 1998, Article 10, web site of Law Initiative:

><http://www.lawinitiative.com/Srpski/Zakoni/Evropska%20konvencija%20za%20zastitu%20ljudskih%20prava%20i%20osnovnih%20sloboda.doc><, visited on November 6<sup>th</sup>, 2005; Serbia and Montenegro ratified the Convention on December 26<sup>th</sup>, 2003 and the ratification went into effect on March 4<sup>th</sup>, 2004, the Official Gazette of Serbia and Montenegro (international treaties), number 9/03

<sup>14</sup> Law on free access to information, Article 30, *see above under 6*

points out to the fact that citizens are denied the possibility of participation in public dealings and decision-making process<sup>15</sup>.

On October 24<sup>th</sup>, 2005 the YIHR submitted four requests to Municipal Courts in charge to initiate offence proceedings against the municipalities of: Mionica, Novi Pazar, Prijepolje and Trgoviste because of their failure to observe legally guaranteed right to access information of public importance<sup>16</sup>. These are the first offence proceedings initiated in Serbia on these grounds.

## **The Law on Free Access to Information**

The Law on Free Access to Information was adopted by the National Assembly of the Republic of Serbia (hereinafter: the Parliament), upon the motion put forth by the Government of the Republic of Serbia (hereinafter: the Government), on November 2<sup>nd</sup>, 2004. It came into force on November 13<sup>th</sup> of the same year. This Law regulates the right of citizens to access information of public importance and the obligation of governmental agencies to enable them to exercise this right.

The Law starts off with defining public bodies obliged to provide information to citizens:

- 1) Governmental body, body in charge of territorial autonomy, local self-government body, as well as the organization entrusted with executing public powers;
- 2) Legal entity, founding or funding fully or predominantly, a governmental body<sup>17</sup>

The Law introduces a supposition that the public has a justified interest to be informed about the information related to endangering and protection of citizens' health and environment, whereas in other instances it is assumed that such an interest exists unless a governmental body proves otherwise<sup>18</sup>. The right to access information of public importance may be restricted, should it be necessary in democratic society, so that prevailing interest based on the Constitution or Law is protected from grave infringements<sup>19</sup>. Total exclusion of this right is envisaged so as to protect life, health, safety or other important welfare of a person; judiciary, i.e. the criminal proceedings or processing other proceedings regulated by the Law, as well as state defense, national and public security, international relations, economic welfare of the country or its control of economic processes, state, official, business or any other secret<sup>20</sup>. The provision of the Law, stating that a body is not obliged to impart information „if the seeker misuses the

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<sup>15</sup> If, for instance, citizens being tax payers, are denied access to information on the manner the budget of the Ministry for capital investments is being spent, they will not know how their money is being spent, which may affect the decision on the candidate or political option they will support at the next elections.

<sup>16</sup> Law on free access to information, Article 5, *see above under 6*

<sup>17</sup> *Ibid.*, Article 3

<sup>18</sup> *Ibid.*, Article 4

<sup>19</sup> *Ibid.*, Article 8

<sup>20</sup> *Ibid.*, Article 9

right to access information of public importance, particularly if the requests are unreasonable, frequent, when repeated requests are made for the same or already obtained information, or when too much information is asked<sup>21</sup>, is contentious, as it leaves public authorities with wide discretion.

The procedure for exercising the right to access information of public importance is set so that a person wanting to access a piece of information submits to the authority in possession of the information a written request in which the address, the name of the body they are contacting, their own name, surname, address and precise description of the information they are looking for should be stated<sup>22</sup>. It is not mandatory to state the reason why the information is needed<sup>23</sup>. The authority is obliged to submit a reply within 15 days, i.e. to enable inspection of the requested document<sup>24</sup>, or, if there are valid reasons why they are unable to do this immediately, to notify the person requesting the document and set a deadline, no longer than 40 days, by which the document will be available<sup>25</sup>. Inspection of the requested document is free of charge and is conducted in the premises of the public body<sup>26</sup>. It is only necessary, if the inspection involves making a copy, to refund basic expenses of copying as well as possible delivery expenses<sup>27</sup>, whereas the journalists and citizens' associations requesting a document within their own scope of work are exempt from reimbursement of these expenses<sup>28</sup>. If the authority fails to enable inspection of the requested document or does not reply within the prescribed deadline, a complaint can be lodged with the Commissioner<sup>29</sup>. However, there is no right of appeal against the decision made by the Parliament, the President of the Republic, the Government, the Supreme Court of Serbia, the Constitutional Court and the Republic Legal Office<sup>30</sup>. The YIHR holds that this provision of the Law ought to be abolished, as it protects the highest authorities, which are believed to possess much information of public importance that should be made available to the citizens. The Commissioner, within 30 days upon submission of the complaint, passes a decision<sup>31</sup> which is legally binding, as well as conclusions made, and their execution is performed by the Government<sup>32</sup>, if needed. Against the decision of the Commissioner, administrative proceedings can be initiated<sup>33</sup>.

The Commissioner is elected by the Parliament upon the proposal of the Government and his term in office lasts for seven years<sup>34</sup>. The Parliament then, upon the motion of the

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<sup>21</sup> *Ibid*, Article 13

<sup>22</sup> *Ibid*, Article 15, Paragraphs 1 and 2

<sup>23</sup> *Ibid*, Article 15, Paragraph 4

<sup>24</sup> *Ibid*, Article 16, Paragraph 1

<sup>25</sup> *Ibid*, Article 16, Paragraph 3

<sup>26</sup> *Ibid*, Article 16, Paragraph 6

<sup>27</sup> *Ibid*, Article 17, Paragraph 2

<sup>28</sup> *Ibid*, Article 17, Paragraph 4

<sup>29</sup> *Ibid*, Article 16, Paragraph 4

<sup>30</sup> *Ibid*, Article 22, Paragraph 2

<sup>31</sup> *Ibid*, Article 24, Paragraph 1

<sup>32</sup> *Ibid*, Article 28

<sup>33</sup> *Ibid*, Article 27

<sup>34</sup> *Ibid*, Article 30

ected Commissioner, elects the Deputy Commissioner<sup>35</sup> and Commissioner's Office for information of public importance<sup>36</sup> is being established (hereinafter; the Office) which should assist him in his work. Rodoljub Sabic was elected Commissioner on December 22<sup>nd</sup>, 2004 but the Parliament and the Government did not enable his work until May 23<sup>rd</sup>, 2005, by giving approval to the Acts of the Commissioner on establishing and organization of the Office<sup>37</sup>. As it took six months for the Commissioner to start working<sup>38</sup>, legislative and executive authorities in the country gave off a very bad picture of the actual readiness of the authorities to provide citizens with the right to access information of public importance. According to the Law, public bodies are obliged to appoint a designated person to deal with citizens' requests<sup>39</sup> within 30 days from the enactment of this Law.

## **Institutions from which Answers have been Sought, their Reactions and Statistics**

<b>The total number of submitted requests 5.12.04.-19.9.05.</b>	<b>645</b>
<b>The total number of received replies 5.12.04.-19.9.05.</b>	<b>318</b>
<b>Percentage</b>	<b>49.30 %</b>

In order to test in practice the enforcement of the Law on Free Access to Information, the YIHR in the period from December 5<sup>th</sup>, 2004 to September 19<sup>th</sup>, 2005 submitted to all relevant institutions in the country 645 requests in total for provision of various information or inspection of certain documents. Out of 645 requests sent to 212 institutions, answers were received to 318 or **49.30 %**.

The research has also shown that different bodies had significantly different approaches to the Law. Out of 262 tested public bodies only 81, viz. **30.92 %** answered to all requests made, which shows that **69.08 %** of tested governmental bodies do not observe the Law on Free Access of Information, whereas 80 public bodies, or **30.53 %**, did not reply to a single sent request.

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<sup>35</sup> *Ibid*, Article 33

<sup>36</sup> *Ibid*, Article 34

<sup>37</sup> The decision on giving consent to the Acts of Commissioner for information on public importance, containing the Decision on establishing Commissioner's Office for information of public importance, the decision on salaries in Commissioner's Office for information of public importance, and Rulebook on internal structure and job systematisation in Commissioner's Office for information of public importance, made at the Third session of regular sitting of Serbian Assembly, on May 23<sup>rd</sup>, 2005. available on web site of the National Assembly:  
><http://www.parlament.sr.gov.yu/content/lat/akta/akta%20detalji.asp?Id=162&t=0#<>, visited on November 2<sup>nd</sup>, 2005

<sup>38</sup> From appointment, on December 22<sup>nd</sup>, 2005 to commencement of the work of the Office July 1<sup>st</sup>, 2005, web site of the Office: ><http://www.poverenik.org.yu/dokumentacija.asp?ID=5<>, visited on November 8<sup>th</sup>, 2005

<sup>39</sup> Law on free access to information, Article 49, Paragraph 1, *see above under 6*

The qualitative analysis of the answers from the governmental bodies has also shown a great negligence towards deadlines prescribed by the Law<sup>40</sup> as well as incompetence of the employees in charge of the implementation of Law<sup>41</sup>. In none of the cases when the request of the YIHR had been declined was brought a decision with rationale and recommendation on legal remedy, though public bodies were obliged to do so<sup>42</sup>.

- **The Government and the Parliament**

<b>The total number of submitted requests 5.12.04.-19.9.05.</b>	<b>63</b>
<b>The total number of received replies 5.12.04.-19.9.05.</b>	<b>31</b>
<b>Percentage</b>	<b>49.20 %</b>

From December 5<sup>th</sup>, 2004 to September 19<sup>th</sup>, 2005 the YIHR in two stages submitted in total 63 requests for free access to information to the Government and the Parliament. Thirty one replies were received, i.e. 49.20 %.

### **The Requests Made from December 5<sup>th</sup> 2004 to April 5<sup>th</sup> 2005**

<b>The number of submitted requests 5.12.04.-5.4.05.</b>	<b>52</b>
<b>The number of received replies 5.12.04.-5.4.05.</b>	<b>23</b>
<b>Percentage</b>	<b>44.23 %</b>

The Government is in charge of providing all the conditions so that the Law of Free Access to Information can freely be implemented<sup>43</sup>, and through its ministry responsible for informing it supervises the enforcement of this Law<sup>44</sup>. Currently the Ministry of Culture is in charge of this supervision<sup>45</sup>.

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<sup>40</sup> *Ibid*, Article 16, Paragraphs 1-3

<sup>41</sup> During its research, the YIHR encountered many cases of utter incompetence and ignorance of responsible persons. Thus, for instance, when a researcher from the YIHR spoke to the person in charge from the municipality of Presevo, he found out that that person until then had not known that Law on free access to information existed; similarly, authorized persons in District public prosecution in Pozarevac, who had received an inquiry sent by the researchers from the YIHR, did not realize what the request was about.

<sup>42</sup> Law on free access to information, Article 16, Paragraph 10, *see above under 6*

<sup>43</sup> *Ibid*, Article 28

<sup>44</sup> *Ibid*, Article 45

<sup>45</sup> B.T: *Sabic: Serbia falls behind when it comes to availability of information*, DANAS, September 17<sup>th</sup>, 2005

Despite such a significant role that the Government has in the implementation of Law, the results of the research show that it did not fully observe its provisions. Sixteen different bodies within Government<sup>46</sup> were tested. To them, 52 requests were sent to which 23 replies were received, i.e. **44.23 %** out of the total number of pieces of information sought.

The Ministry of Education and Sport, the Ministry of Economy, the Prime Minister Cabinet, the Deputy Prime Minister Cabinet as well as the Government itself did not respond to a single request put forth by the YIHR. The Ministry of Finance answered to one request out of seven, and the Ministry of Justice answered to two out of five. The Ministry of Interior sent replies to four out of seven submitted requests but in none of the cases did they observe the deadline of 15 days, laid down by the Law<sup>47</sup>.

On the other hand, the Ministry of Public Administration and Local Self-Government<sup>48</sup>, the Ministry of Health<sup>49</sup>, the Ministry of Culture and Informing<sup>50</sup> and the Ministry of International Economic Relations<sup>51</sup> answered to all requests and produced sought information.

The replies supplied by the Ministry of Religion present a specific example. The YIHR sent to this Department four requests in which the following information was asked for:

1. What is religious affiliation of the employees in the Ministry?<sup>52</sup>
2. Does the budget for 2005 envisage donations to small religious communities?<sup>53</sup>

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<sup>46</sup> The Ministry of Education and Sport, the Ministry of Health, the Ministry of Economy, the Prime Minister Cabinet, the Deputy Prime Minister Cabinet, the Government, the Ministry of Finance, the Ministry of Justice, the Ministry of Interior, the Ministry of Public Administration and Local Self-Government, the Ministry of Culture, the Ministry of International Economic Relations, the Ministry of Religion, the Ministry of Trade, Tourism and Services, the Ministry for Capital Investments and the Ministry of Science and Environmental Protection

<sup>47</sup> First two requests were sent on December 1<sup>st</sup>, 2004, and the reply was received on February 22<sup>nd</sup>, 2005. The third request was submitted on December 24<sup>th</sup> 2005, and the reply was received on February 18<sup>th</sup>, 2005. All the aforementioned requests and replies are filed in the YIHR Documentation

<sup>48</sup> Three requests were put before the Ministry of Public Administration and Local Self-Government. The reply to the first request arrived on January 17<sup>th</sup>, 2005, signed by the Minister, dr Zoran Loncar. The reply to the second request arrived on February 7<sup>th</sup>, 2005, signed by Djordje Cveticanin - the secretary of the Ministry. The response to the third request was received on February 7<sup>th</sup>, signed by the Minister, dr Zoran Loncar. All sent requests and replies received are filed in the YIHR Documentation. Law on free access to information, Article 16, *see above under 6*

<sup>49</sup> The answer from the Ministry of Health was received on April 25<sup>th</sup>, 2005, signed by Dr Tomica Milosavljevic, the Minister. The official letter is kept in the YIHR Documentation

<sup>50</sup> Two requests were sent to the Ministry of Culture and Informing. The reply to the first arrived on January 18<sup>th</sup>, 2005, signed by Aleksandra Kojic - the secretary of the Ministry. The reply to the second request was received on January 31<sup>st</sup>, 2005, signed by Dragan Kojadinovic, the Minister. Both letters are kept in the YIHR Documentation

<sup>51</sup> The reply from The Ministry of International Economic Relations arrived on January 19<sup>th</sup>, 2005, signed by Jasmina Hadziabdic, the deputy Minister. The official letter is kept in the YIHR Documentation

<sup>52</sup> The request was sent on December 2<sup>nd</sup>, 2004 and is filed in the YIHR Documentation

3. What is the amount of funds in the budget for 2005 allocated to Islamic religious community? <sup>54</sup>
4. Would you be able to provide us with budget and financial plan of the Ministry for 2005? <sup>55</sup>

The Ministry of Religion replied to all requests within legally prescribed deadlines<sup>56</sup>, but those answers did not contain requested information, although they were worded as answers and not, as the Law prescribes, the decisions declining disclosure of information<sup>57</sup>. Namely, to the question number three the Minister of Religion gives the following answer: „The budget of the Ministry of Religion is being spent according to established financial plan, which for this year prescribes that Islamic religious community gets funding proportional to the numbers of believers of Islamic confession in the total number of inhabitants of Serbia, as presented in the latest census<sup>58</sup>.“ To question number two identical answer was given, only instead of „Islamic religious community“ the term „small religious communities<sup>59</sup>“ was used. Thus in both cases the requested information was not actually provided.

In answer to the question number four, after the notification that the budget of the Ministry is included in the Law on Budget and available in the Official Gazette of the Republic of Serbia<sup>60</sup>, the Minister of Religion, Milan Radulovic, states that financial plan for 2005 is an internal document on the basis of which the budget is being spent. In this case, an answer was given that requested document shall not be supplied, as it is an „internal document“, but it was not presented in legally prescribed form of a decision, which has to include a written rationale as well as information on possible refutation of this decision<sup>61</sup>. On the other hand, the reasons for rejecting to impart the information are set in the Law rather restrictively<sup>62</sup>, and the YIHR is of the opinion that it is unlikely that financial plan of the Ministry could be included in the category of information protected from public disclosure.

At the end of the reply the Minister of Religion also states:

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<sup>53</sup> The request was sent on December 24<sup>th</sup>, 2004 and is filed in the YIHR Documentation

<sup>54</sup> The request was sent on January 11<sup>th</sup>, 2005. and is filed in the YIHR Documentation

<sup>55</sup> The request was sent on January 25<sup>th</sup>, 2005 and is filed in the YIHR Documentation

<sup>56</sup> Law on free access to information, Article 16, Paragraph 1 *see above under 6*

<sup>57</sup> *Ibid.*, Article 16, Paragraph 10

<sup>58</sup> The reply from the Ministry of Religion reached the YIHR on January 24<sup>th</sup>, 2005, signed by Dr Milan Radulovic - the Minister of Religion. The letter is filed in the YIHR Documentation

<sup>59</sup> The reply from the Ministry of Religion arrived at the YIHR on January 24<sup>th</sup>, 2005, signed by Dr Milan Radulovic - the Minister of Religion. The letter is filed in the YIHR Documentation

<sup>60</sup> The Law on the budget of the Republic of Serbia for 2005 was adopted on November 19<sup>th</sup>, 2004; Official Gazette of RS, number 127/04

<sup>61</sup> Law on free access to information, Article 16, Paragraph 10, *see above under 6*

<sup>62</sup> *Ibid.*, Articles 9,13 and 14

”All the information on the work of the Ministry of Religion shall be in the future made available for your inspection, according to the procedure prescribed by Articles 37, 39 and 40 of the Law<sup>63</sup>.“

Article 37 lays down the obligation of the Commissioner to publish a handbook in which legal decisions will be presented and possibilities available to citizens when it comes to free access to information of public importance. Articles 39 and 40 impose an obligation on governmental bodies to issue, on annual basis, an information booklet containing basic information on their work. This practically means that the Minister of Religion interprets the Law in such a way that he does not have to provide requested information, since he is already obliged to publish bulletin on the work of Ministry. In this way, the Ministry of Religion has breached the Law by evading to provide specific requested information and announced it would not provide any other information within its scope of work in the future.

As the Law prescribes pecuniary penalties ranging from 5,000 to 50,000 dinars for authorised persons in public bodies if they fail to make available for inspection the requested document, decline to file a request or do not make a decision on decline of the request<sup>64</sup>, the responsible ones in the aforementioned bodies should pay, according to the calculations of the YIHR, fines amounting from 30,000 to 300,000 dinars for non-compliance.

Legislative body, the Parliament, gave answer to one out of two sent requests. They failed to meet the request of the YIHR to produce the transcript from the 13<sup>th</sup> session of the Defence and Security Board of November 15<sup>th</sup>, 2004<sup>65</sup>.

### **The Requests Made from June 21<sup>st</sup> , to September 19<sup>th</sup> , 2005**

<b>The number of submitted requests 21.6.05.-19.9.05.</b>	<b>6</b>
<b>The number of received answers 21.6.05.-19.9.05.</b>	<b>5</b>
<b>Percentage</b>	<b>83.33 %</b>

<sup>63</sup> The reply from the Ministry of Religion arrived at the YIHR on February 14<sup>th</sup>, 2005, signed by Dr Milan Radulovic - the Minister of Religion. The letter is filed in the YIHR Documentation

<sup>64</sup> Law on free access to information, Article 46, *see above under 6*

“ 1. A fine between 5,000 and 50,000 dinars for an offense shall be imposed upon an authorized person in public body, if the public body:

5) fails to produce the document for inspection to the submitter of the request and does not make a copy of the document in the same language in which the request was submitted (Article 18, paragraph 4)

6) declines to file the request, does not inform the submitter of request on possession of the information, or does not allow inspection of the document containing requested information, i.e. does not send the copy of the document in the appropriate manner, does not make a decision on rejection of the request and refuse to provide necessary assistance to the submitters so as to exercise their rights (Article 38, Paragraph 2, Item 1). *See above under 1*

<sup>65</sup> The request was sent on December 24<sup>th</sup>, 2005 and is kept in the YIHR Documentation



On June 21<sup>st</sup>, 2005, the YIHR sent six requests to access information of public importance. The requests were directed to the Government, especially the Ministry of Interior, the Ministry of Justice, the Ministry of Trade, Tourism and Services, the president of the Parliament of the Republic of Serbia (hereinafter: the Parliament president) and the Commissioner<sup>66</sup>. Five answers were received, i.e. 83.33%

According to the research results, the right of citizens to access information of public importance, protected by the Law on Free Access to Information<sup>67</sup>, was not observed only by the Ministry of Justice, since it refused to provide requested information and failed to use legally prescribed form of issuing a written decision on rejection of the request with rationale and recommendation on legal remedy<sup>68</sup>. Ten months upon the commencement of implementation of this Law, during which the YIHR addressed 645 requests for free access to information<sup>69</sup> to various authorities, in none of the cases was refusal to disclose information given in legally prescribed form<sup>70</sup>.

The Government received a request containing the following:

- What are the overall expenses for escort of indictees in The International Criminal Court for Former Yugoslavia?<sup>71</sup>

The reply was sent on July 21<sup>st</sup>, 2005<sup>72</sup>, namely 15 days upon the expiry of legal deadline for submission on the reply<sup>73</sup>. It states that the Government cannot provide the requested information since it is classified as confidential.

The Law foresees that the request for providing information of public importance can be rejected if the document or information in question are classified as confidential<sup>74</sup>, and whose publishing "might involve grave legal or other consequences on interests protected by Law prevailing over the interest to access information<sup>75</sup>". The YIHR contends that it is unlikely that the information on the expenses for escort of persons indicted in the ICTY fulfills the conditions to be rated by the official act as classified material in the requested procedure, as well as that its disclosure might involve the aforementioned consequences<sup>76</sup>. This viewpoint of the YIHR is additionally corroborated by the fact that the Law specifically prescribes the obligation of public bodies to strictly restrictively apply

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<sup>66</sup> Though the Commissioner is not a governmental body, we have decided to include him in this category, for methodological reasons

<sup>67</sup> Law on free access to information, Article 5, *see above under 6*

<sup>68</sup> *Ibid.*, Article 16, paragraph 10

<sup>69</sup> Records on each of above mentioned 641 sent requests are kept in the YIHR Documentation

<sup>70</sup> Law on free access to information, Article 16, Paragraph 10, *see above under 6*

<sup>71</sup> The enquiry was sent on June 21<sup>st</sup>, 2005 and is kept in the YIHR Documentation

<sup>72</sup> The reply of the Government reached the YIHR on July 21<sup>st</sup>, 2005, signed by Dejan Mihajlov – secretary general. The letter is kept in the YIHR Documentation

<sup>73</sup> Law on free access to information, Article 16, Paragraph 1, *see above under 6*

<sup>74</sup> In its reply the Government informed the YIHR that those were "the documents of governmental decisions filed as confidential material"

<sup>75</sup> Law on free access to information, Article 9, Paragraph 1, Item 5, *see above under 6*

<sup>76</sup> *Ibid.*, Article 9, Paragraph 1, Item 5

prescribed possibilities for restriction and abolishing the right of free access to information of public importance<sup>77</sup>.

On June 21<sup>st</sup>, 2005, the Parliament President was sent the following request:

- How many violations of the Operating procedure<sup>78</sup> have been noted during Assembly sittings in 2005, and are there records on the number of breaches made by each representative group of Members of the Parliament respectively<sup>79</sup>?

The requested information was in this case also supplied upon the expiry of legally prescribed deadline<sup>80</sup>, on July 26<sup>th</sup>, 2005. The reply stated that in the course of 2005, 35 objections to violations of Operating procedure have been submitted and that they were "the subject of discussion on those days when the Parliament was voting"<sup>81</sup>. However, the reply provided did not fully answer the information the YIHR had asked for, therefore we found out how many objections had been made but not whether those cases actually presented violations of Operating procedure, nor did we find out if there are records on possible violations of Operating procedure, made by representative MP groups.

The examples of the requests sent to public authority bodies are, amongst others:

- Against how many employees in your Ministry disciplinary charges have been brought during 2004 and 2005 and to how many disciplinary measures have been pronounced?<sup>82</sup>
- What is the salary of the convicted prisoners for work they do whilst serving their sentence?<sup>83</sup>
- What were the costs of services of marketing agency "S Team Saatchi & Saatchi" for the creation of new tourist symbol of Serbia, the slogan and the preliminary design of printed brochures, posters, billboards and four tourist videos?<sup>84</sup>

The Ministry of Interior sent its answer 58 days after the request<sup>85</sup> had been put forth, which represents a serious departure from legally set deadline<sup>86</sup>. The answer provided

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<sup>77</sup> *Ibid*, Article 8, Paragraph 2

<sup>78</sup> Proofread text of Operating procedures of National Assembly of the Republic of Serbia, adopted on June 28<sup>th</sup>, 2005, Official Gazette of RS, number 53/05

<sup>79</sup> The request was presented on June 21<sup>st</sup>, 2005 and is kept in the YIHR Documentation

<sup>80</sup> Law on free access to information, Article 16, Paragraph 1, *see above under 6*

<sup>81</sup> The reply of the President of the Parliament arrived in the YIHR on July 26<sup>th</sup>, 2005, signed by Marko Danilovic – the secretary. The letter is kept in the YIHR Documentation

<sup>82</sup> The request was sent on June 21<sup>st</sup>, 2005 and is kept in the YIHR Documentation

<sup>83</sup> The request was sent on June 21<sup>st</sup>, 2005 and is kept in the YIHR Documentation

<sup>84</sup> The request was sent on June 21<sup>st</sup>, 2005 and is kept in the YIHR Documentation

<sup>85</sup> The reply of the Ministry of Interior arrived in the YIHR on August 19<sup>th</sup>, 2005 signed by lieutenant colonel Dejan Matic – the head of administration. The letter is kept in the YIHR Documentation

<sup>86</sup> Law on free access to information, Article 16, Paragraph 1, *see above under 6*

contains information that against the employees 2,497 proceedings were initiated in disciplinary court in the period from January 2004 to June 2005. Out of these, 1,727 proceedings were terminated by pronouncing disciplinary measures, 319 workers were exempted from disciplinary liability, whereas 74 cases were suspended<sup>87</sup>.

On September 19<sup>th</sup>, 2005, the YIHR sent a request for access to information to the Commissioner, asking for the following information:

- Has an authorized person of the public body submitted annual report on the actions taken by that body with the aim of implementing the Law on Free Access to Information of Public Importance, pursuant to article 43 of the Law? If so, could you provide us with information which public authority bodies this refers to?<sup>88</sup>

The answer was received on September 23<sup>rd</sup>, 2005 containing a notification that reports of public bodies are expected towards the end of 2005<sup>89</sup>.

• **Public Enterprises**

<b>The number of submitted requests</b>	<b>9</b>
<b>The number of received answers</b>	<b>5</b>
<b>Percentage</b>	<b>55.55 %</b>

To the addresses of six public enterprises in Serbia<sup>90</sup>, nine requests to access information of public importance were sent to which five replies were received (**55.5 %**). Serbian Telecom, The State radio and television of Serbia and The Oil Industry of Serbia answered to all the requests. On the other hand JAT Airways, to which one request was sent, and Electrical Industry of Serbia, to which two requests were put forth, did not reply to a single request, whereas The Railway Company answered to one out of two submitted requests. Thus all three public enterprises deprived the YIHR of exercising the right guaranteed by the Law on free access to information<sup>91</sup>.

The YIHR sent the following request to public enterprise "Telekom Srbija":

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<sup>87</sup> The letter of the Ministry of Interior with above mentioned information is held in the YIHR Documentation

<sup>88</sup> The request was sent on September 19<sup>th</sup>, 2005 and is kept in the YIHR Documentation

<sup>89</sup> The reply of the Commissioner arrived in the YIHR four days later, on September 23<sup>rd</sup>, 2005, signed by Rodoljub Sabic – the Commissioner for information of public importance. The letter is kept in the YIHR Documentation

<sup>90</sup> Serbian Telecom, The State radio and television of Serbia, The Oil Industry of Serbia, JAT Airways (hereinafter: JAT) , Electrical Industry of Serbia and The Railway Company

<sup>91</sup> Law on free access to information, Article 5, *see above under 6*

- What are the salaries of the director and members of managing board of "Telekom Srbija"?<sup>92</sup>

"Telekom Srbija" sent a reply in which they refused to impart requested information, with the explanation that it was a business secret<sup>93</sup>, referring to Article 9, Paragraph 1, Item 5 of the Law<sup>94</sup>. This interpretation of the Law by a public enterprise could serve as an excuse for rejecting a number of requests put forth by the citizens, which considerably disparages the sense of this Law. In order to prevent the misuse of the Law by citing this provision, in practice a so-called three-part test<sup>95</sup> was created, by which it is investigated whether a public body has had the right to deny requested information. This test comprises the following questions:

- 1) is the access to information denied in order to protect the interests listed by the Law<sup>96</sup>;
- 2) would that interest be violated in a specific case;
- 3) is it, according to the standards of democratic society, necessary to deny access to information.

The implementation of this test would disable public bodies to deny the submitter a legal right to access information and prevent them from acting arbitrarily, which is, in the opinion of the YIHR, an enough reason for its adoption as a legislative and legal standard. It is essential to determine as early as possible whether imparting the information on salaries of the officials of public enterprises leads to serious legal and other consequences on interests protected by Law prevailing over the interest to access information. The YIHR believes that public bodies have to satisfy the interest of citizens to know the salary of a director of a public enterprise, which is financed from their income tax.

Therefore, out of six tested public enterprises, three acted in keeping with the provisions of the Law on Free Access to Information, which implies that, according to the research results, **50%** of monitored public enterprises did not observe the Law.

## • **Institutions of the State Union of Serbia and Montenegro**

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<sup>92</sup> The request was sent on February 8<sup>th</sup>, 2005 and is kept in the YIHR Documentation

<sup>93</sup> The reply of "Telekom Srbija" was received in the YIHR on March 4<sup>th</sup>, 2005, signed by Ivan Djurovic – acting director of independent sector of international relations. The letter is kept in the YIHR Documentation

<sup>94</sup> The Law on free access to information, Article 9, Paragraph 1, Item 5, *see above under 6*

"Public body shall not make it possible for the submitter to exercise the right to access information of public interest if by doing so:

They would make accessible a piece of information or a document, for which regulations or official acts based on law specify that it should be kept as a state, official, business or other secret, i.e. which is available only to a particular group of persons, and whose disclosure might involve grave legal or other consequences on interests protected by law prevailing over the interest to access information". *See above under 1*

<sup>95</sup> *A guidebook through the Law on free access to information*, Open Society Fund, Belgrade 2005, pages 31-33

<sup>96</sup> The Law on free access to information, Articles 9, 13 and 14, *see above under 6*

<b>The number of submitted requests</b>	<b>11</b>
<b>The number of received answers</b>	<b>6</b>
<b>Percentage</b>	<b>54.54 %</b>

When it comes to the institutions of the State Union of Serbia and Montenegro (hereinafter: The State Union), their actions regarding free access to information are not legally regulated. Since the Law on Free Access to Information, as a Law passed on the level of a member state, the Republic of Serbia, applied only to republic public bodies, a question is posed whether citizens can have access to information in possession of these bodies. The YIHR wanted to check by testing whether these institutions only recognize the right to free access to information of public importance<sup>97</sup>. Eleven requests were sent, and six replies received, i.e. **54.54 %**. The Ministry of Defence denied reply to two out of five requests put forth by the YIHR, The Ministry of Human and Minority Rights replied to one out of three sent requests, whilst the Ministry of Foreign Affairs did not answer either of the two sent requests.

The YIHR sought the following information from the Ministry of Human and Minority Rights:

- How many people of Roma nationality work in the Department for Roma issues in your Ministry?<sup>98</sup>

The request was sent on December 24<sup>th</sup>, 2004. As the answer had not been supplied, the YIHR decided to send again the same request on March 12<sup>th</sup>, 2005, after which the Ministry did send the reply, on March 31<sup>st</sup>, 2005<sup>99</sup>.

The YIHR sent five requests to which it received three replies. One of the questions the Ministry failed to answer was:

- When and on what grounds was the Officer of the Yugoslav Army, Ratko Mladic sent to retirement<sup>100</sup>?

Considering the fact that to the majority of requests the replies were received promptly, regardless of whether they were sent before of after this one, the impression is that the Ministry of Defense classify requests they want to give answers to, but it is unclear on the basis of what criteria.

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<sup>97</sup> See the Recommendation R (2002) 2 of the Council of ministers of the European Council, adopted on February 21<sup>st</sup>, 2002 at the 784<sup>th</sup> meeting of Deputy Ministers. This recommendation refers to “official documents” which public authorities have in their possession.

<sup>98</sup> The request was sent on December 24<sup>th</sup>, 2004 and is kept in the YIHR Documentation

<sup>99</sup> The reply from the Ministry of Human and Minority Rights of Serbia and Montenegro was signed by Jelena Markovic – assistant minister. The letter is kept in the YIHR Documentation

<sup>100</sup> The request was sent on November 30<sup>th</sup>, 2004 and is kept in the YIHR Documentation

Out of four institutions of the State Union, only the Council of Ministers replied to all sent requests. Thus, the findings indicate that **25 %** of the State Union institutions observed the right of free access to information.

- **Republic Administrations, Directorates and Agencies**

<b>The number of requests submitted</b>	<b>11</b>
<b>The number of received answers</b>	<b>7</b>
<b>Percentage</b>	<b>63.63 %</b>

Republic administrations, directorates and agencies have also unsatisfactorily fulfilled their obligations set by the Law on Free Access to Information. To ten requests the YIHR got six answers, in other words **60 %**. Young people's association, Road Directorate of the Republic of Serbia and Security Information Agency have replied to none of the requests. Acting in this way towards their legal obligations, the above mentioned administrations, directorates and agencies have denied citizens their right to access information, guaranteed by the Law<sup>101</sup>.

Completely reverse attitude towards this Law has been observed with Serbian Agency for the Development of Small and Middle-sized Enterprises and Entrepreneurship, the Broadcast Agency Council, Public Procurement Office, Customs Administration and National Employment Service, which responded and sent sought information within legally prescribed deadlines<sup>102</sup>. The Privatisation Agency answered to one out of two presented requests.

The YIHR sent a request to The National Bank of the Republic of Serbia to provide the following information:

- What is the salary of the Governor of the National Bank of Serbia?<sup>103</sup>

The answer was supplied, but not within timelines set by the Law.<sup>104</sup> The reply quotes that the Rulebook on determining the data and documents in the National Bank of Yugoslavia states that the salaries of the employees in The National Bank of Serbia are an

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<sup>101</sup> The Law on free access to information, Article 5: "Everyone has the right to be told whether a public body possesses certain information of public importance, in other words whether it is accessible. Everyone has the right to access to information of public importance by making it possible for them to inspect the document containing the information of public importance, the right to have a copy of that document, as well as the right to have the copy of the document sent, upon request, either by mail, fax, e-mail or in any other way". *See above under 6*

<sup>102</sup> The Law on free access to information, Article 16, Paragraph 1, *see above under 6*

<sup>103</sup> The request was sent on December 24<sup>th</sup>, 2005 and is kept in the YIHR Documentation

<sup>104</sup> The request was sent on December 24<sup>th</sup>, 2005, and the answer received on February 4<sup>th</sup>, 2005. The deadline for submission of reply is 15 days – Article 16, paragraph 1 of the Law on free access to information, *see above under 6*

official secret classified as "confidential"<sup>105</sup>. They called upon Article 9, Paragraph 1, Item 5 of the Law<sup>106</sup>.

The Privatization Agency sent answer to one out of two sent requests, containing requested information, within legally prescribed deadline. The supplied reply was signed:

"Rade Sevic, an authorized person in Privatization Agency in charge of dealing with requests for free access to information."<sup>107</sup>

During research of the enforcement of the Law on Free Access to Information, this is the only instance, which makes it clear that in a public authority body indeed a person was nominated to be in charge of handling the requests for free access to information of public importance.

- **Judiciary and the University**

<b>The total number of submitted requests 5.12.04.-19.9.05</b>	<b>62</b>
<b>The total number of received answers 5.12.04.-19.9.05</b>	<b>37</b>
<b>Percentage</b>	<b>59.68 %</b>

From December 5<sup>th</sup>, 2004 to September 19<sup>th</sup>, 2005, the YIHR sent, in two stages, in total 62 requests for free access to information to judiciary bodies and University institutions in Serbia. Thirty seven answers were received, in other words 59.68%.

### **The Requests Made from December 5<sup>th</sup>, 2004 to April 5<sup>th</sup>, 2005**

<b>The number of submitted requests</b>	<b>11</b>
<b>The number of received answers</b>	<b>5</b>
<b>Percentage</b>	<b>45.45 %</b>

To six requests, addressed to judiciary institutions, the YIHR got only two replies, i.e. **33.33%**. The answers were not received from: Republic Public Prosecution, the Constitutional Court of the Republic of Serbia, the District Court in Belgrade and the

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<sup>105</sup> The answer reached the YIHR on February 4<sup>th</sup>, 2005 signed by Bojana Markovic. The letter is kept in the YIHR Documentation

<sup>106</sup> See arguments referring to "Telekom Srbija" in part bearing the title *Public enterprises*

<sup>107</sup> The YIHR received the reply from Privatisation Agency on June 30<sup>th</sup>, 2005, signed by Rade Sevic - an authorized person for handling requests for free access to information. The letter is kept in the YIHR Documentation

District Court in Novi Sad. Only Republic Legal Office entirely fulfilled its legal obligations.

We will single out as an example the District Court in Nis to which the YIHR sent a request containing the following:

- Is any proceedings currently in progress in military section within the District Court in Nis? We kindly ask you to provide us with the information on these cases if the answer is affirmative<sup>108</sup>.

The District Court in Nis stated in its answer that those documents are too voluminous and that they could not meet our requests. Such an answer, at first glance, is in accordance with the Law<sup>109</sup>, however, the YIHR asked for statistical figures on the number of cases in progress in military sections on District courts and basic information on them, rather than all the data in possession of the Court on several cases. On this occasion, the District Court in Nis was obliged to separate the requested information from the others contained in the document, for which it was not obliged to allow the inspection and provision of to the submitter, i.e. the YIHR<sup>110</sup>.

Out of six tested judiciary bodies only one, viz. **16.66 %** observed the provisions of the Law on Free Access to Information and responded to all requests put forth.

When it comes to the University, the YIHR sent five inquiries and received three replies, in other words **60 %**. The Faculty of Law of the University of Belgrade and the University of Pristina – the Rectorate did not answer our requests. Two replies obtained from the Faculty of Mechanical Engineering did not include the requested information, therefore this faculty also failed to fulfil its legal obligation. Only the reply we received from the Rectorate of the University of Belgrade was in keeping with the Law.

A request was handed in to the Faculty of Mechanical Engineering on December 24<sup>th</sup>, 2004, containing the following:

We kindly ask you to send us the decision of the Management of the Faculty of Mechanical Engineering by which the citizens' association "Dveri srpske"<sup>111</sup> is allowed to hold its sessions at your Faculty.<sup>112</sup>

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<sup>108</sup> The request was sent on April 12<sup>th</sup>, 2005 and is kept in the YIHR Documentation

<sup>109</sup> The Law on free access to information, Article 13: "Public authority shall not make it possible for the submitter to exercise the right to access information of public importance, if the submitter misuses the right to access information of public importance particularly if the request is unreasonable, frequent, when repeated requests for the same or already obtained information are made or when too much information is requested". *See above under 6*

<sup>110</sup> The Law on free access to information, Article 12: "If the requested information of public importance can be separated from other information in the document, for which public authority is not obliged to allow the inspection of to the submitter, the authority will enable the submitter the inspection of part of the document containing only requested information". *See above under 6*

<sup>111</sup> "Dveri srpske" is an organisation issuing the magazine also called "Dveri srpske" on national culture and social issues. Within this organisation is active a students' organisation, bearing the same name.



In the answer provided on January 27<sup>th</sup>, 2005 the following was said:

”The authorised person at the Faculty of Mechanical Engineering of the University in Belgrade is the Dean of the Faculty, and currently this function is being performed by Prof. Milos Nedeljkovic, PhD“<sup>113</sup>.

As this was not originally requested information, the YIHR sent the request again on February 23<sup>rd</sup>, 2005.

”With reference to your reply of January 27<sup>th</sup>, 2005, to our request put forth on December 24<sup>th</sup>, 2005, we would like to inform you that according to the Law on Free Access to Information of Public Importance, Article 5, you are obliged to allow us the inspection of the requested document. Instead of the requested document, you gave us the information who the Dean of the Faculty of Mechanical Engineering was. Hoping that this was all due to a misunderstanding and that on this occasion you will provide us with the requested document within deadlines laid down by the Law, we reiterate once again which document we are looking for: The decision of the Management of the Faculty of Mechanical Engineering allowing the citizens’ association ”Dveri srpske“ to hold their sessions at your Faculty.“<sup>114</sup>

In the second answer, dated April 6<sup>th</sup>, 2005 the same information was offered again:

”The person responsible for providing the information you are interested in is the Dean of the Faculty, Prof. Milos Nedeljkovic, PhD, therefore please refer to him“.

Both answers sent by the Faculty of Mechanical Engineering were delivered in time intervals longer than prescribed<sup>115</sup>. Therefore, the Faculty of Mechanical Engineering failed to enable the YIHR to exercise the right guaranteed by the Law<sup>116</sup>.

According to the results of this research, the Law on Free Access to Information has been observed only by **25 %** of the tested bodies.

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<sup>112</sup> The request was sent on December 24<sup>th</sup>, 2005 and is kept in the YIHR Documentation

<sup>113</sup> The reply of the Faculty of Mechanical Engineering was received on January 27<sup>th</sup>, 2005, signed by the secretary of the Faculty, Pavle Bakic. The reply is kept in the YIHR Documentation

<sup>114</sup> The request was sent on February 23<sup>rd</sup>, 2005 and is kept in the YIHR Documentation

<sup>115</sup> The first request was sent on December 24<sup>th</sup>, 2005, and the reply received on January 27<sup>th</sup>, 2005, the second was put forth on February 23<sup>rd</sup>, 2005, and the reply received on April 6<sup>th</sup>, 2005

<sup>116</sup> The Law on free access to information, Article 5, *see above under 6*

## The Requests Made from June 21<sup>st</sup> to September 19<sup>th</sup>, 2005

### District Courts in Serbia and the Constitutional Court of Serbia

<b>The number of submitted requests</b>	<b>26</b>
<b>The number of received answers</b>	<b>16</b>
<b>Percentage</b>	<b>61.54 %</b>

The YIHR sent on August 25<sup>th</sup>, 2005, 26 requests for free access to information to the addresses of 25 District courts in Serbia<sup>117</sup> and one request to the Constitutional Court of Serbia. Sixteen answers<sup>118</sup> were received, i.e. 61.54 %. Nine complaints for failure of District courts to observe the Law were lodged with the Commissioner<sup>119</sup>.

From District courts in Serbia we asked the following information:

- How many cases are being processed in your court for committing a criminal offence stated in Article 134 of the Basic Criminal Code – incitement of racial, religious and national hatred, contention and intolerance<sup>120</sup>? We kindly ask you to provide us also with the number of verdicts delivered for the aforementioned criminal act during 2004 and 2005.

To our requests, replies were not received from District courts in Leskovac, Negotin, Novi Pazar, Pirot, Prokuplje, Subotica, Sabac, Vranje and Zrenjanin. In these cases the YIHR encountered "silence of the management"<sup>121</sup>. In none of the cases did the Initiative get the decision laid down by the Law on rejection of the request with written rationale and instructions on legal remedy<sup>122</sup>. The YIHR sent requests to District courts on August 25<sup>th</sup>, 2005. With the exception of the District Court in Novi Sad, which mailed in its reply on September 19<sup>th</sup>, 2005<sup>123</sup> and the District Court in Sremska Mitrovica, whose answer arrived on September 13<sup>th</sup><sup>124</sup>, District courts met the deadline for submission of replies<sup>125</sup> set by the Law. The Law on Free Access to Information was adhered to by

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<sup>117</sup> The requests were sent on August 25<sup>th</sup>, 2005 and are kept in the YIHR Documentation

<sup>118</sup> All the replies of District courts are kept in the YIHR Documentation

<sup>119</sup> The YIHR filed the abovementioned nine complaints with the Commissioner, on October 13<sup>th</sup>, 2005. All the complaints are kept in the YIHR Documentation

<sup>120</sup> The Basic Criminal Code, adopted on September 29<sup>th</sup>, 2005 shall become effective on January 1<sup>st</sup>, 2006, the Official Gazette of RS, number 85/05

<sup>121</sup> Silence of the management (silence of administration) is a special institution of administrative law in case when, upon request, the authority in charge does not make decision within deadline prescribed by the law; Law *Encyclopedia*, Savremena administracija, Beograd, 1985, page 203

<sup>122</sup> The Law on free access to information, Article 16, Paragraph 10, *see above under 6*

<sup>123</sup> The reply of the District Court in Novi Sad arrived in the YIHR on September 21<sup>st</sup>, 2005, signed by Sofija Samardzija. The letter is kept in the YIHR Documentation

<sup>124</sup> The reply of the District Court in Sremska Mitrovica arrived in the YIHR on September 13<sup>th</sup>, 2005, signed by Branka Bancevic – the President of the District court. The letter is kept in the YIHR Documentation

<sup>125</sup> Article 16, Paragraph 1 of the Law on free access to information, *see above under 6*

District courts in Belgrade<sup>126</sup>, Jagodina<sup>127</sup>, Kragujevac<sup>128</sup>, Kraljevo<sup>129</sup>, Krusevac<sup>130</sup>, Nis<sup>131</sup>, Pancevo<sup>132</sup>, Pozarevac<sup>133</sup>, Smederevo<sup>134</sup>, Sombor<sup>135</sup>, Uzice<sup>136</sup>, Valjevo<sup>137</sup>, Zajecar<sup>138</sup> and Cacak<sup>139</sup>.

The Constitutional Court of Serbia did not send, in any form, a reply to the request the YIHR sent on June 21<sup>st</sup>, 2005, in which we asked for the following information:

- Has a public hearing or a consultant meeting on constitutionality of the procedure of passing Labour Law been held, and, if not, when will it be held, as announced by the president of the Constitutional Court, Slobodan Vucetic, to TANJUG, on June 1<sup>st</sup>, 2005<sup>140</sup>?

### District Attorney's Offices in Serbia

<b>The number of sent requests</b>	<b>25</b>
<b>The number of received answers</b>	<b>16</b>
<b>Percentage</b>	<b>64 %</b>

<sup>126</sup> The reply of the District Court in Belgrade arrived in the YIHR on September 9<sup>th</sup>, 2005, signed by Ivana Ramic – the Spokesperson of the Court . The letter is kept in the YIHR Documentation

<sup>127</sup> The reply of the District Court in Jagodina arrived in the YIHR on August 30<sup>th</sup>, 2005, signed by Vladimir Golubovic – Computer science expert. The letter is kept in the YIHR Documentation

<sup>128</sup> The reply of the District Court in Kragujevac arrived in the YIHR on September 7<sup>th</sup>, 2005, signed by Miroljub Tomic - the President of the District Court. The letter is kept in the YIHR Documentation

<sup>129</sup> The reply of the District Court in Kraljevo arrived in the YIHR on September 6<sup>th</sup>, 2005, signed by Biljana Nikolic - the President of the District Court. The letter is kept in the YIHR Documentation

<sup>130</sup> The reply of the District Court in Krusevac arrived in the YIHR on September 11<sup>th</sup>, 2005, signed by Janko Milenkovic - the President of the District Court. The letter is kept in the YIHR Documentation

<sup>131</sup> The reply of the District Court in Nis arrived in the YIHR on August 31<sup>st</sup>, 2005, signed by Dr Danilo Nikolic - the President of the District Court. The letter is kept in the YIHR Documentation

<sup>132</sup> The reply of the District Court in Pancevo arrived in the YIHR on September 1<sup>st</sup>, 2005, signed by Jovanovic Persida – the Spokesperson and a judge. The letter is kept in the YIHR Documentation

<sup>133</sup> The reply of the District Court in Pozarevac arrived in the YIHR on September 9<sup>th</sup>, 2005, signed by Svetlana Gaco - the President of the District Court. The letter is kept in the YIHR Documentation

<sup>134</sup> The reply of the District Court in Smederevo arrived in the YIHR on August 30<sup>th</sup>, 2005, signed by Slavoljub Nikolic - the President of the District Court. The letter is kept in the YIHR Documentation

<sup>135</sup> The reply of the District Court in Sombor arrived in the YIHR on September 1<sup>st</sup>, 2005, signed by Ljiljana Vejnovic - the President of the District Court. The letter is kept in the YIHR Documentation

<sup>136</sup> The reply of the District Court in Uzice arrived in the YIHR on September 1<sup>st</sup>, 2005, signed by Ljubica R. Radulovic - the President of the District Court. The letter is kept in the YIHR Documentation

<sup>137</sup> The reply of the District Court in Valjevo arrived in the YIHR on August 31<sup>st</sup>, 2005, signed by Dragan Obradovic - the President of the District Court. The letter is kept in the YIHR Documentation

<sup>138</sup> The reply of the District Court in Zajecar arrived in the YIHR on September 5<sup>th</sup>, 2005, signed by Slobodan Mitic - the President of the District Court. The letter is kept in the YIHR Documentation

<sup>139</sup> The reply of the District Court in Cacak arrived in the YIHR on September 31<sup>st</sup>, 2005, signed by Radoslav Petrovic - the President of the District Court. The letter is kept in the YIHR Documentation

<sup>140</sup> *Vucetic: On Labour Law - a public hearing or a consultant meeting (orig. O zakonu o radu javna rasprava ili konsultativni sastanak), TANJUG*; the statement is available on web site Antic.com: ><http://www.mail-archive.com/sim@antic.org/msg23800.html><, visited on November 6<sup>th</sup>, 2005. The request was sent on June 21<sup>st</sup>, 2005 and is kept in the YIHR Documentation

On August 25<sup>th</sup>, 2005 the YIHR sent 25 requests for access to information of public importance, to district attorney's offices in Serbia. Sixteen replies were received<sup>141</sup>, viz. 64%.

From District attorney's offices, the YIHR sought the following information:

- How many criminal charges have been brought before your District Attorney's Office during 2004 and 2005 for criminal offence under Article 134 of the Basic Criminal Code – incitement of racial, religious and national hatred, contention and intolerance<sup>142</sup>? We kindly ask you to provide us also with the number of charges processed in courts for the aforementioned criminal act in that period<sup>143</sup>.

The requested information was not supplied by District attorney's offices in Kragujevac, Krusevac, Novi Sad, Novi Pazar, Smederevo, Uzice, Sabac, Subotica and Sremska Mitrovica.

When it comes to District attorney's offices in Serbia, a problem appeared regarding persons responsible for dealing with requests for free access to information<sup>144</sup>, as it is observed from their answers that such a person had never been nominated<sup>145</sup>. It is true that the Law foresees the possibility that in cases when no authorised person for handling the requests has been appointed, the director of the public body<sup>146</sup> should be in charge of them. Therefore the YIHR believes that by introduction of a strict legal obligation of appointing a responsible person, the implementation of this Law would be considerably enhanced.

The deadline for submission of answers, specified by the Law, was not met by District Attorney's Office in Belgrade, as it delivered the reply on September 20<sup>th</sup>, 2005<sup>147</sup>, also in Nis<sup>148</sup>, on September 21<sup>st</sup>, in Cacak<sup>149</sup>, on September 21<sup>st</sup> and in Negotin<sup>150</sup> on September 16<sup>th</sup>.

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<sup>141</sup> All the replies the YIHR received from district attorney's offices are kept in the YIHR Documentation

<sup>142</sup> The Basic Criminal Code, *see above under 120*

<sup>143</sup> The requests were made on August 25<sup>th</sup>, 2005 and are held in the YIHR Documentation

<sup>144</sup> The Law on free access to information, Article 49, Paragraph 1: "Public authorities shall appoint a person responsible for dealing with requests for free access to information of public importance within 30 days upon enactment of this law". *See above under 6*

<sup>145</sup> In most cases the replies were signed by prosecutors and their deputies, not persons who would in their signature indicate that they are "authorised person for dealing with the requests for free access to information"

<sup>146</sup> The Law on free access to information, Article 38, Paragraph 2, *see above under 6*

<sup>147</sup> The reply of the District Attorney's Office in Belgrade the YIHR received on September 20<sup>th</sup>, 2005, signed by Dusan Loncarevic – Public prosecutor's deputy. The letter is kept in the YIHR Documentation

<sup>148</sup> The reply of the District Attorney's Office in Nis the YIHR received on September 21<sup>st</sup>, 2005, signed by Svetlana Savovic – District attorney. The letter is kept in the YIHR Documentation

<sup>149</sup> The reply of the District Attorney's Office in Cacak the YIHR received on September 21<sup>st</sup>, 2005, signed by Miodrag Surla – Public prosecutor's deputy. The letter is kept in the YIHR Documentation

<sup>150</sup> The reply of the District Attorney's Office in Negotin the YIHR received on September 16<sup>th</sup>, 2005, signed by Miroslav Srznetic – District attorney. The letter is kept in the YIHR Documentation

The District Attorney's Offices in Jagodina<sup>151</sup>, Kraljevo<sup>152</sup>, Leskovac<sup>153</sup>, Pancevo<sup>154</sup>, Pirot<sup>155</sup>, Pozarevac<sup>156</sup>, Zajecar<sup>157</sup>, Prokuplje<sup>158</sup>, Sombor<sup>159</sup>, Valjevo<sup>160</sup>, Zrenjanin<sup>161</sup> and Vranje<sup>162</sup> completely observed the Law.

- **Local Institutions**

<b>The total number of submitted requests 5.12.04.-19.9.05.</b>	<b>489</b>
<b>The total number of received answers 5.12.04.-19.9.05.</b>	<b>232</b>
<b>Percentage</b>	<b>47.44 %</b>

From December 5<sup>th</sup>, 2004 to September 19<sup>th</sup>, 2005, the YIHR sent, in two phases, in total 489 requests for free access to information to local institutions in Serbia. Two hundred and thirty two replies were received, i.e. 47.44 %.

### **The Requests Made from December 5<sup>th</sup>, 2004 to April 5<sup>th</sup>, 2005**

<b>The number of submitted requests 5.12.04.-5.4.05.</b>	<b>439</b>
<b>The number of received replies 5.12.04.-5.4.05.</b>	<b>217</b>
<b>Percentage</b>	<b>49.97 %</b>

<sup>151</sup> The reply of the District Attorney's Office in Jagodina the YIHR received on August 31<sup>st</sup>, 2005, signed by Goran Busarcevic – District attorney. The letter is kept in the YIHR Documentation

<sup>152</sup> The reply of the District Attorney's Office in Kraljevo the YIHR received on September 2<sup>nd</sup>, 2005, signed by Dragan Belcevic – Public prosecutor' deputy. The letter is kept in the YIHR Documentation

<sup>153</sup> The reply of the District Attorney's Office in Leskovac the YIHR received on September 1<sup>st</sup>, 2005, signed by Edvard Jerin – District attorney. The letter is kept in the YIHR Documentation

<sup>154</sup> The reply of the District Attorney's Office in Pancevo the YIHR received on September 12<sup>th</sup>, 2005, signed by Nikonovic Milan – District attorney. The letter is kept in the YIHR Documentation

<sup>155</sup> The reply of the District Attorney's Office in Pirot the YIHR received on September 8<sup>th</sup>, 2005, signed by Tihomir Djordjevic – District attorney. The letter is kept in the YIHR Documentation

<sup>156</sup> The reply of the District Attorney's Office in Pozarevac the YIHR received on September 1<sup>st</sup>, 2005, signed by Dragan Petrovic – District attorney. The letter is kept in the YIHR Documentation

<sup>157</sup> The reply of the District Attorney's Office in Zajecar the YIHR received on September 4<sup>th</sup>, 2005, signed by Zorin Zogovic – District attorney. The letter is kept in the YIHR Documentation

<sup>158</sup> The reply of the District Attorney's Office in Prokuplje the YIHR received on September 10<sup>th</sup>, 2005, signed by Viseslav Bukumirovic – District attorney. The letter is kept in the YIHR Documentation

<sup>159</sup> The reply of the District Attorney's Office in Sombor the YIHR received on September 2<sup>nd</sup>, 2005, signed by Borislav Kurjakov – District attorney. The letter is kept in the YIHR Documentation

<sup>160</sup> The reply of the District Attorney's Office in Valjevo the YIHR received on September 5<sup>th</sup>, 2005, signed by Zlatko Sulovic – District attorney. The letter is kept in the YIHR Documentation

<sup>161</sup> The reply of the District Attorney's Office in Zrenjanin the YIHR received on September 7<sup>th</sup>, 2005, signed by Dragan Ladic – District attorney. The letter is kept in the YIHR Documentation

<sup>162</sup> The reply of the District Attorney's Office in Vranje the YIHR received on September 8<sup>th</sup>, 2005, signed by Milan Bozilovic – District attorney. The letter is kept in the YIHR Documentation

Whilst researching the implementation of Law on Free Access to Information, the YIHR sent 439 requests to addresses of 166 municipalities in Serbia, to which 217 replies were received, in percent **48.97%**.

Out of 166 municipalities, 40 failed to send answers to a single request, which represents **24.09%**. As an extreme example, we can single out the Municipality of Barajevo to which four requests were sent but no answer received. Thus, the YIHR, in cases where the municipalities did not in any way respond to the requests put forth, encountered "the silence of the management"<sup>163</sup>. Listed municipalities failed to provide answers even upon the expiry of extended deadline of 40 days<sup>164</sup>. In these instances, the Law stipulates the possibility of lodging a complaint with the Commissioner<sup>165</sup>. As the Commissioner's Office did not start functioning not even six months after the Law had been passed<sup>166</sup>, the YIHR was unable to use this legal means to exercise its rights.

We will state the examples of some of the requests put before municipalities:

1. Has any funding and in what amounts been allocated in 2005 for donations to local non-governmental organizations?
2. What are the funds from your budget intended for social expenditures in 2005?
3. What is the percentage of women employed in local public authorities' bodies?
4. Are there ramps for the disabled at entrances to municipal buildings, and if there are not, is their construction scheduled for 2005?
5. What are the salaries of the president of the municipality and members of municipal council?

Amongst local institutions, which sent the answers there are also those whose replies did not contain requested information, or in another way did not fully observe their legal obligation. The instance of this is the Municipality of Knjazevac, whose authorities notified the YIHR that they could produce a copy of the requested documents but with reimbursement of expenses of 3.00 dinars for an A4 copy as well as reimbursement of delivery costs, amounting from 16.50 dinars for an ordinary and 33.00 and 49.50 dinars for a registered letter and a registered letter with a return note<sup>167</sup> respectively. It is true that the Law stipulates that basic expenses of producing copies or delivery costs<sup>168</sup> should be refunded, however from this obligation are exempt, amongst others, also "associations

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<sup>163</sup> *Law Encyclopedia*, page 203, *see above under 121*

<sup>164</sup> The Law on free access to information, Article 16, Paragraph 3: "If a public body is unable, for justified reasons, to notify the submitter on possession of information, within the deadline set out in Paragraph 1 of this Article, it is obliged to inform the submitter immediately and set subsequent deadline, which cannot exceed 40 days from submission of the request..." *See above under 6*

<sup>165</sup> *Ibid*, Article 22

<sup>166</sup> The Office started working on July 1<sup>st</sup> 2005, *see above under 38*

<sup>167</sup> The reply of the municipality of Knjazevac the YIHR received on April 15<sup>th</sup>, 2005, signed by graduate lawyer Jasmina Krstic. The letter is kept in the YIHR Documentation

<sup>168</sup> The Law on free access to information, Article 17, Paragraph 2, *see above under 6*

for the protection of human rights, if they ask for a copy with the purpose of accomplishing the goals of the association<sup>169</sup>. Accordingly, the obligation of covering for those expenses should not apply to the YIHR.

Another example is Public Utility Enterprise in charge of public garages and car parks, which in its answer stated that this institution falls into the public authorities this Law pertains to<sup>170</sup>, but that they are unable to meet our request; as an excuse they used an obligation of the public authorities, stipulated by the same Law, to at least once a year produce an information booklet with basic information on its work and that they are obliged to allow the inspection of its work to interested parties<sup>171</sup>. Naturally, the Law does not foresee that the obligation of issuing the information booklet excludes the one of providing requested information or documents.

The YIHR mailed a request to the Municipality of Cacak to provide information on the amount of financial resources spent on organizing New Year celebrations, under the old calendar. The reply was that requested information could be found on the web page of the Municipality. As this was not the case, the YIHR sent yet another request. The second answer stated that the Municipality of Cacak had not allocated any financial resources for New Year's Celebration, therefore it ensues that no decision was made for funds to be transferred in the name of organizing a celebration, thus this information could not have been found on the web page in the first place<sup>172</sup>.

It should be emphasized that out of total number of 166 municipalities, only 34 or **20.48 %** answered to all sent requests. The municipalities of Novi Sad, Novi Beograd and Grocka stand out as the ones, which replied to all four requests put before them. Therefore, according to the results of this research, **79.52 %** of municipalities in Serbia do not fully abide by the Law on Free Access to Information.

### **From June 21<sup>st</sup> to September 19<sup>th</sup>, 2005**

<b>The number of submitted requests 21.6.05.-19.9.05.</b>	<b>50</b>
<b>The number of received answers 21.6.05.-19.9.05.</b>	<b>15</b>
<b>Percentage</b>	<b>30 %</b>

On August 17<sup>th</sup>, 2005 the YIHR mailed 50 requests for free access to information of public importance to local public authorities. Target group was the municipalities, which in the previous research answered none of the sent requests. Those were the municipalities of Alibunar, Aleksandrovac, Babusnica, Backa Palanka, Backi Petrovac,

<sup>169</sup> *Ibid*, Article 17, Paragraph 4

<sup>170</sup> *Ibid*, Article 3

<sup>171</sup> *Ibid*, Article 39

<sup>172</sup> The reply of the municipality of Cacak the YIHR received on March 14<sup>th</sup>, 2005, signed by Velimir Stanojevic – the president of the municipality. The letter is kept in the YIHR Documentation

Barajevo, Beocin, Bogatic, Bojnik, Cajetina, Coka, Cuprija, Kosjeric, Lapovo, Mali Idjos, Merosina, Mionica, Nova Crnja, Nova Varos, Novi Knezevac, Novi Pazar, Odzaci, Osecina, Pecinci, Plandiste, Pozega, Presevo, Prijepolje, Raca, Raska, Rekovac, Secanj, Sjenica, Smederevska Palanka, Sopot, Sremska Mitrovica, Stara Pazova, Surdulica, Svilajnac, Temerin, Trgoviste, Trstenik, Tutin, Varvarin, Vlasotince, Vrbas, Zabalj, Zabari, Zemun, Zitiste. Only **15 replies** were received, or **30 %**. Considering the fact that the tested municipalities were those which had failed to provide answers in previous research, we can draw an inference that some of them have changed their attitude towards the implementation of this Law.

The tested municipalities were requested the following information:

- Are financial resources from the municipal budget allocated to aid religious communities? If the answer is affirmative, we kindly ask you to provide us with the information which religious communities you assist and in what amounts<sup>173</sup>.

The requests were left unanswered by the municipalities of Aleksandrovac, Babusnica, Backa Palanka, Backi Petrovac, Bojnik, Coka, Cuprija, Lapovo, Mali Idjos, Merosina, Mionica, Nova Varos, Novi Pazar, Osecina, Pozega, Presevo, Prijepolje, Raca, Raska, Rekovac, Secanj, Sjenica, Smederevska Palanka, Sremska Mitrovica, Stara Pazova, Surdulica, Temerin, Trgoviste, Trstenik, Tutin, Varvarin, Vlasotince, Zabalj, Zabari and Zitiste<sup>174</sup>. In reference to this unfounded denial of answers, the YIHR filed complaints with the Commissioner<sup>175</sup>.

The requests for access to information were sent to the municipalities on August 17<sup>th</sup>, 2005, but many municipalities provided their replies upon the expiry of legally set deadline<sup>176</sup>. Thus the Municipality of Barajevo sent the answer on September 8<sup>th</sup>, 2005, Beocin also on September 8<sup>th</sup>, 2005, Novi Knezevac on September 20<sup>th</sup>, 2005, Pecinci on September 5<sup>th</sup>, 2005, Sopot on September 5<sup>th</sup>, 2005 and the Municipality of Zemun on September 14<sup>th</sup>. It ensues that out of 15 received answers to our requests, six were not sent within the deadline prescribed by the Law<sup>177</sup>.

Nine municipalities, which had left the YIHR short of answers in the previous research, this time fulfilled their obligation set by the Law<sup>178</sup>. These are the municipalities of: Alibunar, Bogatic, Cajetina, Kosjeric, Nova Crnja, Odzaci, Plandiste, Svilajnac and Vrbas.

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<sup>173</sup> The YIHR sent on August 15<sup>th</sup> the same enquiry to the addresses of 50 different municipalities in Serbia. Each separate request is kept in the YIHR Documentation

<sup>174</sup> In total 35 municipalities

<sup>175</sup> The YIHR lodged 35 appeals with the Commissioner on September 9<sup>th</sup>, 2005. All complaints are held in the YIHR Documentation

<sup>176</sup> The Law on free access to information, Article 16, Paragraph 1, *see above under 6*

<sup>177</sup> *Ibid*, Article 16, Paragraph 1

<sup>178</sup> The replies of the municipalities which observed the Law on free access to information are kept in the YIHR Documentation



## Complaints lodged with the Commissioner for access to information of public importance

The basic functions of the Commissioner are to monitor the implementation of the Law and inform the public and the Parliament about it<sup>179</sup>, to put forth the motions for amendments of the Law<sup>180</sup>, to propose to the public authorities taking measures for enhancement of implementation of the Law<sup>181</sup>, to take measures for training of the staff employed in public bodies<sup>182</sup>, to rule on the complaints lodged by submitter<sup>183</sup>, to notify the public on the contents of the Law<sup>184</sup> and deal with other issues in terms of this Law<sup>185</sup>.

The complaint against groundless denial of the right to access information of public importance can be filed with the Commissioner within 15 days from the day a public body sent a reply refusing to issue the requested information<sup>186</sup>. Provisions of the Law, regulating general administrative procedure<sup>187</sup>, apply to the cases processed with the Commissioner, which refer to the second instance proceedings<sup>188</sup>. Namely, the administrative procedure is considered initiated by mere submission of the request for free access to information to the public authority. For this reason, a potential complaint filed with the Commissioner represents *de facto* a complaint to the second instance administrative body. The Commissioner is obliged to rule on a decision sustaining or overruling the complaint, without delay, at the latest within 30 days starting from the day the complaint has been filed<sup>189</sup>. Against the decision of the Commissioner administrative proceedings<sup>190</sup> can be initiated. The powers of the Commissioner in processing complaints are exhausted the moment the ruling is made sustaining or overruling the complaint<sup>191</sup>. In order for responsible persons in public bodies to be held accountable for non-conforming to the Law, the submitters need to initiate offence proceedings in one of the courts in charge. However, it is unlikely that a great many appealants will be motivated enough to engage in lengthy and expensive offence proceedings. Precisely for this reason, the YIHR contends that this is a serious drawback of the Law.

Apart from this, the YIHR believes that the Department in charge of providing information, viz. The Ministry of Culture, is not the best choice when it comes to

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<sup>179</sup> The Law on free access to information, Article 35, Paragraph 1, Item 1, *see above under 6*

<sup>180</sup> *Ibid*, Article 35, Paragraph 1, Item 2

<sup>181</sup> *Ibid*, Article 35, Paragraph 1, Item 3

<sup>182</sup> *Ibid*, Article 35, Paragraph 1, Item 4

<sup>183</sup> *Ibid*, Article 35, Paragraph 1, Item 5

<sup>184</sup> *Ibid*, Article 35, Paragraph 1, Item 6

<sup>185</sup> *Ibid*, Article 35, Paragraph 1, Item 7

<sup>186</sup> *Ibid*, Article 22

<sup>187</sup> The Law on General Administrative Procedure, Official Gazette of Serbia and Montenegro, number 33/97 and 31/01

<sup>188</sup> The Law on free access to information, Article 23, *see above under 6*

<sup>189</sup> *Ibid*, Article 24, Paragraph 1

<sup>190</sup> *Ibid*, Article 27

<sup>191</sup> *Ibid*, Article 24

monitoring the implementation of the Law<sup>192</sup>, as until the completion of this report, according to the information in possession of the Commissioner's Office, the Ministry of Culture did not initiate a single offence proceedings against the responsible persons in public bodies, for non-compliance with this Law<sup>193</sup>.

In his report on the implementation of Law on Free Access to Information, the Commissioner writes about the Ministry of Culture, as the institution in charge of supervising the Law, the following:

”Submission of requests for initiating offence proceedings involves prior supervision so as to determine the identity of the persons involved and the elements of the offence. The Ministry of Culture, at this moment, does not have at its disposal the personnel, organizational, logistic and other possibilities for performing this function. Also when it comes to performing other tasks, ensuing from the obligation of carrying out supervision, of great, negative significance is the fact that the Ministry in its structure does not have an inspection service, which would be in charge of supervision. Therefore, it must be noted that out of dozens of possible offenders, so far no one has been processed.”<sup>194</sup>

On July 15<sup>th</sup>, 2005, the YIHR lodged five complaints with the Commissioner for non-compliance of the Ministry of Interior, the Ministry of Education and Sport, the Ministry of Justice, the Ministry of Finance and the Ministry of Defence of Serbia and Montenegro<sup>195</sup>. As expected, the Commissioner dismissed the complaint against the Ministry of Defence of Serbia and Montenegro, with the explanation that the Ministry of Defence of Serbia and Montenegro is a body of the State Union and therefore not bound to the Law of either member state.

During a meeting of the researchers from the YIHR with the Commissioner<sup>196</sup>, regarding filed complaints, there was a disagreement concerning counting the deadlines for submission of complaints. Namely, the Commissioner held that the deadline for lodging complaints commenced from the date he was appointed, and that complaints lodged by the YIHR on July 15<sup>th</sup>, 2005 are untimely. On the other hand, the YIHR's researchers were of the opinion that the deadline should be counted from the date the Commissioner's Office *de facto* started functioning, i.e. from May 23<sup>rd</sup>, 2005, as until then it was not possible to file a complaint. The Commissioner did accept the arguments presented by the YIHR and took into consideration filed complaints.

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<sup>192</sup> *Ibid*, Article 45

<sup>193</sup> The conversation between the researchers of the YIHR and the Commissioner – Rodoljub Sabic, the *Palace* hotel, on October 21<sup>st</sup>, 2005. The report is kept in the YIHR Documentation

<sup>194</sup> *The Report of the Commissioner on implementation of the Law on free access to information*, November 3<sup>rd</sup>, 2005, web site of the Commissioner's office: >[http://www.poverenik.org.yu/Dokumentacija/43\\_ldok.doc](http://www.poverenik.org.yu/Dokumentacija/43_ldok.doc)<, visited on November 7<sup>th</sup>, 2005

<sup>195</sup> These five complaints were filed by the YIHR on July 15<sup>th</sup>, 2005. The complaints are kept in the YIHR Documentation

<sup>196</sup> The meeting was held on July, 15<sup>th</sup>, in the Commissioner's Office, in Svetozara Markovica street number 42 the minutes from the meeting are kept in the YIHR Documentation

Regarding the appeals filed by the YIHR against the Ministry of Justice<sup>197</sup>, The Ministry of Interior<sup>198</sup> and the Ministry of Education and Sport<sup>199</sup>, the Commissioner has, in different time intervals, ruled on decisions by which he suspended the initiated proceedings with the explanation that the above-mentioned ministers informed him that they had subsequently provided the YIHR with requested information<sup>200</sup>. These decisions were brought by the Commissioner within deadlines set out by the Law<sup>201</sup>. Therefore, the YIHR did receive requested information, but nobody was held accountable for the omissions made until then<sup>202</sup>, although for those offences a pecuniary penalty is prescribed<sup>203</sup>. As said earlier, the Ministry of Culture, as a body in charge of initiating administrative proceedings<sup>204</sup> according to the Law, so far has not reacted.

On the other hand, the Commissioner presented a decision to the YIHR on August 25<sup>th</sup>, 2005, which states that the appeal made against the Ministry of Finance had been accepted and the Ministry was ordered to provide the requested information within three days<sup>205</sup>. Despite this, the YIHR did not get the reply until 34 days<sup>206</sup> after the Commissioner's decision had been passed, i.e. eight months and four days since the request had been sent to the Ministry of Finance<sup>207</sup>. For obstruction of exercising the right to access information of public importance<sup>208</sup>, for failure to meet the deadlines prescribed by the Law<sup>209</sup>, and for non passing of decisions on rejection of the request with written explanation and instructions on legal remedy<sup>210</sup>, nobody in the Ministry of Finance was held responsible.

The new stage of researching the implementation of this Law and the analysis of the results having been completed, the YIHR lodged 56 appeals with the Commissioner in

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<sup>197</sup> The Commissioner on August 31<sup>st</sup>, 2005, passed a ruling suspending the proceedings against the Ministry of Justice of the Republic of Serbia, signed by Rodoljub Sabic – the Commissioner. This document is kept in the YIHR Documentation

<sup>198</sup> The Commissioner on September 6<sup>th</sup>, 2005, passed a ruling suspending the proceedings against the Ministry of Interior of the Republic of Serbia, signed by Rodoljub Sabic – the Commissioner. This document is kept in the YIHR Documentation

<sup>199</sup> The Commissioner on September 6<sup>th</sup>, 2005, passed a ruling suspending the proceedings against the Ministry of Education and Sport of the Republic of Serbia, signed by Rodoljub Sabic – the Commissioner. This document is kept in the YIHR Documentation

<sup>200</sup> The decisions of the Commissioner against the Ministry of Justice, Interior and Education and Sport, held in the YIHR Documentation

<sup>201</sup> The Law on free access to information, Article 21, Paragraph 1, *see above under 6*

<sup>202</sup> The most commonly breached Articles of Law are 5 and 16, Paragraph 1. The Law on free access to information, *see above under 6*

<sup>203</sup> The Law on free access to information, Articles 46, 47 and 48, *see above under 6*

<sup>204</sup> *Ibid*, Article 45

<sup>205</sup> The Commissioner on August 25<sup>th</sup>, 2005 ruled on decision ordering the Ministry of Finance of RS to provide the submitter with requested information at the latest within three days; signed by Rodoljub Sabic – the Commissioner. The decision is kept in the YIHR Documentation

<sup>206</sup> The reply of the Ministry of Finance reached the YIHR on September 29<sup>th</sup>, 2005, signed by Mirjana Arnautovic. The letter is kept in the YIHR Documentation

<sup>207</sup> The request was sent on January 25<sup>th</sup>, 2005 and is kept in the YIHR Documentation

<sup>208</sup> The Law on free access to information, Article 5, *see above under 6*

<sup>209</sup> *Ibid*, Article 16, Paragraph 1

<sup>210</sup> *Ibid*, Article 16, Paragraph 10

the period from September 9<sup>th</sup>, 2005<sup>211</sup>, to October 13<sup>th</sup>, 2005<sup>212</sup>. Shortly afterwards the YIHR started receiving the answers to their requests sent to local institutions. By November 5<sup>th</sup>, 2005, the municipalities which failed to mail the replies were: Mionica, Novi Pazar, Prijepolje and Trgoviste. In keeping with the mechanisms envisaged by the Offence Law<sup>213</sup>, on October 24<sup>th</sup> the YIHR submitted requests for initiating offence proceedings against the aforementioned municipalities<sup>214</sup>, to the municipal courts in Mionica<sup>215</sup>, Novi Pazar<sup>216</sup>, Prijepolje<sup>217</sup> and Vranje<sup>218</sup>. During the procedure of submitting the requests to the Commissioner, it was observed that, since the Law does not stipulate that failure to meet deadlines presents a basis for offence liability of public authorities<sup>219</sup>, according to the YIHR, there is a danger that the period in which the right to free access to information is being exercised can be so protracted as to lead to frequent withdrawals of the requests.

On the basis of its researches, the YIHR has come to the conclusion that the citizens are poorly informed on the mechanisms which this Law provides, therefore they do not use them sufficiently, and consequently the implementation of the Law on Free Access to Information still is not giving satisfactory results. To substantiate this conclusion serves the information that from July 1<sup>st</sup> to September 14<sup>th</sup>, only 118 appeals were filed with the Commissioner<sup>220</sup>.

This research has shown that the mechanism of lodging appeals with the Commissioner has started giving expected results, which can be illustrated with the fact that after

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<sup>211</sup> The YIHR on September 9<sup>th</sup>, 2005 filed 35 appeals with the Commissioner for non-compliance with the Law on free access to information by local institutions. All the complaints are filed in the YIHR Documentation

<sup>212</sup> The YIHR on October 13<sup>th</sup>, 2005 filed 21 appeals with the Commissioner for non-compliance with the Law on free access to information by District courts and District attorney's offices in Serbia. All the complaints are filed in the YIHR Documentation

<sup>213</sup> Offence Law, Official Gazette of RS number 55/2004

<sup>214</sup> The YIHR submitted four requests for initiating offence proceedings on October 25<sup>th</sup>, 2005. those documents are kept in the YIHR Documentation

<sup>215</sup> Being the court in charge of handling offence proceedings in the municipality of Mionica

<sup>216</sup> Being the court in charge of handling offence proceedings in the municipality of Novi Pazar

<sup>217</sup> Being the court in charge of handling offence proceedings in the municipality of Prijepolje

<sup>218</sup> Being the court in charge of handling offence proceedings in the municipality of Trgoviste

<sup>219</sup> The Law on free access to information, Article 46: "A fine between 5,000 and 50,000 dinars for an offence shall be imposed upon an authorized person in public body, if the public body: 1) acts against the principle of equality 2) discriminates a journalist or a public medium 3) does not specify the holder of information, when and where the requested information has been published 4) does not impart truthful and complete information, i.e. does not allow inspection of the document containing truthful and complete information 5) fails to produce the document for inspection to the submitter and does not make a copy of the document in the same language in which the request was submitted and 6) declines to file the request, does not inform the submitter of request on possession of the information, or does not allow inspection of the document containing requested information, i.e. does not send the copy of the document in the appropriate manner, does not make a decision on rejection of the request and refuses to provide necessary assistance to the submitters for exercising their rights". See above under 6

<sup>220</sup> *Sabic : Serbia falls behind when it comes to availability of information, see above under 37*; N. Bogovic: *Citizens need to defend the Law*, DANAS, September 28<sup>th</sup>, 2005

complaints had been filed with the Commissioner, some municipalities started sending their replies.<sup>221</sup>

## **Conclusions on the Implementation of the Law on Free Access to Information**

Based on the research of implementation of the Law on Free Access to Information, the YIHR has drawn the following inferences:

1. Whilst researching the implementation of the Law on Free Access to Information, the YIHR found out that the above-mentioned Law was not observed by **69.08 %** of tested public bodies. The requests were sent to the addresses of 262 different governmental bodies. Only 80 of them replied to all sent requests. Thus, they degraded legitimate and legally protected interest of the citizens to actively participate in political life and control the work of governmental bodies.
2. Out of the total number of tested public bodies, 80 of them, i.e. **30.53 %** did not reply to a single submitted request.
3. The Law on Free Access to Information came into force on November 13<sup>th</sup>, 2004. The Parliament was obliged to elect a Commissioner within 45 days from the day the Law became effective. The decisions on establishing of the Commissioner's Office for information of public importance and on the salaries of the employed in the Commissioner's Office, as well as Operating procedures on internal organization and job systematization in the Commissioner's Office, were not made until May 23<sup>rd</sup>, 2005.
4. The Commissioner's Office did not start working until July 1<sup>st</sup>, 2005, six months after Rodoljub Sabic had been appointed to perform this function.
5. The Law stipulates that a public body can deny access to information of public importance when it comes to a piece of information or a document which represents a state, official, business or other secret, whose disclosure could involve grave legal and other consequences, which would jeopardize the interests protected by the Law. The research has shown that this provision, being imprecise, to some public bodies served as an excuse to reject a number of requests, which considerably disparaged the sense of this Law.
6. A great number of public bodies did not abide by the prescribed deadline of 15 days for supplying requested information.

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<sup>221</sup> Out of 35 lodged complaints for failure to observe the Law on free access to information of public importance by as many municipalities, upon the reaction of the Commissioner, 31 municipalities provided the YIHR with requested information. All the aforementioned replies are kept in the YIHR Documentation

7. It has been established that the fact the replies were sent often did not mean that the authorities in charge had fully observed the Law. Many cases of replies not containing sought information have been recorded, although the Law envisages that in such a form only requested answer or information can be provided, when it will be provided, but not the rejection of the requests, for which a separate form has been devised.
8. The Law lays down the obligation of the public bodies to issue once a year an information booklet containing basic information on their work. Many public bodies interpreted this provision as an excuse not to reply to sent requests, though the Law does not state that publishing information booklet exempts from the obligation of imparting information
9. The right to free access to information of public importance is not protected by the Law at State Union level.
10. Active authorization for conducting proceedings for breaching the Law on Free Access to Information is entrusted to the Ministry of Culture. The YIHR stresses that this is not an adequate solution, as the Ministry of Culture is not capable enough of handling these issues.
11. The citizens are not informed on the mechanisms, which this Law provides, therefore they are not using them sufficiently, and consequently the implementation of the Law on Free Access to Information is not giving satisfactory results yet. To substantiate this conclusion serves the information that from July 1<sup>st</sup> to September 14<sup>th</sup>, only 118 complaints were lodged with the Commissioner.
12. The research has show that public servants have not familiarized themselves sufficiently with the contents of this Law. The YIHR contends that part of responsibility lies with the Commissioner himself, as he is in charge of taking necessary measures so that the employed in public bodies are trained in and knowledgeable about the rights to access information.
13. None of the tested public bodies used the possibility envisaged by the Law of postponement of deadlines up to 40 days.
14. Generally speaking, the Commissioner's work can be rated very well. In particular, his good cooperation with non-governmental organizations and other institutions of civil society should be pointed out.
15. The Law does not specify failure to meet deadlines as a basis for offence liability. The YIHR is of the opinion that this represents an omission, which encourages non-compliance with this Law and irresponsible attitude of the public bodies towards its implementation.

16. Pecuniary penalties envisaged by the Law on Free Access to Information are low and do not present an appropriate sanction for its violation, i.e. sanctions which would achieve the desired objective.
17. As practice has shown so far, great problems can be expected related to publishing of the Information booklet and submission of annual reports to the Commissioner by the public bodies.

## **Recommendations on the Implementation of the Law on Free Access to Information**

Based on the research of implementation of the Law on Free Access to Information, and conclusions made, the YIHR adopted the following recommendations:

1. Authorized persons in governmental agencies have to be held responsible for non-compliance with the Law, in accordance with prescribed penalty provisions of the Law; this would send a clear message to all public bodies that failure to observe this Law cannot pass with impunity, by which better implementation of this Law would be indirectly achieved.
2. The YIHR insists that governmental bodies should consistently deliver training to the staff on implementation of the Law on Free Access to Information so as to avoid future unfamiliarity with its contents by those who should be enforcing it in practice
3. The Commissioner needs to fulfill his legal obligation of being more proactive towards the officers working in public bodies who have displayed ignorance of the contents of this Law
4. The implementation of the Law in practice has shown an urgent need for public debate when it comes to the information declared a state, official, business or other secret, and regarding the relationship between private and public sector and border cases in which those two interests are directly opposed. The provision regulating this relationship needs to be defined more precisely so as not to present an easy and efficient means of evasion and undermining the sense of this Law
5. The procedure regarding the misuse of free access to information needs to be more narrowly specified in the Law so that public bodies do not exercise wide discretion of determining themselves what should be deemed a misuse, as there is a danger that the power itself could be abused in order to avoid implementation of the Law.
6. It is necessary to abolish a legal decision, which quotes that there is no right of appeal against the ruling of the Parliament, the President of the Republic, the Government, the Supreme Court of Serbia, the Constitutional Court and

Republic Public Prosecutor. This provision of the Law protects the highest authorities, which undoubtedly possess a lot of information of public importance that should be made accessible to citizens.

7. Public authorities should contact the submitter and demand postponement of the deadline for submission of information in every instance when they know they will be unable to meet the deadline of 15 days.
8. It is necessary that the Law on Free Access to Information be passed on State Union level, which would make it possible for the citizens to supervise the work of agencies at that level of authority.
9. The supervision over implementation of the Law is entrusted to the Ministry of Culture. This legal provision should be altered and the control should be handed over to a more competent authority in this area.
10. The Law on Free Access to Information is still not being applied to a sufficient extent, one of the reasons being citizens' ignorance. A comprehensive action should be initiated by which the citizens would be familiarized with their right to access information of public importance as well as the mechanisms for exercising this right, laid down by this Law.
11. Though the Commissioner is not a judiciary authority, which can pronounce sanctions, the YIHR thinks that he should be given wider powers when it comes to establishing mechanisms for sanctioning the offenders of the Law. In his work so far the Commissioner has shown the highest degree of expertise and interest in the implementation of this Law.
12. The Law on Free Access to Information should be supplemented by the provision specifying that failure to meet prescribed deadlines would represent a basis for offence liability, which entails a pecuniary penalty. The YIHR believes that in this way a considerable influence would be exerted within public authorities so as to abide by this Law.
13. It is necessary to increase the amount of fines for non-adherence to the Law on Free Access to Information, since erstwhile pecuniary penalties have not given expected results, according to the research results. The YIHR assumes that they were not taken into consideration seriously due to the fact they were low.
14. The Commissioner needs to be insistent on the implementation of legal obligation of public authorities to produce once a year an information booklet, for whose issuing he will issue the instructions and provide advice; he should also insist on the obligation imposed on authorized persons within public bodies to submit annual reports.



## 2. Implementation of the Law on National Minorities

The Law on National Minorities was adopted in the Parliament of the then Federal Republic of Yugoslavia<sup>222</sup> in 2002. The Law was adopted with the support of experts from the Organization for Security and Cooperation in Europe (hereinafter: OSCE) and the Council of Europe. The Law regulates basic rights and freedoms of the members of national minorities in the territory of the State Union. In addition to this Law, the rights of the members of national minorities are guaranteed by the Charter on Human and Minority Rights and Civil Liberties of the State Union of Serbia and Montenegro<sup>223</sup>, the Constitution of the Republic of Serbia<sup>224</sup> and the Constitution of the Republic of Montenegro<sup>225</sup>. As to the ratified international documents, the Council of Europe Framework Convention for the Protection of National Minorities<sup>226</sup> provides the most comprehensive protection for national minorities.

The fact that the Law was adopted on the former Federation level, now on the level of the State Union<sup>227</sup>, creates problems in its implementation. For example, constitutional appeals for the protection of rights and freedoms of national minorities which may be submitted by the Federal Ministry of National and Ethnic Communities and National Minority Councils (hereinafter: the National Councils<sup>228</sup>) are not applicable since the Federal Constitutional Court<sup>229</sup>, which has the jurisdiction over such appeals, ceased to exist with the adoption of the Constitutional Charter<sup>230</sup> and the formation of the State Union<sup>231</sup>.

Also, the Law provides for the establishing of the Federal Fund for the Promotion of Social, Economic, Cultural and Overall Development of National Minorities (hereinafter: the Fund<sup>232</sup>). It has been stipulated that the Fund should use the Federal budget to finance projects related to the improvement of the position of members of national

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<sup>222</sup> Law on National Minorities, *see above under 2*

<sup>223</sup> Charter on Human and Minority Rights and Civil Liberties of the State Union of Serbia and Montenegro, adopted and entered into force on February 28<sup>th</sup>, 2003, Official Gazette of Serbia and Montenegro number 6/03

<sup>224</sup> Constitution of the Republic of Serbia, adopted and entered into force on September 28<sup>th</sup>, 1990, Official Gazette of the RS number 1/90

<sup>225</sup> Constitution of the Republic of Montenegro, Official Gazette of the Republic of Montenegro number 48/92

<sup>226</sup> Framework Convention for the Protection of National Minorities of the Council of Europe, ratified and entered into force on September 1<sup>st</sup>, 2001, Official Gazette of the Federal Republic of Yugoslavia, International Agreements, number 6/98

<sup>227</sup> By constitutional amendments in 2003, the Federal Republic of Yugoslavia was established as the State Union of Serbia and Montenegro, see: Constitutional Charter of the State Union of Serbia and Montenegro, adopted and entered into force on February 4<sup>th</sup>, 2003, Official Gazette of Serbia and Montenegro number 1/03

<sup>228</sup> Law on National Minorities, Article 23, Paragraph 2, *see above under 2*

<sup>229</sup> *Ibid*

<sup>230</sup> Constitutional Charter of the State Union, *see above under 230*

<sup>231</sup> Law on the Implementation of the Constitutional Charter of the State Union of Serbia and Montenegro, adopted on February 4<sup>th</sup>, 2003, Official Gazette of Serbia and Montenegro number 1/03, Article 3

<sup>232</sup> Law on National Minorities, Article 22, Paragraph 1, *see above under 2*

minorities. However, the current budget of the State Union has not earmarked funds to this use<sup>233</sup>, so the Fund never started functioning<sup>234</sup>.

Due to these problems, but also due to the uncertain future of the State Union<sup>235</sup>, the representatives of the National Councils asked the Government several times to propose the adoption of a Republic Law on the Protection of Rights and Freedoms of National Minorities and allocate funds from the Republic budget to finance the National Councils<sup>236</sup>. This Law should regulate in more detail the position of minorities, their rights, but also the financial and any other assistance that the Republic would be obligated to provide to minority communities. All government action to help national minorities and meet their demands has so far been an act of good will without a specific legal obligation<sup>237</sup>. Such a situation cannot be a guarantee to the members of national minorities that their rights will also be respected in the future.

### • National Councils

National Councils have competences in the areas of the use of language and script, education, public information and culture. The Law stipulates that National Councils should be elected by citizens<sup>238</sup>. National minorities do not have the obligation to establish these bodies<sup>239</sup>, however all major minority communities except Albanians have formed their Councils, so that there are currently 12 National Councils functioning in the territory of Serbia<sup>240</sup>.

Of special importance are the provisions of the Law stipulating that Republic, Provincial and local institutions may delegate to National Councils part of their original competences in the areas of the official use of language, education, public information in languages of national minorities and culture, and that in these cases the State will provide funds necessary to exercise such competences<sup>241</sup>. In addition, the Law provides that the

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<sup>233</sup> Interviews that YIHR researchers conducted with the representatives of National Minority Councils, 2005, YIHR documentation

<sup>234</sup> *Ibid*

<sup>235</sup> The referendum in Montenegro on the possible independence of this member country is planned for spring 2006, see: Starting Points for the Restructuring of Relations between Serbia and Montenegro (Belgrade Agreement), March 14<sup>th</sup>, 2002, available at >[http://www.predsednikscg.yu/view\\_file.php?file\\_id=29#sr<](http://www.predsednikscg.yu/view_file.php?file_id=29#sr<), accessed on November 8<sup>th</sup>, 2005

<sup>236</sup> The request was signed by the representatives of the Bosniak, Bulgarian, Bunjevci, Croatian, Hungarian, Roma, Romanian, Ruthenian, Slovak and Ukrainian National Councils, see: National Minorities Demand Council Financing from the Budget, B92 web site: [http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&dd=11&nav\\_id=134907<](http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&dd=11&nav_id=134907<), visited on November 8<sup>th</sup>, 2005.

<sup>237</sup> The current Law on National Minorities does not prescribe the obligations of Republic authorities to national minorities, *see above under 2*

<sup>238</sup> Law on National Minorities, Article 19, *see above under 2*

<sup>239</sup> *Ibid*, Articles 1 and 12

<sup>240</sup> Interviews with representatives of National Minority Councils, *see above under 233*; the establishing of the Vlach National Council, which would be the 13th National Council, is under way. YIHR documentation, interview with the representative of the Initiative Committee for the establishment of the Vlach National Council, June 2005.

<sup>241</sup> Law on National Minorities, Article 19, Paragraph 10, *see above under 2*

requests of National Councils must also be taken into account when making decisions to delegate these competences<sup>242</sup>.

So far this legal provision has only been implemented in practice by the Assembly of the Autonomous Province of Vojvodina (hereinafter: Vojvodina) which made the decision to delegate to National Councils its founding rights over printed media in the languages of national minorities, as well as the competences to determine traditional names of places in Vojvodina<sup>243</sup>. Traditional names are old names of places in the languages of national minorities and they are written on all town signs at the entrances into multi ethnic places in the Province together with names in the Serbian language<sup>244</sup>. The Provincial Secretariat for Administration, Regulations and National Minorities has determined there is strong resistance to putting up these signs, especially in places where the majority of the population is of Serbian ethnicity.<sup>245</sup>

- **Official Use of Language and Script**

The Law guarantees the members of national minorities the right to official use of their mother tongue and script<sup>246</sup>. According to the Law, a language spoken by at least 15% of the population of a municipality must be introduced into official use<sup>247</sup>. In spite of this, the Municipal Assembly of Priboj rejected three proposals by non-governmental organizations and political parties<sup>248</sup> to introduce the Bosnian language as an official language<sup>249</sup>, although more than 17% of the population of this municipality had stated they spoke this language<sup>250</sup>. Also, there is no possibility to use the Bosnian language in court and administrative proceedings in the Municipality of Priboj, assembly documents are not printed in two languages, and citizens cannot get their personal identification documents in their language<sup>251</sup>.

The situation is not much different in other municipalities in Sandzak<sup>252</sup>. On all town signs in Sandzak towns such as Novi Pazar (with 76% of Bosniak population)<sup>253</sup> or

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<sup>242</sup> *Ibid.* Article 19, Paragraph 11

<sup>243</sup> Decision on Further Regulation of Certain Issues of the Official Use of Language and Script of National Minorities in the Territory of the Autonomous Province of Vojvodina, Official Gazette of the Autonomous Province of Vojvodina number 8/03, dated May 22<sup>nd</sup>, 2003

<sup>244</sup> *Ibid.*

<sup>245</sup> Address of the Secretariat representative in the report from the YIHR forum in Subotica, February 3<sup>rd</sup>, 2005, Youth Initiative for Human Rights, *Implementation of the Framework Convention for the Protection of National Minorities in Eight Multi Ethnic Municipalities and Towns in Serbia*, Belgrade, 2005, p. 89, see also: Helsinki Committee for Human Rights in Serbia, *In Conflict with Ethnic Identity of the State*, Belgrade, 2004, p. 26

<sup>246</sup> Law on National Minorities, Article 11, see above under 2

<sup>247</sup> *Ibid.*, Article 11, Paragraph 2

<sup>248</sup> Committee for the Protection of Human Rights and Humanitarian Activity, Priboj, Party of Democratic Action and Civil Alliance of Serbia, interview with the representatives of non-governmental organizations in Priboj on November 5<sup>th</sup>, 2004, conducted by the YIHR researcher, YIHR documentation.

<sup>249</sup> *Ibid.*

<sup>250</sup> Republic Statistics Institute, *Census of Population, Households and Flats in the Republic of Serbia in 2002*, Belgrade, 2002

<sup>251</sup> Interview with the representatives of non-governmental organizations in Priboj, see above under 248

<sup>252</sup> Interview conducted by the YIHR researcher with the representatives of non-governmental organizations in Novi Pazar and Tutin, November 3<sup>rd</sup> – 4<sup>th</sup>, 2004, YIHR documentation

Prijepolje (31%)<sup>254</sup>, only the Serbian language and Cyrillic script are used, as well as on all plaques with the names of institutions exercising public authorities,<sup>255</sup> which is in contravention of the legal provision stipulating that in the territory of municipalities where at least 15% of the population speaks the language of a national minority, names of institutions exercising public authorities, names of local self government units, settlements, squares and streets, and other toponyms should also be written in the language of this minority in accordance with its tradition and orthography<sup>256</sup>.

In the municipalities of Presevo and Bujanovac with majority Albanian population, plaques with the names of institutions are mostly in one language, except those on municipal authority buildings<sup>257</sup>. Authorities in charge of issuing documents refuse to issue personal identification documents in Albanian explaining this is a technical problem, as they do not have Albanian alphabet installed in their computers<sup>258</sup>.

The extent to which the provisions of this Article are respected is much greater in Vojvodina than in other parts of Serbia. The Law is violated by Belgrade based institutions such as the Army of Serbia and Montenegro, Tax Administration, Geodetic Institute etc, which have their names written in Serbian only<sup>259</sup>. The Provincial Secretariat for Regulations, Administration and National Minorities announced that measures would be taken to sanction the violations of the Law by Republic institutions, but so far, these have had no effect<sup>260</sup>.

- **Education in Mother Tongue**

The Law on National Minorities guarantees the right to education in their mother tongue to members of minority communities<sup>261</sup>. However, many practical examples demonstrate that this right is not entirely respected. For example, the proposals of the Bosniak ethnic community to introduce education in Bosnian were publicly debated for a long time<sup>262</sup>. Former Minister of Education Ljiljana Colic<sup>263</sup> categorically refused to grant this

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<sup>253</sup> Population census, *see above under 250*

<sup>254</sup> *Ibid*

<sup>255</sup> Interview conducted by the YIHR researcher with the representatives of the Bosniak National Council (BNC) in May 2005, YIHR documentation.

<sup>256</sup> Law on National Minorities, Article 11, Paragraph 2, *see above under 2*

<sup>257</sup> Interview conducted by the YIHR researcher with the representatives of non-governmental organizations and political parties in Presevo (Centre for Multi Cultural Education, Party for Democratic Action, Democratic Party, Democratic Party of Albanians, Party for Democratic Progress, etc. ), December 2004, YIHR Documentation

<sup>258</sup> *Ibid*

<sup>259</sup> Address of the Secretariat Representative, *see above under 245*

<sup>260</sup> *Ibid*

<sup>261</sup> Law on National Minorities, Articles 13 - 15, *see above under 2*

<sup>262</sup> M. Niciforovic: *First Letters in Bosnian*, VECERNJE NOVOSTI, September 2<sup>nd</sup>, 2004; *Curriculum in the Ministry of Education*, POLITIKA, September 4<sup>th</sup>, 2004; *Bosnian Language as Elective Course*, DANAS, October 4<sup>th</sup>, 2004; S. Bakracevic: *Bosnian Language in Cyrillic*, POLITKA, October 26<sup>th</sup>, 2004; A. Brkic: *Bosnian Language Does Not Exist*, POLITKA, November 11<sup>th</sup>, 2004; V. Andric: *Bosnian Language – Issue of Linguistics, Not of Essence*, DANAS, November 11<sup>th</sup>, 2004

<sup>263</sup> Ljiljana Colic was Minister of Education from March 3<sup>rd</sup> to September 16<sup>th</sup>, 2004

request<sup>264</sup>. The first step forward was made by the agreement made between the Bosniak National Council and the new Minister of Education and Sports Slobodan Vuksanovic<sup>265</sup> in late 2004<sup>266</sup>. It was agreed to introduce two teaching hours per week of the Bosnian language as an optional subject containing elements of national tradition and culture. Teaching began in the second semester of the academic year 2004/2005<sup>267</sup>. Textbooks for this subject are written by the Bosniak National Council expert team, in accordance with the provision of the Law, which guarantees the participation of National Councils in preparing curricula and textbooks for subjects relating to the languages and culture of national minorities<sup>268</sup>. The representatives of Bosniaks still insist that the Law be fully implemented and that complete tuition in the Bosnian language be allowed<sup>269</sup>.

The Albanian national community is concentrated in the Municipalities of Presevo, Bujanovac and Medvedja, and receives elementary and secondary education in its mother tongue, but there is no higher education at this point<sup>270</sup>. The representatives of Albanian political parties<sup>271</sup> demanded that the opening of a department of the Teacher Training Faculty in Albanian be allowed in Presevo quoting as the basis for this the Law on National Minorities<sup>272</sup>, but the Ministry of Education and Sports rejected this request<sup>273</sup>.

In Vojvodina, the tuition in the Croatian language started in primary and secondary schools in 2003<sup>274</sup>. The problem that arises is the lack of qualified teaching staff, and it should be solved by establishing a chair or departments of teacher training faculties in Croatian. Such a solution is already successfully being applied in the cases of Hungarian, Slovakian and Romanian languages<sup>275</sup>. There are no schools in Roma or Vlach languages, the explanation of the relevant authorities being that there is no standardized orthography for these two languages<sup>276</sup>.

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<sup>264</sup> M. Niciforovic, interview with Ljiljana Colic, *No Bosnian in Schools*, VECERNJE NOVOSTI, September 4<sup>th</sup>, 2004

<sup>265</sup> Slobodan Vuksanovic was appointed Minister of Education on October 15<sup>th</sup>, 2004

<sup>266</sup> Interview with BNC representatives, *see above under 255*

<sup>267</sup> *Bosnian Languages in Schools in Serbia*, B92, December 27<sup>th</sup>, 2004, web site B92: >[http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=12&dd=27&nav\\_id=158787](http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=12&dd=27&nav_id=158787)<, visited on November 8<sup>th</sup>, 2005

<sup>268</sup> Law on National Minorities, Article 13 Paragraph 6, *see above under 2*

<sup>269</sup> Interview with BNC representatives, *see above under 255*

<sup>270</sup> Interview with representatives of non-governmental organizations and political parties in Presevo, *see above under 257*

<sup>271</sup> *Ibid*

<sup>272</sup> Law on National Minorities, Article 14, Paragraph 1, *see above under 2*

<sup>273</sup> Address of the Mayor of Presevo Riza Halimi at the YIHR forum in Presevo, February 10<sup>th</sup>, 2005, in: Youth Initiative for Human Rights: *Implementation of the Framework Convention for the Protection of Minority Rights in Eight Multi Ethnic Municipalities and Towns in Serbia*, Belgrade 2005, page 116

<sup>274</sup> Interview conducted by the YIHR researcher with the representatives of the Croat ethnic community, November 2004, YIHR documentation

<sup>275</sup> *HLC Shadow Report on the Implementation of the Framework Convention for the Protection of National Minorities, Albanians in Serbia*, Chapter III, page 177, Humanitarian Law Centre, Belgrade 2003

<sup>276</sup> Interview the YIHR researcher conducted with Rasid Kurtic, Vice-Chairman of the Roma National Council, May 2005, YIHR Documentation

The Law on National Minorities also stipulates the obligation that teaching materials in Serbian language must contain information on the history, culture and position of national minorities in order to improve inter-ethnic tolerance<sup>277</sup>. In spite of this, minority cultures are not represented in textbooks used in schools, while some of the subjects such as History or the Serbian language and literature, in the opinion of the representatives of National Minority Councils and relevant non-governmental organizations, contain teaching units that present the history and culture of minority communities in Serbia in a biased and non-objective manner<sup>278</sup>. There is an ongoing attempt to overcome this problem by writing a multi-ethnic textbook through the cooperation of the Ministry of Education and Sports and the Bosniak National Council<sup>279</sup>.

### • **Public Information in Mother Tongue**

The right of the members of national minorities to information in their mother tongue is guaranteed by Article 17 of the Law on National Minorities<sup>280</sup>. In practice, this right has not been ensured for all national communities. For example, there are no printed media in Bosnian, Albanian, Roma and Vlach languages<sup>281</sup>. There exist no electronic media in the Vlach language, and there is only radio program in Croatian<sup>282</sup>. The Assembly of Vojvodina delegated its founding rights over printed media in the languages of national minorities to the National Councils<sup>283</sup>. The representatives of the Hungarian and Croatian national minorities proposed a similar solution for electronic media, or at least for broadcasts in the languages of national minorities on RTV Novi Sad<sup>284</sup>. Such a step would eliminate the problem that arises because of the obligation to privatize all local media by 2006, given that due to the lack of interest on the part of investors the expectation is that media with programming broadcast entirely or partially in the languages of national minorities will be closed down<sup>285</sup>.

In Vojvodina, minority communities currently have problems with the management of RTV Novi Sad, which first cancelled the broadcast in the Croatian language entitled *Tragom hrvatskim* (until 2004 this broadcast was entitled *TV divanji*)<sup>286</sup>, and then reduced

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<sup>277</sup> Law on National Minorities, Article 13 Paragraph 7, *see above under 2*

<sup>278</sup> *Human Rights Situation and Recommendations for Their Protection*, Sandzak Committee for the Protection of Human Rights and Freedoms, Novi Pazar, July 2004; Interviews with representatives of National Minority Councils, *see above under 233*

<sup>279</sup> Report from the press conference given by BNC Vice-President Esad Dzudzevic, May 12<sup>th</sup>, 2005 in Media Centre, Belgrade, YIHR Documentation.

<sup>280</sup> Law on National Minorities, Article 17, *see above under 2*

<sup>281</sup> Interviews with representatives of National Minority Councils, *see above under 233*

<sup>282</sup> *Ibid*

<sup>283</sup> Address of the representative of the Secretariat for Administration, Regulations and National Minorities of Vojvodina at the Youth Initiative for Human Rights forum in Subotica, February 3<sup>rd</sup>, 2005, *Implementation of the Framework Convention for the Protection of National Minorities in Eight Multi Ethnic Municipalities and Towns in Serbia*, Belgrade, 2005, page 88

<sup>284</sup> Interviews conducted by YIHR researchers with the representatives of Hungarian and Croatian ethnic communities in Subotica, December 2004, YIHR Documentation

<sup>285</sup> *Ibid*

<sup>286</sup> A. Roknic: *No Sign of 'Trag hrvatski'*, web site of the Independent Association of Journalists of Serbia: ><http://www.nuns.org.yu/srp/dosije/dom/?conid=1619><, visited on November 7<sup>th</sup>, 2005; more on this in the *Implementation of the Law on Broadcasting* chapter of this book

the amount of radio programming in the Hungarian language<sup>287</sup>. Also, according to the representatives of the Slovak National Council, the management of RTV Novi Sad had an argument with this Council because of the attempt to reduce the programming on Slovak culture in Vojvodina<sup>288</sup>. Such steps faced fierce reactions from both the National Councils and the Executive Council of Vojvodina, but not from Radio Television of Serbia head office<sup>289</sup>.

- **Participation in Public Life and Equal Employment Opportunities in the Public Sector**

By investigating the implementation of the Law on National Minorities, the YIHR reached the conclusion that members of national minorities are not equally represented in bodies of public authority in Serbia. In the Parliament, national minorities are represented by only two deputies from Sandzak, who became Members of Parliament as candidates of the Democratic Party<sup>290</sup>. This situation is due to the provision of the Law on the Election of Deputies, according to which the election threshold for entering the Parliament was 5% for all parties, regardless of whether they represent the majority people or one of the minority peoples<sup>291</sup>. This provision was changed by adopting the amendments to the Law on the Election of Deputies, so that there is no longer election threshold for parties of national minorities<sup>292</sup>.

The only representative of national minorities who was the Chairman of one of Parliament committees – Committee for Inter-Ethnic Relations – Esad Dzudzevic, was removed on April 5<sup>th</sup>, 2005<sup>293</sup>. Representatives of all parties except the Democratic Party voted for his removal<sup>294</sup>. There are no ministers in the Government who represent a national minority party, and no members of national minorities are heads of public companies or institutions in Serbia<sup>295</sup>.

Under-representation of members of minority communities also exists in the police and the judiciary. For example in the Municipal Court in Bujanovac, which has majority Albanian population<sup>296</sup>, not one judge speaks Albanian<sup>297</sup>. While this report was being

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<sup>287</sup> *Ibid*

<sup>288</sup> Interview conducted by YIHR researcher with the representatives of the Slovak National Council, May 2005, YIHR Documentation

<sup>289</sup> *No Sign of 'Trag hrvatski', see above under 286*

<sup>290</sup> Election results for deputies of the Assembly of Serbia are accessible on the web site of the Centre for Free Elections and Democracy: >[http://www.cesid.org/rezultati/sr\\_dec\\_2003/index.jsp](http://www.cesid.org/rezultati/sr_dec_2003/index.jsp)<, visited on November 7<sup>th</sup>, 2005

<sup>291</sup> Law on the Election of Deputies, Official Gazette of RS, number 35/00, Article 81

<sup>292</sup> Law on Amendments to the Law on the Election of Deputies, adopted on February 25<sup>th</sup>, 2004, Official Gazette of RS number 18/04, Article 13

<sup>293</sup> *Dzudzevic Denounces Serbia*, B92, April 5<sup>th</sup>, 2005, B92 web site

>[http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=04&dd=05&nav\\_id=165864&nav\\_category=11](http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=04&dd=05&nav_id=165864&nav_category=11)<, visited on November 6<sup>th</sup>, 2005

<sup>294</sup> *Ibid*, The proponent of this removal, Serb Radical Party deputy Milan Veselinovic stated that Dzudzevic 'denounced Serbia' by his work on investigating crimes in Sandzak during the 1990s

<sup>295</sup> Interviews with the representatives of National Minority Councils, *see above under 233*

<sup>296</sup> Population Census, *see above under 250*

finished, on November 15<sup>th</sup> 2005, Supreme Council of Justice recommended Iljaz Mustafi to be the first elected Albanian judge of Municipal Court in Bujanovac.<sup>298</sup>

In the Municipality of Tutin with more than 90% of Bosniak population, more than 80% of police officers are Serbs<sup>299</sup>. In the Municipality of Priboj with one fourth of Bosniak population, there are no Bosniak members of the Municipal Council or directors of public companies<sup>300</sup>.

- **Roma**

The Law on National Minorities recognizes the difficult position of the Roma national minority, and in order to try to resolve this problem it stipulates that the State must adopt measures and legal documents ‘with the aim of improving the position of persons of the Roma national minority.’<sup>301</sup> That singling out of the Roma is not without a reason is supported by information collected by one of the YIHR researchers in late 2004 and early 2005<sup>302</sup>.

According to the 2002 census, only 21.9% of Roma finish primary school, 7.8% finish secondary school, and only 0.3% have advanced or higher education<sup>303</sup>. Almost 80% of pupils in special schools for children with special needs are Roma, which is a consequence of school enrollment discrimination and unadapted tests<sup>304</sup>. The Roma are facing discrimination in public places and employment discrimination, but also racial segregation in education<sup>305</sup>. In Primary School Vuk Karadzic in Nis, more than 80% of pupils are Roma<sup>306</sup>. According to the statements of the Roma from Nis, this is happening because the parents of non-Roma children do not wish to send their children to this school, while other primary schools in Nis refuse to accept Roma children<sup>307</sup>.

A great number of Roma live in non-hygienic settlements that do not provide basic conditions for living such as water, electricity and sewage system<sup>308</sup>. Local authorities in Serbia often pull down these settlements without a ready plan to resettle the population

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<sup>297</sup> Interviews conducted by YIHR researcher with the representatives of non-governmental organizations and political parties in Presevo and Bujanovac, December 2004, YIHR Documentation

<sup>298</sup> *Iljaz Mustafi recommended for judge in Bujanovac*, DANAS, November 17<sup>th</sup>, 2005

<sup>299</sup> Interview with BNC representatives, *see above under 233*

<sup>300</sup> Interview with the representatives of non-governmental organizations in Priboj, *see above under 248*

<sup>301</sup> Law on National Minorities, Article 4 Paragraph 2, *see above under 2*

<sup>302</sup> Youth Initiative for Human Rights, *Implementation of the Framework Convention for the Protection of National Minorities in Eight Multi Ethnic Municipalities and Towns in Serbia*, Belgrade, 2005, pages 47-52

<sup>303</sup> Population Census, *see above under 250*

<sup>304</sup> Interview with Rasid Kurtic, *see above under 279*, on school enrolment discrimination against Roma see more in: Humanitarian Law Centre: *Roma in Serbia*, Belgrade 2003, Chapter 3, pages 117-123

<sup>305</sup> *Roma in Serbia*, Humanitarian Law Centre, Chapter 3, pages 115-160, Belgrade 2003; *HLC Shadow Report*, pages 147-149, *see above under 275*

<sup>306</sup> YIHR Documentation, report from the Nis research, December 2004

<sup>307</sup> *Ibid*

<sup>308</sup> *Roma in Serbia*, *see above under 304*



that lives there<sup>309</sup>. The Roma are denied the rights to education in their mother tongue, official use of language and script, and participation in public authorities<sup>310</sup>.

The Republic of Serbia joined the World Bank and Soros Foundation *Roma Decade* project, which foresees that Central and Eastern European Countries should invest additional funds in integrating the Roma into their societies<sup>311</sup>. Special funds will be established for education, housing and employment<sup>312</sup>. However, the Government has informed the representatives of the Roma National Council that it cannot provide additional funding for this year as funds have not been earmarked by the Law on Budget for 2005<sup>313</sup>.

### ***Conclusions on the Implementation of the Law on National Minorities***

Based on the research of the implementation of the Law on National Minorities, the YIHR has drawn the following inferences:

1. The Law on National Minorities was passed on the Federal level i.e. on the level of the State Union, which caused some of its provisions to be inapplicable. Above all, this refers to the opportunity to protect constitutional rights of minorities, a matter that is supposed to be taken up with the Federal Constitutional Court which no longer exists.
2. National Councils function on the basis of the provisions of the Law on National Minorities. There is no institution on the Republic level responsible for contacts with these bodies and act upon their requests.
3. The competences of National Councils differ depending on the territory in which they operate. National Councils based in Vojvodina have founding rights over printed media in minority languages. This situation is a consequence of the provision of the Law on National Minorities that allows the authorities to decide whether to delegate their competences to National Councils and what those competences will be.
4. The rights of the members of national minorities are at stake in many municipalities in Serbia. The provisions of the Law on National Minorities are violated in the Municipalities of Priboj, Bujanovac, Novi Pazar and many others.

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<sup>309</sup> In this was the City of Belgrade authorities pulled down Roma settlements in Cukaricka Padina and Novi Beograd, Centre for Minority Rights, *Violations of the Rights of Roma in Serbia, Report 2*, Belgrade, 2003, pages 35-36

<sup>310</sup> Interview with Rasid Kurtic, *see above under 276*

<sup>311</sup> *World Roma Day*, B92, April 8<sup>th</sup>, 2005, B92 web site:

>[http://www.B92.net/info/vesti/index.php?yyyy=2005&mm=04&dd=08&nav\\_id=166061](http://www.B92.net/info/vesti/index.php?yyyy=2005&mm=04&dd=08&nav_id=166061)<, visited on November 6<sup>th</sup>, 2005

<sup>312</sup> Official Roma Decade web site: ><http://www.romadecade.org/en/index.php><, visited on November 8<sup>th</sup>, 2005

<sup>313</sup> Interview with Rasid Kurtic, *see above under 276*

5. Insufficient attention is paid to the problems of Roma. Although Serbia joined the Roma Decade Project, no funds from the state budget have been allocated to finance programs that would improve the situation of this national minority.

### ***Recommendations for the Implementation of the Law on National Minorities***

Based on the research of the implementation of the Law on National Minorities and conclusions made, the YIHR adopted the following recommendations:

1. The Republic of Serbia should adopt the Law on National Minorities on the Republic level as soon as possible, thereby defining the duties of Republic authorities and allowing legal protection of minority rights before regular courts.
2. It is necessary to adopt a separate Law on National Councils to regulate the status, position, competences and manner of election of these bodies. Competences in the areas of culture, language preservation, education and information should be legally assigned to National Councils so they do not depend on the willingness of other bodies to delegate these competences to them.
3. The provisions of the Law on National Minorities that guarantee the rights and freedoms of members of national minorities must be respected unreservedly.
4. In order to consistently implement the Law on National Minorities, all violations of this Law must be appropriately sanctioned.

### 3. Implementation of the Law on Cooperation with the ICTY

Law on the Cooperation with the ICTY<sup>314</sup> was adopted in the Parliament of the Federal Republic of Yugoslavia, later State Union in April 2002<sup>315</sup>. This Law defines the procedure according to which the obligations of Serbia and Montenegro prescribed by the UN Security Council Resolution number 827 and the Tribunal Statute will be met<sup>316</sup>. These obligations are to allow investigations to be conducted in the territory of the State Union, deliver documentation requested by the Tribunal or the Prosecutor's Office of the Tribunal, cooperation between the national Prosecutor's Office and that of the Tribunal, as well as the obligation to arrest and transfer persons indicted by the Tribunal<sup>317</sup>.

It is the arrest and transfer of war crime indictees that is the most contentious aspect of cooperation with the Tribunal<sup>318</sup>. Given the fact that the Law on Cooperation with the ICTY leaves this obligation to the bodies of member states<sup>319</sup>, we shall further analyze the implementation of the Law by the authorities of the Republic of Serbia.

From the adoption of the Law until the end of 2003, the cooperation was deficient but nevertheless it existed in some aspects<sup>320</sup>. In early 2004 with the formation of the new government there was a complete standstill in the implementation of the Law on Cooperation with the ICTY<sup>321</sup>. In spite of the strong pressure by US<sup>322</sup> and European Union<sup>323</sup> officials, as well as the demands of the UN Security Council<sup>324</sup> to continue

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<sup>314</sup> Law on the Cooperation with the ICTY, *see above under 1*

<sup>315</sup> Constitutional Charter of the State Community, *see above under 227*

<sup>316</sup> Law on Cooperation with the ICTY, Article 1, *see above under 1*

<sup>317</sup> *Ibid*, Chapters II-V

<sup>318</sup> Other obligations such as the service of documents or freeing witnesses of the obligation to keep state secrets are mostly not contentious any more, see: address of the ICTY President Theodore Meron to the United Nations Security Council on November 23<sup>rd</sup>, 2004, ><http://www.un.org/icty/bhs/frames/latest.htm><, visited on November 6<sup>th</sup>, 2005

<sup>319</sup> Law on Cooperation with the ICTY, Article 18, Paragraph 2, *see above under 1*

<sup>320</sup> I. Jovanovic, *The Work of the International Criminal Tribunal for the Former Yugoslavia, Cooperation with Serbia and Montenegro, War Crime Trials before National Courts 2000-2003*, pages 211-216 in: Association for International Law of Serbia and Montenegro, *Yearbook 2000-2003*, Belgrade, 2004

<sup>321</sup> Address of Theodor Meron to the Security Council, *see above under 321*; address of the Chief Prosecutor of the ICTY Carla del Ponte to the United Nations Security Council on November 23<sup>rd</sup>, 2004, ><http://www.un.org/icty/bhs/frames/latest.htm><, visited on November 6<sup>th</sup>, 2000

<sup>322</sup> USA: *Partial Sanctions for Belgrade*, B92, January 14<sup>th</sup>, 2005, B92 web site:

>[http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=01&dd=14&nav\\_id=159937](http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=01&dd=14&nav_id=159937)<, visited on November 9<sup>th</sup>, 2005; Interview of Pierre - Richard Prosper, US Ambassador for War Crimes Issues: *I Leave Dissatisfied, but Hopeful*, DANAS, October 7<sup>th</sup>, 2005

<sup>323</sup> Solana *Isn't Coming because of the Hague*, B92, January 21<sup>st</sup>, 2005, B92 web site:

>[http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=01&dd=21&nav\\_id=160439](http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=01&dd=21&nav_id=160439)<, visited on November 9<sup>th</sup>, 2005

<sup>324</sup> United Nations Security Council Resolutions: Resolution number 1534, ICTY web site: ><http://www.un.org/icty/bhs/icty/documents/old/res1534.pdf><, visited on November 8<sup>th</sup>, 2005 and resolution no 1503, ICTY web site, ><http://www.un.org/icty/bhs/icty/documents/old/res1503.pdf><, visited on November 8<sup>th</sup>, 2005

cooperation with the Tribunal, the Government insists on the so-called 'two-way cooperation'<sup>325</sup> and voluntary surrender of indictees<sup>326</sup>.

- **Legal Procedure for Arresting and Transferring Indictees to the ICTY**

The procedure for arresting and transferring persons indicted by the Tribunal is regulated in detail by the Law<sup>327</sup>. A confirmed indictment is delivered to the Ministry of Foreign Affairs of the State Union, which then sends it to the competent court<sup>328</sup>. In Serbia, the competent court is the District Court in Belgrade, and in Montenegro this court is the Higher Court in Podgorica<sup>329</sup>. The court has the obligation to inform the Ministry of the actions taken within three days<sup>330</sup>. The court then decides to remand the person in custody or take other actions to ensure the presence of the indictee, and has the obligation to make the decision that conditions have been met for the surrender of this person<sup>331</sup>. This implies determining the identity of the indictee, whether the indictment was confirmed in accordance with the Statute, whether the offence is punishable according to national laws, and whether the offence is under the jurisdiction of the Tribunal<sup>332</sup>. The indictee has the right to appeal the decision of the investigative judge, and the appeal is to be discussed by a three-member panel of the court within three days<sup>333</sup>. The decision made may no longer be appealed<sup>334</sup>, and is delivered to the Ministry of Human and Minority Rights, which makes the decision to transfer the indictee<sup>335</sup>. Law enforcement bodies have the powers to arrest indictees and transfer them. They are obligated to arrest and bring before the investigative judge all persons indicted by the

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<sup>325</sup> The use of the term 'two-way cooperation' by the Government implies a series of concessions that the Tribunal might give, such as provisional pre-trial release of indictees, transfer of cases to national courts etc; see: statement by Zoran Loncar, Minister for State Administration and Local Self Government: *Loncar Expects New Surrenders*, B92, October 2<sup>nd</sup>, 2005, B92 web site:

>[http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=10&dd=02&nav\\_id=177733](http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=10&dd=02&nav_id=177733)<, visited on November 9<sup>th</sup>, 2005; *Loncar: Positive Assessments by Meron and Del Ponte*, BETA, June 13<sup>th</sup>, 2005, web site:

>[http://www.smpj.sv.gov.yu/Srpski/Bilteni/Srpski/b140605\\_s.html](http://www.smpj.sv.gov.yu/Srpski/Bilteni/Srpski/b140605_s.html)<, visited on November 12<sup>th</sup>, 2005; For the Tribunal itself, these concessions are just one part of the entire procedure and do not constitute cooperation. Cooperation can only mean processes directed to providing assistance for the national judiciary for trials of serious breaches of international law, *A View from the Hague, Cooperation is a Mutual Process*, BALKAN, December 26<sup>th</sup>, 2003; There is the opinion that 'two-way cooperation' is just platitude to be used for political purposes; Zivorad Kovacevic, B92, *Hague Pressure on the Government Increases, Two - Way Cooperation is Just Platitude*, December 7<sup>th</sup>, 2004, B92 web site B92:>[http://www.freeb92.org/info/vesti/index.php?yyyy=2004&mm=12&dd=07&nav\\_category=64](http://www.freeb92.org/info/vesti/index.php?yyyy=2004&mm=12&dd=07&nav_category=64)<, visited on November 12<sup>th</sup>, 2005

<sup>326</sup> Speech by the PM – designate of Serbia Vojislav Kostunica, March 2<sup>nd</sup>, 2004, available at the web site of Nova srpska politicka misao magazine: >[www.nspm.org.yu/Hronike/ekspezo\\_VKostunice.htm](http://www.nspm.org.yu/Hronike/ekspezo_VKostunice.htm)<, visited on November 7<sup>th</sup>, 2005

<sup>327</sup> Law on Cooperation with the ICTY, *see above under 1*

<sup>328</sup> *Ibid*, Article 19

<sup>329</sup> *Ibid*, Article 5, Paragraph 1

<sup>330</sup> *Ibid*, Article 6, Paragraph 2

<sup>331</sup> *Ibid*, Article 29, Paragraph 1

<sup>332</sup> *Ibid*, Article 29, Paragraph 2

<sup>333</sup> *Ibid*, Article 30, Paragraph 2

<sup>334</sup> *Ibid*, Article 30, Paragraph 3

<sup>335</sup> *Ibid*, Article 31, Paragraph 1

Tribunal regardless of whether there exists an order by the investigative judge or not<sup>336</sup>. However, Law enforcement bodies so far have not acted in accordance with this legal obligation<sup>337</sup>. Law enforcement bodies did not arrest four army and police generals<sup>338</sup> for whom the warrant was issued both by the District Court in Belgrade in accordance with the order of the Ministry of Foreign Affairs, and the Tribunal<sup>339</sup>.

- **National Council for Cooperation with the ICTY**

The Law provides for the establishing of the National Council of the Federal Republic of Yugoslavia for Cooperation with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter: the National Council)<sup>340</sup>. Rasim Ljajic, Minister for Human and Minority Rights in the Council of Ministers of the State Union of Serbia and Montenegro, was appointed Chairman of the Council on July 16<sup>th</sup>, 2004<sup>341</sup>. Pursuant to the Law, the Council is competent for the cooperation with the ICTY, particularly in the matters of access to archive documentation, witnesses and assistance to the families of the indictees<sup>342</sup>. In view of the fact that the Council decides on requests to free witnesses from the obligation to keep state, military or professional secret, as well as on unclassifying documentation and its delivery to the Tribunal, state officials have often taken the functioning of this body as evidence of cooperation<sup>343</sup>. In 2005 the cooperation with the ICTY was improved in matters under the jurisdiction of the National Council, which was stated in the Council of Europe report on the compliance of Serbia and Montenegro with CoE post-accession obligations<sup>344</sup>.

- **Voluntary Surrender of War Crimes Indictees**

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<sup>336</sup> Law enforcement bodies have the obligation to arrest an indictee pursuant to the order of the investigative judge, but also in the case that the order does not exist, if there is a warrant issued by a domestic court or the Tribunal. As the Tribunal has issued warrants for all persons against whom indictments have been raised and confirmed, law enforcement bodies have the obligation to arrest all these persons, Law on Cooperation with the ICTY, Article 23, *see above under 1*

<sup>337</sup> Statement by the former spokesperson of the District Court in Belgrade Sonja Prostran: *Prostran: MoI Does Not Carry Out Court Orders*, B92, October 27<sup>th</sup>, 2004, B92 web site:

>[http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=10&dd=27&nav\\_id=154374&nav\\_category=11](http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=10&dd=27&nav_id=154374&nav_category=11) <, visited on November 8<sup>th</sup>, 2005

<sup>338</sup> These are Serbia and Montenegro Army Generals Nebojsa Pavkovic and Vladimir Lazarevic, and Police Generals Sreten Lukic and Vlastimir Djordjevic

<sup>339</sup> Statement by Sonja Prostran, *see above under 337*

<sup>340</sup> Law on Cooperation with the ICTY, Article, 7 Paragraph 1, *see above under 1*

<sup>341</sup> *Ljajic Appointed Council Chairman*, B92, July 16<sup>th</sup>, 2004, B92 web site:

>[http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=07&dd=16&nav\\_id=145977](http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=07&dd=16&nav_id=145977)<, visited on November 9<sup>th</sup>, 2005

<sup>342</sup> Law on Cooperation with the ICTY, Article 7, Paragraph 2, *see above under 1*

<sup>343</sup> Statement by Minister for State Administration and Local Self Government in the Government of the Republic of Serbia Zoran Loncar, Belgrade Centre for Human Rights, *Human Rights in Serbia and Montenegro 2004*, Belgrade, 2005, page 426

<sup>344</sup> *Compliance with obligations and commitments and obligations and implementation of the post-accession co-operation program, report eight (March 2005 – June 2005)*, July 13<sup>th</sup>, 2005, Item 40, available at Forum NGO Kraljevo web site:

>[http://www.zamislisrbiju.org/docs/analize/se\\_sr\\_04082005.pdf](http://www.zamislisrbiju.org/docs/analize/se_sr_04082005.pdf)<, visited on November 9<sup>th</sup>, 2005

Since March 2005, when the YIHR started monitoring the implementation of the Law on the Cooperation with the ICTY, nine war crime indictees have surrendered to the court voluntarily. These persons are: Vinko Pandurevic, indicted for genocide and crimes against humanity in Srebrenica;<sup>345</sup> Milorad Trbic, indicted for crimes against humanity in Srebrenica;<sup>346</sup> Mico Stanisic, indicted for crimes against humanity and violations of the laws and customs of war in Bosnia – Herzegovina;<sup>347</sup> Nebojsa Pavkovic, indicted for crimes against humanity and violations of the laws and customs of war in Kosovo;<sup>348</sup> Sreten Lukic, indicted for crimes against humanity and violations of the laws and customs of war in Kosovo;<sup>349</sup> Ljubomir Borovcanin, indicted for complicity in genocide in Srebrenica;<sup>350</sup> Drago Nikolic, indicted for genocide or complicity in genocide in Srebrenica;<sup>351</sup> Vujadin Popovic, indicted for genocide or complicity in genocide<sup>352</sup> and Gojko Jankovic, indicted for crimes against humanity and grave breaches of the Geneva Conventions<sup>353</sup>.

Voluntary surrenders took place in agreement with the Government and were presented as a success of the state leadership in meeting international obligations.<sup>354</sup> Serbian Government Ministers Zoran Stojkovic, Dragan Jovic and Zoran Loncar took part in the negotiations with the indictees. The indictees left for The Hague accompanied by ministers from the Government of the Republic of Serbia and press releases were issued praising their decisions to surrender as acts of patriotism and honour.

General Vladimir Lazarevic, indicted for grave breaches of international humanitarian law was received jointly by the Prime Minister of Serbia Vojislav Kostunica and the head of the Serb Orthodox Church Patriarch Pavle. Speaking about Lazarevic's surrender, the Prime Minister said that:

“The general acted in accordance with the long tradition of the Serb army that our officers fight for the interests of its people and its country till the end.”<sup>355</sup>

Former Minister of Interior in the Government of Republika Srpska Mico Stanisic decided to surrender to the ICTY on March 11<sup>th</sup>, 2005 after talking to Minister for State Administration and Local Self-Government in the Government of the Republic of Serbia Zoran Loncar, who on this occasion said that this was:

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<sup>345</sup> *Overview of ICTY Cases*, ICTY web site: ><http://www.un.org/icty/bhs/frames/cases.htm><, visited on November 1<sup>st</sup>, 2005

<sup>346</sup> *Ibid*

<sup>347</sup> *Ibid*

<sup>348</sup> *Ibid*

<sup>349</sup> *Ibid*

<sup>350</sup> *Ibid*

<sup>351</sup> *Ibid*

<sup>352</sup> *Ibid*

<sup>353</sup> *Ibid*

<sup>354</sup> *Government Ready for all Challenges*, VECERNJE NOVOSTI, April 14<sup>th</sup>, 2005; I. Stojkovic: *Strategy Effects Noticeable*, GLAS JAVNOSTI, May 15<sup>th</sup>, 2005

<sup>355</sup> U. Kandic: *Lazarevic Goes to the Hague*, GLAS JAVNOSTI, January 29<sup>th</sup>, 2005

“A moral and patriotic decision in the best interest of Serbia and Montenegro and Republika Srpska.”<sup>356</sup>

Gojko Jankovic, indicted for crimes against Bosniak population in Foca in 1992, surrendered on March 14<sup>th</sup>, 2005, and the opinion of the Government of the Republic of Serbia was that his decision was:

“Moral, responsible and in the interest of the State Union of Serbia and Montenegro and Republika Srpska.”<sup>357</sup>

Drago Nikolic, indicted for complicity in genocide in Srebrenica in 1995 surrendered after talking to Minister of Justice Zoran Stojkovic. The Government of the Republic of Serbia issued a press release stating that Nikolic had made this decision ‘to help his people, his country and his family’, as well as that the indictee ‘has demonstrated that he wishes to put the interests of the state and people above his personal interests.’<sup>358</sup> Soon after this, Minister Stojkovic also met Vinko Pandurevic, also indicted for genocide and persuaded him to surrender to The Hague.<sup>359</sup> The surrenders of other indictees were also commented in similar press releases by the Government of Serbia as being moral, responsible and patriotic.<sup>360</sup>

### • **Violations of the Law by Authorities in Serbia**

The Government believes that the only right way to cooperate on transferring the indictees to the Tribunal is their voluntary surrender.<sup>361</sup> This position is both against national and international law since the obligation fully to cooperate with the Tribunal was clearly defined as unconditional.<sup>362</sup> The statements given by government representatives also demonstrate that the implementation of the law is perceived as an optional obligation and that the Law may, but does not have to be implemented. Minister for Human and Minority Rights and Chairman of the National Council Rasim Ljajic stated:

“It is better for the indictees to surrender voluntarily, and if that does not happen, there is no other way but for the state to strictly apply the Law on the Cooperation with the Tribunal.”<sup>363</sup>

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<sup>356</sup> D.V: *Mico Stanisic Volunteers*, BLIC, March 11<sup>th</sup>, 2005

<sup>357</sup> Press release by the Government of the Republic of Serbia, March 13<sup>th</sup>, 2005, Government web site: ><http://www.srbija.sr.gov.yu/vesti/vest.php?id=22626><, visited on November 3<sup>rd</sup>, 2005

<sup>358</sup> *Drago Nikolic Leaves Won't Be an Obstacle*, SRPSKI NACIONAL, March 18<sup>th</sup>, 2005

<sup>359</sup> V. Mitric: *I Don't Want to Keep My People Hostage*, VECERNJE NOVOSTI, March 20<sup>th</sup>, 2005

<sup>360</sup> All press releases by the Government of the Republic of Serbia are available at the government web site: ><http://www.srbija.sr.gov.yu/vesti/vest.php><, visited on November 4<sup>th</sup>, 2005

<sup>361</sup> P. Vasiljevic: *Hague Won't Be an Obstacle*, VECERNJE NOVOSTI, April 15<sup>th</sup>, 2005

<sup>362</sup> UN Security Council Resolution number 827 adopted on May 25<sup>th</sup>, 2005, Statute of the International Criminal Tribunal for the Former Yugoslavia, Article 29, available at the ICTY web site:

><http://www.un.org/icty/bhs/icty/documents/old/res827.htm><, visited on November 6<sup>th</sup>, 2005; Law on Cooperation with the ICTY, Article 1, *see above under 1*

<sup>363</sup> *We Will Meet Our Obligations to the Hague*, SRPSKI NACIONAL, March 16<sup>th</sup>, 2005

That this is not an isolated opinion, but the policy of authorities in Serbia and the State Union is supported by the statements of other ministers, and even by the Prime Minister Kostunica himself who said the following in his interview to the *Vecernje novosti* daily:

“We will keep working on voluntary surrenders as this produces good, or it is better to say excellent results.”<sup>364</sup>

Minister of Justice Zoran Stojkovic said in his interview to the *Glas javnosti* daily that:

“The government will not change anything in the Hague cooperation strategy as it has proved to be good and produced visible results.”<sup>365</sup>

At the press conference on April 14<sup>th</sup>, 2005, the Prime Minister even more precisely defined the position on the Law on the Cooperation with the Tribunal. When asked why the police did not act as prescribed by the Law and court orders and arrest persons indicted by the Tribunal, the Prime Minister responded:

“International law is above national law, and the ICTY is above national courts. We respect international law, and the Statute of the Tribunal does not prescribe the manner of transfer of indictees. When choosing between arrests and voluntary surrender, we obviously chose the way that is better both for the indictees and their families, but also for the entire country.”<sup>366</sup>

Article 29, Paragraph 2 of the Statute of the Tribunal clearly states that “states shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

- (a) the identification and location of persons;
- (b) the taking of testimony and the production of evidence;
- (c) the service of documents;
- (d) the arrest or detention of persons;
- (e) the surrender or the transfer of the accused to the International Tribunal.”<sup>367</sup>

The competences of state authorities to act according to the provisions of the Statute are also precisely defined in the Law on Cooperation with the ICTY.<sup>368</sup>

There are seven more persons indicted by the ICTY who are currently at large.<sup>369</sup> Those are: Radovan Karadzic,<sup>370</sup> Ratko Mladic;<sup>371</sup> Vlastimir Djordjevic,<sup>372</sup> Ante Gotovina,<sup>373</sup> Goran Hadzic,<sup>374</sup> <sup>375</sup> Zdravko Tolimir;<sup>376</sup> and Stojan Zupljanin.<sup>377</sup>

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<sup>364</sup> *Government Ready for all Challenges*, VECERNJE NOVOSTI, March 16<sup>th</sup>, 2005

<sup>365</sup> *Strategy Effects Noticeable*, see above under 354

<sup>366</sup> Vasiljevic: *Hague Won't Be an Obstacle*, see above under 361

<sup>367</sup> Statute of the Tribunal, Article 29, see above under 362

<sup>368</sup> Law on Cooperation with the ICTY, Article 2, Paragraph 2, see above under 1

<sup>369</sup> Information on November 12<sup>th</sup>, 2005



## ***Conclusions on the Implementation of the Law on Cooperation with the ICTY***

Based on the research of the implementation of the Law on Cooperation with the ICTY, the YIHR has drawn the following inferences:

1. The transfer of indictees as the most important aspect of cooperation with the ICTY takes place only by way of voluntary surrenders of war crime indictees, which is not in compliance with the Law that, in line with the international obligation of the state, regulates the obligations to transfer the indictees regardless of whether they surrender voluntarily or are at large.
2. The police does not carry out the orders of the District Court in Belgrade that war crime indictees be brought into custody. The police also does not implement the provisions of the Law on the Cooperation with the ICTY requesting immediate arrests of all persons who are on the warrant of that court.
3. In their statements and press releases government officials encourage the opinion held by one part of the public that cooperation with the ICTY takes place only because of the pressure of the international community, completely disregarding the need to establish the rule of law and try the most serious crimes against international humanitarian law.

## ***Recommendations for the Implementation of the Law on Cooperation with the ICTY***

Based on the research of the implementation of the Law on Cooperation with the ICTY and conclusions made, the YIHR adopted the following recommendations:

1. The Government of the Republic of Serbia has the obligation fully to cooperate with the Tribunal as prescribed by international and national regulations, and also in order to establish the rule of law as well as in order for justice to be done.
2. The Ministry of Interior must unconditionally and consistently act upon the orders of national courts, but also upon the warrants of the Tribunal.

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<sup>370</sup> *Overview of ICTY Cases, Case Radovan Karadzic et al.*

<sup>371</sup> *Case Ratko Mladic, ibid.*

<sup>372</sup> *Case Pavkovic, ibid.*

<sup>373</sup> *Case Gotovina, ibid.*

<sup>374</sup> *Case Goran Hadzic, ibid.*

<sup>375</sup> *Case Vasiljevic et al. ibid.*

<sup>376</sup> *Case Tolimir et al. ibid.*

<sup>377</sup> *Case Zupljanin, ibid.*

3. The Government of the Republic of Serbia should inform the public of the facts for which the indictees have been charged by the Tribunal. This would contribute to the process of facing the past and to the recovery of the society in Serbia.
4. The promotion of the policy of voluntary surrender as the only manner for the surrender of indictees has to stop immediately, because this is in contravention of the obligation of the authorities under international and national law.

## 4. Implementation of the Law on Prosecution of War Crimes

In the wars in the territory of the former Yugoslavia during the 1990s, there were numerous grave breaches of international humanitarian law.<sup>378</sup> The first serious steps to prosecute the crimes were taken on May 25<sup>th</sup>, 1993 with the adoption of UN Security Council Resolution 827<sup>379</sup> on the basis of the report of the Secretary General of the United Nations,<sup>380</sup> whereby the ICTY was formed. The Security Council formed this ad hoc international court for the purpose of preventing further crimes and establishing and maintaining peace and stability in the region.<sup>381</sup> Due to limited funds, the ICTY first had to concentrate only on prosecuting two categories of alleged perpetrators: the highest ranking ones and those who were particularly notorious in a certain area or were alleged to be responsible for particularly heinous acts, and on July 23<sup>rd</sup>, 2002 the Security Council adopted the strategy to concentrate on prosecuting highest political and military leaders, thus making investigations and criminal prosecution of a great number of alleged perpetrators of grave breaches of international humanitarian law the exclusive responsibility of national criminal judiciary systems in the former Yugoslavia. This is why the ICTY concentrates its work also on providing assistance to national judiciaries in prosecuting grave breaches of international humanitarian law.<sup>382</sup>

This situation imposed the need to create conditions to prosecute these acts before judicial institutions in Serbia, which led to the adoption of the Law on Prosecution of War Crimes.<sup>383</sup> This Law establishes a complete framework for the prosecution of grave breaches of international humanitarian law, which implies the forming of special state i.e. judicial bodies, determining the scope of their jurisdiction and competences.<sup>384</sup>

The Law stipulates that the following criminal acts be within the jurisdiction of authorities established by this Law:<sup>385</sup>

- crimes against humanity and international laws as defined in Chapter XVI of the Basic Criminal Code;<sup>386</sup>

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<sup>378</sup> *Overview of ICTY Cases, see above under 345*

<sup>379</sup> Resolution number 827, *see above under 362*

<sup>380</sup> Report of the Secretary General of the United Nations in accordance with Paragraph 2 of the Security Council Resolution number 808 (1993), available at the ICTY web site:

> <http://www.un.org/icty/bhs/icty/documents/s25704-b.htm><, visited on November 3<sup>rd</sup>, 2005

<sup>381</sup> Frequently asked question, web site of the ICTY: ><http://www.un.org/icty/bhs/frames/tribunal.htm><, visited on November 4<sup>th</sup>, 2005

<sup>382</sup> *Ibid*

<sup>383</sup> Law on the Prosecution of War Crimes, *see above under 7*

<sup>384</sup> Law on Amendments to the Law on Organization and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes, adopted on December 21<sup>st</sup>, 2004, Official Gazette of RS number 135/4

<sup>385</sup> *Ibid*, Article 2

- grave breaches of the International Humanitarian Law, committed in the territory of the former Yugoslavia since January 1<sup>st</sup>, 1991, as recognized by the Statute of the International Criminal Tribunal for the Former Yugoslavia.<sup>387</sup>

This formulation used in the Law covers all acts against international humanitarian law, thus avoiding facing the problem of defining individual acts, as well as acts the basic forms of which were not part of the Criminal Code.<sup>388</sup> The Law limited the jurisdiction of the established judicial institutions to acts committed in the territory of the former SFRY<sup>389</sup>, while there are no limitations as to the citizenship of the alleged perpetrator or victim.<sup>390</sup>

Special bodies competent for prosecuting grave breaches of international humanitarian law formed by this Law are: War Crimes Prosecutor's Office, War Crimes Chamber of the District Court in Belgrade and War Crimes Investigation Service in the Ministry of Interior of Serbia.<sup>391</sup> A special detention unit was formed in the District Court in Belgrade, as well as a special department for administrative and technical tasks, tasks related to witness and victim protection and facilitating conditions for the implementation of procedural provisions of this Law in the District Court in Belgrade.<sup>392</sup>

- **Mass Graves in Serbia**

In June 2001, the government announced that mass graves were found near Belgrade, in Batajnica, and that there was grounded suspicion that they contained bodies of Albanians killed in 1999 in Kosovo.<sup>393</sup> The first person to publicize this information was the owner of a local weekly in Zajecar – Timocka krimi revija – Dragan Vitomirovic. He indicated that in April 1999 a refrigerator truck with Pec license plates that was full of bodies emerged on the surface of the Danube, but that the competent authorities prevented the publication and dissemination of this information.<sup>394</sup> The Ministry of Interior of Serbia appointed police official Dragan Karleusa to be in charge of the investigation, and at the press conference held on May 24<sup>th</sup>, 2001 he said there was grounded suspicion that the burying of bodies was ordered by Slobodan Milosevic at the meeting attended by Minister

<sup>386</sup> Criminal Code of the Republic of Serbia, Articles 370-393, *see above under 120*

<sup>387</sup> Resolution number 827, Statute of the Tribunal, *see above under 362*

<sup>388</sup> For example, the Criminal Code of Serbia does not mention grave breaches of the 1949 Geneva Conventions as a criminal offence, although the FPRY ratified the four Geneva Conventions as early as April 21<sup>st</sup>, 1950, and the SFRY ratified Additional Protocols I and II on June 11<sup>th</sup>, 1979, while all countries created in the territory of the former Yugoslavia took over these international agreements, see. International Committee of the Red Cross (ICRC) – States Party to the Geneva Conventions and their Additional Protocols, ICRC web site:

<[http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/party\\_gc/\\$File/Conventions%20de%20Geneve%20et%20Protocoles%20additionnels%20ENG.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/party_gc/$File/Conventions%20de%20Geneve%20et%20Protocoles%20additionnels%20ENG.pdf)>, visited on November 5<sup>th</sup>, 2005

<sup>389</sup> Law on Prosecution of War Crimes, Article 3, *see above under 7*

<sup>390</sup> *Ibid*

<sup>391</sup> *Ibid*, Articles 4 -10

<sup>392</sup> *Ibid*, Articles 11 and 12

<sup>393</sup> *Milosevic Ordered the Removal of Crime Traces*, B92, May 25<sup>th</sup>, 2001, web site B92:

>[http://www.b92.net/info/vesti/index.php?yyyy=2001&mm=05&dd=25&nav\\_id=25886](http://www.b92.net/info/vesti/index.php?yyyy=2001&mm=05&dd=25&nav_id=25886)<, visited on November 5<sup>th</sup>, 2005

<sup>394</sup> M.Vasic: *Dead People Travelling...* VREME, June 21<sup>st</sup>, 2001

of Interior Vlado Stojiljkovic, Head of the Ministry of Interior, Public Security Service Vlastimir Djordjevic and Head of the State Security Department Radomir Markovic.<sup>395</sup> According to Karleusa, refrigerator trucks were used to transport the bodies from Kosovo to destinations in Serbia. After the unsuccessful sinking of the bodies in the Danube and Lake Perucac, they were transported to police training grounds and buried.<sup>396</sup> Soon after, graves were discovered in Petrovo Selo,<sup>397</sup> police training ground in Batajnica and on the shore of Lake Perucac.<sup>398</sup>

In June 2001, the District Court in Belgrade began the procedure of exhumation of bodies following the order of the State Prosecutor.<sup>399</sup> These activities are part of pre-criminal procedure and their aim is to identify the bodies using DNA analysis.<sup>400</sup> The procedure is still pending.<sup>401</sup>

The War Crimes Prosecutor's Office took over this case in 2003 and it has been announced that the indictments will be raised at the end of 2005.<sup>402</sup> The first result was the taking in of nine former and current members of Ministry of Interior of Serbia who are suspected of being responsible for killing 48 Albanian civilians in Suva Reka in Kosovo in March 1999, whose bodies were found in the mass grave in Batajnica.<sup>403</sup> Thirty-day custody was ordered for these persons and the investigative procedure is pending.<sup>404</sup>

According to the latest District Court Belgrade press release, so far 834 skeleton remains have so far been found in mass grave in Serbia.<sup>405</sup> 709 bodies in eight pits have been found in mass graves in Batajnica, 77 have been found in two pits at the police training ground in Petrovo Selo, while 48 bodies were discovered on the shore of Lake Perucac.<sup>406</sup>

## • **Publicity of War Crimes Trials**

The possibility to electronically record the trials and broadcast them in the media has drawn the attention of experts.<sup>407</sup> The current solution is based on consequent

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<sup>395</sup> *Milosevic Ordered the Removal of Crime Traces*, B92, May 25<sup>th</sup>, 2001, *see above under 393*

<sup>396</sup> *Ibid*

<sup>397</sup> A. Ciric: *Batajnica Archaeology*, VREME, November 8<sup>th</sup>, 2002

<sup>398</sup> *60 Bodies in the Refrigerator Truck in Artificial Lake Perucac*, B92, July 14<sup>th</sup>, 2001, B92 web site: >[http://www.b92.net/info/vesti/index.php?yyyy=2001&mm=07&dd=14&nav\\_id=27878](http://www.b92.net/info/vesti/index.php?yyyy=2001&mm=07&dd=14&nav_id=27878)<, visited on November 5<sup>th</sup>, 2005

<sup>399</sup> District Court in Belgrade press release, June 7<sup>th</sup>, 2005, District Court web site:

><http://okruznisudbg.org.yu/content/2005/saopstenja/repatrijacija><, visited on November 8<sup>th</sup>, 2005

<sup>400</sup> *Ibid*

<sup>401</sup> *Ibid*

<sup>402</sup> *Batajnica Indictments by the End of Year*, POLITIKA, August 25<sup>th</sup>, 2005

<sup>403</sup> District Court in Belgrade press release, October 27<sup>th</sup>, 2005, District Court web site:

><http://okruznisudbg.org.yu/content/2005/saopstenja/suwareka><, visited on November 8<sup>th</sup>, 2005

<sup>404</sup> *Ibid*

<sup>405</sup> District Court in Belgrade press release, *see above under 399*

<sup>406</sup> *Ibid*

<sup>407</sup> Lj. Smajlovic: *Process TV*, NIN, September 8<sup>th</sup>, 2005; R. Cvjeticanin: *Mein Kampf*, DANAS, September 3<sup>rd</sup> – 4<sup>th</sup>, 2005; A. Nosov: *State Affairs on Television*, DANAS, January 14<sup>th</sup>, 2005, page 14, available at the Humanitarian

implementation of the provisions of the Criminal Procedure Code, which states the following:

“Optical recording may not be conducted at the main hearing except when the President of the Republic Supreme Court allows this for a particular hearing. If recording at the main hearing has been permitted, the panel may decide for justified reasons that certain parts of the main hearing shall not be recorded.”<sup>408</sup>

The YIHR has started the campaign to permit live broadcasts of trials to electronic media. At first, the idea was not supported by representatives of the judiciary who work in special bodies for the prosecution of grave breaches of international humanitarian law.<sup>409</sup> Their main objections are that judges and prosecutors will not be able to do their job well in the presence of cameras; that the safety of persons participating in trials will be jeopardized, as well as that the trial may easily turn into a farce.<sup>410</sup> The opinion that live broadcasts of the trials in The Hague only strengthen citizens’ solidarity with the indictees is often used as an argument.<sup>411</sup>

The YIHR believes that the prosecution of grave breaches of international humanitarian law must be accessible to the public due to its great importance first of all for the victims, but also for entire society in Serbia.<sup>412</sup> In order for these trials fully to serve the cause of asserting justice, it is necessary for facts presented during these trials to be made public. In practice, this means that the statements of victims and witnesses, photos of places where crimes were committed and objects that were used, information about camps, different forms of torture, mass executions, ethnic cleansing and other similar information must be accessible to all citizens of Serbia. This would prevent the publication of false information and the concealment of truth. It should be also borne in mind that facts determined in court trials and evidence presented in court are clear, precise and have great importance for the public.<sup>413</sup>

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Law Centre web site: ><http://www.hlc.org.yu/storage/docs/ee2c624136a25c56b17707c47f716bb.pdf><, visited on November 1<sup>st</sup>, 2005

<sup>408</sup> Criminal Procedure Code, Official Gazette of RS, number 58/04 and 85/05, Article 179 Item 2

<sup>409</sup> YIHR Documentation, Report from the Faculty of Law round table on war crimes trials, May 12<sup>th</sup>, 2005

<sup>410</sup> *Ibid*

<sup>411</sup> *Ibid*

<sup>412</sup> *State Affairs on Television, see above under 407*

<sup>413</sup> To support this claim, one can mention the importance of the footage of the execution of six Bosniak men and boys, first shown on June 1<sup>st</sup>, 2005 by Prosecutor Jeffrey Nice in the ICTY courtroom during the cross examination of the defense witness Obrad Stevanovic at the trial of the former president of Serbia and Yugoslavia Slobodan Milosevic. It is only after this footage that most people in Serbia finally admitted the Serb army had killed the captured Bosniak from Srebrenica. Video footage of the execution of six young men from Srebrenica by the members of the unit *Skorpion* in July, 1995, was made by members of the unit, acquired by the non-governmental organization Humanitarian Law Centre while investigating war crimes, and delivered to the Office of the Prosecutor of the ICTY and the Office of the War Crimes Prosecutor in Belgrade. See: RFE, B. Mihajlovic, interview with the Executive Director of the Humanitarian Law Centre Natasa Kandic: *Officials in Serbia New about the Footage of the Srebrenica Executions*, June 5<sup>th</sup>, 2005, RFE web site: >[http://www.slobodnaevropa.org/article/2005/06/05/9f72066a-0170-4f6e-8c7e-ef1a11e96c2b.html?text\\_only=F](http://www.slobodnaevropa.org/article/2005/06/05/9f72066a-0170-4f6e-8c7e-ef1a11e96c2b.html?text_only=F)<, visited on November 7<sup>th</sup>, 2005; *Footage of the Execution of Muslims on Air*, B92,

One of the basic principles of the right to a fair trial is ensuring the publicity of trials.<sup>414</sup> Although the trials before the War Crimes Chamber are public, and technical conditions in the courthouse allow the presence of a certain number of trial observers, the YIHR is of the opinion that it is necessary to ensure the publicity of trials, which implies the opportunity to follow these trials in the state media. Without the transparency of these trials and coordinated efforts to inform the local communities and the general public, it is not likely that these trials will be perceived positively by society.

Creating the opportunity to use audio and visual tapes from trials and their archiving would be an important source for individuals and institutions concerned with the investigations of breaches of international humanitarian law.

- **War Crimes Chamber Cases**

There are currently two pending cases before the War Crimes Chamber of the District Court in Belgrade, involving persons charged with killing Croat civilians at the Ovcara farm near Vukovar in 1991, with two indictments raised against them.<sup>415</sup> This is the indictment against 17 members of the Territorial Defense units from Vukovar and the volunteer unit Leva Supoderica.<sup>416</sup> The trial began on March 9<sup>th</sup>, 2004.<sup>417</sup> Although the indictment was also supposed to refer to some JNA officers, the War Crimes Prosecutor's Office failed to do this.<sup>418</sup> During the trial, witnesses presented facts indicating that the JNA Guard Brigade had full control of the Territorial Defense units, and that this army delivered custody of prisoners and civilians from the Vukovar hospital to the members of the Territorial Defense and volunteer units.<sup>419</sup>

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June 1<sup>st</sup>, 2005, B92 web site:

>[http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=06&dd=01&nav\\_id=](http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=06&dd=01&nav_id=) visited on November 7<sup>th</sup>, 2005

<sup>414</sup>International Covenant on Civil and Political Rights adopted by Resolution 2200 A (XXI) of the General Assembly of the United Nation, entered into force on March 23<sup>rd</sup>, 1976, Article 41, web site of the Belgrade Centre for Human Rights:

><http://www.bgcentar.org.yu/documents/1.%20Medjunarodni%20pakt%20o%20gradjanskim%20i%20politic-kim%20pravima%20od%2016.%20decembra%201966.%20godine.pdf><, visited on November 5<sup>th</sup>, 2005; European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol Number 11, entered into force on November 1<sup>st</sup>, 1998, basic text adopted on November 4<sup>th</sup>, 1950, Article 4, Council of Europe web site: ><http://www.humanrights.coe.int/aware/GB/publi/materials/3.pdf><, visited on November 5<sup>th</sup>, 2005

<sup>415</sup> Indictment against Mirosljub Vujanovic and others for war crimes against prisoners of war was raised on December 4<sup>th</sup>, 2003, and the indictment against Milan Lanzucanin and others for war crimes against prisoners of war was raised on May 24<sup>th</sup>, 2004. The indictment in the joint trial of all indictees was further specified on September 16<sup>th</sup>, 2005. All indictments are available at the District Court Belgrade web site:

> <http://okruzisudbg.org.yu/content/2005/predmeti/ratnizlocini/Ovcara><, visited on November 5<sup>th</sup>, 2005

<sup>416</sup> *Ibid*

<sup>417</sup> Report of the Regional Team of Non-Governmental Organizations for Monitoring War Crimes Trials before National Courts (Humanitarian Law Centre Belgrade, Centre for Peace, Non-Violence and Human Rights Osijek, and Research and Documentation Centre Sarajevo), April 6<sup>th</sup>, 2005, Humanitarian Law Centre web site: >[http://www.hlc.org.yu/srpski/Nacionalna\\_sudjenja\\_za\\_ratne\\_zlocine/Srbija/index.php?file=1196.html](http://www.hlc.org.yu/srpski/Nacionalna_sudjenja_za_ratne_zlocine/Srbija/index.php?file=1196.html)<, visited on November 6<sup>th</sup>, 2005

<sup>418</sup> Dragoljub Todorovic: *Sjivancanin: Don't Bother Me*, DANAS, December 24<sup>th</sup>, 2004, *see also above under 417*

<sup>419</sup> YIHR Documentation, Report of YIHR researcher from the Ovcara crime trial, April 2005

The Regional team of the non-governmental organizations Humanitarian Law Centre from Belgrade, Centre for Peace, Non-Violence and Human Rights from Osijek and Research and Documentation Centre from Sarajevo, who also monitor war crimes trials, stated the following in their press release of April 6<sup>th</sup>:

“Based on the witness statements and their answers to questions posed by the presiding judge of the Trial Chamber, by the Prosecutor, by the attorney of the plaintiffs, and by the defense attorneys, it has been established that in the course of the duration of the conflict in the Vukovar area, the TD and Leva Supoderica units were under the command of the JNA Guard Brigade. It has also been established that the commander of the Guard Brigade, colonel Mile Mrksic, made the decision to deliver custody of those Croatian prisoners from the hospital, who stayed behind after the wounded prisoners and the medical personnel were separated, to the TO unit from Vukovar. That decision was not withdrawn, and no measures to protect the prisoners were undertaken after colonel Mile Mrksic had been informed that the lives of prisoners on the “Ovcara” farm were in danger. Witnesses, officers and members of the military police of the 80th Motor Brigade said in their testimonies that the military police had been in a position to stop the physical harassment of the prisoners and maintain order on the “Ovcara” farm, when the order came for them to withdraw from the farm.”<sup>420</sup>

The YIHR warns that neglecting the responsibility of JNA officers is a tendency in the work of the national Prosecutor’s Office. In the Zvornik case,<sup>421</sup> the indictment was raised against seven persons for murders and forced deportation of Bosniak population from the territory of the Municipality of Zvornik in May and June 1992.<sup>422</sup> The victims of this crime were transported to Hungary across the territory of Serbia.<sup>423</sup> All seven indictees were military or political leaders of the Municipality of Zvornik at the time.<sup>424</sup> Even though it does not seem possible that the civilians were transported across the territory of Serbia without the complicity of the then Republic authorities, the Prosecutor’s Office did not take into account this aspect.

The practice of prosecutors to deny the possibility of the involvement of the official authorities of Serbia in armed conflicts in Croatia and Bosnia-Herzegovina stretches to other cases. A typical example of this is the trial for kidnapping and murder of civilians

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<sup>420</sup> Press release of the Regional Team of Non-Governmental Organizations for Monitoring War Crimes Trials before National Courts, April 6<sup>th</sup>, 2005, Humanitarian Law Centre web site:

>[http://www.hlc.org.yu/srpski/Nacionalna\\_sudjenja\\_za\\_ratne\\_zlocine/Srbija/index.php?file=1133.html](http://www.hlc.org.yu/srpski/Nacionalna_sudjenja_za_ratne_zlocine/Srbija/index.php?file=1133.html)<, visited on November 6<sup>th</sup>, 2005

<sup>421</sup> Indictment of the Prosecutor’s Office for War Crimes against Grujic Branko and others for war crimes against civilian population raised on August 12<sup>th</sup>, 2005, web site of the District Court in Belgrade:

><http://okruznisudbg.org.yu/content/2005/zvornik><, visited on November 6<sup>th</sup>, 2005

<sup>422</sup> *Ibid*

<sup>423</sup> In his VREME magazine article on the indictment, journalist Teofil Pancic questions the completeness of the indictment, which he expressed in the witty remark that he had never heard of a border crossing between Bosnia and Hungary, see: *Bosnians with Czardas Legs*, VREME, August 18<sup>th</sup>, 2005

<sup>424</sup> Zvornik case indictment, *see above under 421*



from Sjeverin on October 22<sup>nd</sup>, 1992,<sup>425</sup> during which several witnesses presented facts on the involvements of the commanders of the Visegrad, Gorazde and Rudo Brigades of the Republika Srpska Army, now officers of the Army of Serbia and Montenegro<sup>426</sup>, who have never been subject to criminal proceedings. A similar example is the trial for kidnapping Bosniak civilians from a train in Strpci station on February 27<sup>th</sup>, 1993.<sup>427</sup> Regardless of abundant evidence that the highest leadership of Serbia and the Federal Republic of Yugoslavia knew the kidnapping was being planned,<sup>428</sup> the Prosecutor's Offices of Serbia and Montenegro never dared institute the investigation and determine the entire truth about this event.<sup>429</sup>

## ***Conclusions on the Implementation of the Law on Prosecution of War Crimes***

Based on the research of the implementation of the Law on Prosecution of War Crimes, the YIHR has drawn the following inferences:

1. War Crimes Prosecutor's Office raises indictments against low ranked members of military units and disregards evidence of the responsibility of officers with higher ranks.
2. War Crimes Prosecutor's Office does not demonstrate enough efficiency when it comes to crimes that the Army of Yugoslavia or the police of the Republic of Serbia are suspected of being responsible for. Pre-criminal procedure in the case of mass graves has lasted since June 2001. In October 2005, nine suspects were taken in for the murder of 48 Albanian civilians in Suva Reka, whose bodies were found in the mass grave in Batajnica, and this has been the only result of this action so far.

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<sup>425</sup> Trial for war crimes against civilian population pursuant to the indictment of the District Prosecutor's Office in Belgrade against Milan Lukic and others, raised on October 17<sup>th</sup>, 2002. The first instance court sentenced Milan Lukic, Dragutin Dragicevic and Oliver Krsmanovic to 20 years, and Djordje Sevic to 15 years imprisonment by its verdict dated July 15<sup>th</sup>, 2005. All data available at the web site of the District Court in Belgrade: ><http://okruznisudbg.org.yu/content/2005/predmeti/prvostepenokriv/sjeverin>< visited on November 6<sup>th</sup>, 2005

<sup>426</sup> Humanitarian Law Centre: Analysis of War Crimes Trials: the Sjeverin Case, May 16<sup>th</sup>, 2003 HLC web site: >[http://www.hlc.org.yu/srpski/Nacionalna\\_sudjenja\\_za\\_ratne\\_zlocine/Srbija/index.php?file=42.html](http://www.hlc.org.yu/srpski/Nacionalna_sudjenja_za_ratne_zlocine/Srbija/index.php?file=42.html)<, visited on November 7<sup>th</sup>, 2005

<sup>427</sup> Trial of Nebojsa Ranisavljevic for war crimes against civilian population at Higher Court in Bijelo Polje, Montenegro, pursuant to the indictment raised on March 14<sup>th</sup>, 1997. Nebojsa Ranisavljevic was sentenced to 15 years imprisonment by the verdict dated September 9<sup>th</sup>, 2002. All data taken from: *Analysis of the Trial for the Strpci Crime*, Humanitarian Law Centre, September 17<sup>th</sup>, 2002, HLC web site:

>[http://www.hlc.org.yu/srpski/Nacionalna\\_sudjenja\\_za\\_ratne\\_zlocine/Crna\\_Gora/index.php?file=75.html](http://www.hlc.org.yu/srpski/Nacionalna_sudjenja_za_ratne_zlocine/Crna_Gora/index.php?file=75.html)<, visited on November 7<sup>th</sup>, 2005

<sup>428</sup> *Ibid*

<sup>429</sup> More on these two cases: Dragoljub Todorovic. *Is There a Crime if It Happened*, DANAS, June 11<sup>th</sup>, 2004; Jovan Nivic: *It Is a Long Way to Justice*, DANAS, February 25<sup>th</sup>, 2005

3. War crime trials are not entirely transparent, which makes it impossible for the truth established in court and the testimonies of victims and witnesses to be accessible to a greater number of people.

### ***Recommendations for the Implementation of the Law on Prosecution of War Crimes***

Based on the research of the implementation of the Law on Prosecution of War Crimes and conclusions made, the YIHR adopted the following recommendations:

1. War Crimes Prosecutor's Office is obligated to conduct investigations in a professional and unbiased manner irrespective of the position that the alleged perpetrators occupy or occupied in government institutions, and of the ethnicity of the victims.
2. It is necessary for trials to be as efficient as possible. It is unacceptable for the investigation on mass graves in Serbia to take more than four years.
3. Government of the Republic of Serbia as the authorized proponent should initiate the change of the Law on Prosecution of War Crimes to allow electronic recording and broadcasting of tapes in the media. This would provide the necessary transparency of trials, and citizens would have the opportunity to hear directly the testimonies of victims and witnesses about these crimes and the role of government institutions in the crimes.

## 5. Implementation of the Law on Assumption of Jurisdiction

The Law on Assumption of Jurisdiction was adopted in late 2004, and it came into force on January 1<sup>st</sup>, 2005.<sup>430</sup> The Constitutional Charter establishing the State Union of Serbia and Montenegro<sup>431</sup> provides for the cessation of functioning of military judiciary and the transfer of its competences to regular courts in member republics. Although the Law on the Implementation of the Constitutional Charter of the State Union of Serbia and Montenegro stipulates that these laws must be adopted within six months<sup>432</sup>, the Republic of Serbia waited for the adoption for almost two years.<sup>433</sup>

This Law regulates the transfer of jurisdiction from military courts, military prosecutor's offices and the Military Attorney's Office to regular judicial institutions in the Republic of Serbia.<sup>434</sup> It stipulates that the District Court in Belgrade is competent for first instance trials for the areas of jurisdiction of District Courts in Valjevo, Zajecar, Negotin, Pozarevac, Smederevo, Uzice and Sabac; the District Court in Novi Sad for the areas of jurisdiction of District Courts in Zrenjanin, Pancevo, Sombor, Sremska Mitrovica and Subotica, and the District Court in Nis for the areas of jurisdiction of District Courts in Vranje, Gnjilane, Jagodina, Kosovska Mitrovica, Kragujevac, Krusevac, Kraljevo, Leskovac, Novi Pazar, Pec, Pirot, Prizren, Pristina, Prokuplje and Cacak.<sup>435</sup>

Special military departments are established in district courts.<sup>436</sup> The Supreme Court of Serbia is competent for second instance, i.e. appellate proceedings, and a special military department is established within this court.<sup>437</sup>

The jurisdiction of military prosecutor's offices is assumed by public prosecutor's offices<sup>438</sup>, so that special military departments are established in District Prosecutor's Offices in Belgrade, Novi Sad and Nis, and the Military Department of the Republic Public Prosecutor's Office is established within the Republic Public Prosecutor's Office.<sup>439</sup>

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<sup>430</sup> Law on the Assumption of Jurisdiction, *see above under 8*

<sup>431</sup> Constitutional Charter of the State Union *see above under 227*

<sup>432</sup> Law on the Implementation of the Constitutional Charter, *see above under 231*

<sup>433</sup> Law on the Implementation of the Constitutional Charter came into effect on February 12<sup>th</sup>, 2003, and the Law on the Assumption of Jurisdiction was adopted on December 24<sup>th</sup>, 2004

<sup>434</sup> Law on the Assumption of Jurisdiction, Article 1, *see above under 8*

<sup>435</sup> *Ibid*, Article 3

<sup>436</sup> *Ibid*, Article 4: 'For trials for criminal offences from Article 3 of this Law, court departments as special court departments shall be established in the District Courts in Belgrade, Novi Sad and Nis as defined by Article 36 of the Law on the Organization of Courts.'

<sup>437</sup> *Ibid*, Article 3, Paragraph 3

<sup>438</sup> *Ibid*, Article 5

<sup>439</sup> *Ibid*, Article 6

It has also been stipulated that the Military Attorney's Office is to transfer its jurisdiction to the Republic Public Attorney's Office.<sup>440</sup>

Military detention units are established within the District Prisons in Belgrade, Novi Sad and Nis<sup>441</sup>, and a military department is established in the Penal Correctional Facility in Nis.<sup>442</sup>

The interest of the public in these institutions increased after a series of unresolved murders in the facilities of the Army of Serbia and Montenegro.<sup>443</sup> However, military departments only started working in the spring of 2005.<sup>444</sup>

### • **Implementation of the Law and Examples of Cases Initiated**

The most contentious issue in relation to this Law is the staffing composition of military departments. The Government of the Republic of Serbia was of the opinion that only civilians or the staff from military judicial institutions, if they are demobilized, can work in these departments.<sup>445</sup> The Army representatives were in favor of the solution according to which judges and prosecutors would have the status of military personnel assigned to work in other governmental institutions.<sup>446</sup> This position indicates that the Army of Serbia and Montenegro was not entirely willing to transfer the jurisdiction of military courts, prosecutor's offices and the Military Attorney's Office to civilian institutions. There is no single provision in the Law that precisely defines the requirements for future appointments of officials to civilian institutions that will work on military matters. The Law indicates that the provisions of the Law on Organization of Courts<sup>447</sup>, the Law on Judges<sup>448</sup> and the Law on Public Prosecutor's Office<sup>449</sup> shall be applicable when appointing the officials to work in these institutions.<sup>450</sup>

As this is a peculiar kind of transfer that entails the taking over of cases from the military judiciary, the YIHR believes it was necessary specifically to define conditions under which a member of military judiciary may be transferred to civilian judiciary, as this would thwart the appointment of persons who may have violated human rights to civilian judicial institutions.

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<sup>440</sup> *Ibid.*, Article 7

<sup>441</sup> *Ibid.*, Article 8

<sup>442</sup> *Ibid.*, Article 9: 'A special military department shall be established within the penal correctional facility for serving of prison sentences of convicted servicemen retaining their military status after conviction as prescribed by the law.'

<sup>443</sup> The case of the soldiers Dragan Jakovljevic and Drazen Milovanovic who were killed in the Topcider barracks in Belgrade on October 5<sup>th</sup>, 2004 generated the most intensive public attention. Besides these two murders, another 13 soldiers were killed in the Army of Serbia and Montenegro in 2004 and 2005, see: *Murders of Soldiers Happen More and More Often*, BETA (published in REPUBLIKA newspaper on), January 1<sup>st</sup>, 2004

<sup>444</sup> A. Roknic: *Transfer of around 11000 Military Cases Begins*, DANAS, January 17<sup>th</sup>, 2005

<sup>445</sup> M. Ilic: *Civilians to Prosecute Soldiers*, BLIC, October 16<sup>th</sup>, 2004

<sup>446</sup> *Ibid*

<sup>447</sup> Law on Organization of Courts, adopted on November 5<sup>th</sup>, 2001, Official Gazette of RS, number 63/01

<sup>448</sup> Law on Judges, adopted on November 6<sup>th</sup>, 2001, Official Gazette of RS, number 63/01

<sup>449</sup> Law on the Public Prosecutor's Office, adopted on April 22<sup>nd</sup>, 2004, Official Gazette of RS, number 44/04

<sup>450</sup> Law on the Assumption of Jurisdiction, Article 10, *see above under 8*

If one takes into account the fact that the Law on the Army of Yugoslavia<sup>451</sup> stipulates that the position of a person in the Army of Yugoslavia depend on the evaluation by his or her superiors, then the independence of Military Court judges in the past is brought into question. The law prescribes that a professional soldier will lose his job if his performance is twice negatively evaluated, and that a military judge will be relieved of his duty if his performance is twice negatively evaluated. Judges' performance is evaluated by the court president, and that of the court president is evaluated by military officers from outside the military judiciary.<sup>452</sup>

In the past military courts in Serbia worked as non-transparent institutions the actions of which remained unknown even to experts.<sup>453</sup> As to information available to the general public, the most illustrative case is the first war crimes trial before the Military Court in Nis to which the Humanitarian Law Centre had factual objections.<sup>454</sup> During this trial the court did not determine the names of the victims, but it seriously brought into question the fairness of the trial because observers had the impression that judges were on the side of the defendants as they pronounced very mild sanctions.<sup>455</sup> In addition to a great number of desertion trials during the armed conflict, the ability of military judges to continue serving in judicial positions is brought into question due to the work of these courts during the armed conflict in Kosovo. The public is aware of two typical cases: the arrest and espionage trial of the journalist Miroslav Filipovic<sup>456</sup> for publishing an article claiming that members of the Army of Yugoslavia committed crimes in Kosovo, and the case of the members of the 'terrorist' organization OSE who were sentenced for the assassination attempt against the former Yugoslav President Slobodan Milosevic and Head of the General Staff Nebojsa Pavkovic.<sup>457</sup> After his release from prison, Filipovic publicly testified about how military authorities treated Albanians, who were a special target for the military judiciary at the time.<sup>458</sup>

The assumption of jurisdiction of military courts, prosecutor's offices and the Military Attorney's Office took place as prescribed by the Law. The Military Department of the District Court in Belgrade consists of five District Court judges who will be working on military cases in addition to their regular cases. Judge Milan Birman was appointed Head

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<sup>451</sup> Law on the Army of Yugoslavia, Article 107, Official Gazette of FRY, number 37/02; Official Gazette of Serbia and Montenegro number 7/05 and 44/05

<sup>452</sup> *Human Rights in Yugoslavia, 2002 Report*, Belgrade Centre for Human Rights, page 471, web site of BG Centre: ><http://www.bgcentar.org.yu/documents/2002ljp.pdf><, visited on November 13<sup>th</sup>, 2005

<sup>453</sup> Results of the research conducted by the YIHR demonstrate that there is very little information on cases tried by the military judiciary that is accessible to the public.

<sup>454</sup> Remarks on the Nis Trial for War Crimes against Civilians, Humanitarian Law Centre, October 14<sup>th</sup>, 2002, available at HLC web site:

>[http://www.hlc.org.yu/srpski/Nacionalna\\_sudjenja\\_za\\_ratne\\_zlocine/Srbija/index.php?file=67.html](http://www.hlc.org.yu/srpski/Nacionalna_sudjenja_za_ratne_zlocine/Srbija/index.php?file=67.html)<, visited on November 13<sup>th</sup>, 2005

<sup>455</sup> *Ibid*

<sup>456</sup> Miroslav Filipovic was sentenced to seven years imprisonment for predicate offence of espionage and dissemination of false information. The Military Court in Nis decided that Filipovic gathered information for foreign intelligence services. Part of his trial was closed for the public. Case history accessible at the B92 web site: ><http://www.freeb92.net/mediji/filipovic-hronumberphtml><, visited on November 12<sup>th</sup>, 2005

<sup>457</sup> Z. Dizdarevic: Interview with Miroslav Filipovic, *You Don't Release a Spy*, BH DANI, December 15<sup>th</sup>, 2000

<sup>458</sup> *Ibid*

of the Special Department of the District Court in Belgrade, Judges Bojan Masic and Biljana Sinanovic were appointed presiding judges of the panels, and investigation was assigned to Judges Dragan Lazarevic and Nebojsa Zivkovic.<sup>459</sup> At the beginning of March 2005, former Military Court Judges Vuk Tufegdžic and Novica Mihajlovic were appointed investigative judges of the Special Military Department of the District Court in Belgrade.<sup>460</sup> At the same time, Milan Birman was also appointed presiding judge of one of the three Military Department panels, while Vladimir Vucinic and Dragan Mirkovic, former judges of the First Municipal Court in Belgrade, were appointed presiding judges of the other two panels instead of Biljana Sinanovic and Bojan Masic.<sup>461</sup> On March 25<sup>th</sup>, 2005 Judge Birman gave the statement in which he said that up to that moment the Military Department of the District Court in Belgrade had received 158 indictments, 469 pending investigation cases, 856 cases which had been adjourned, 523 cases which were in the enforcement phase and had been closed by final court decisions, as well as 650 cases which were archived. He then added that the beginning of the first trials depended on the dynamics of the transfer of cases to the prosecutor, but that investigations were being carried out daily.<sup>462</sup>

It is important to say that six prosecutors were appointed to the Military Department of the District Prosecutor's Office, and they took over 2,242 cases from the former Military Prosecutor's Office as well as another 627 cases from the Military Department of the District Court in Belgrade.<sup>463</sup>

Seventeen trials of military cases were scheduled to take place before the Special Military Department of the District Court in Belgrade at the beginning of October 2005.<sup>464</sup> Considering the total number of military related cases, it seems that the number of cases that the District Court in Belgrade took over was rationalized to a certain extent. A great number of decisions to waive prosecution were made, mostly in draft dodging cases before 2000.<sup>465</sup> According to the estimate of Djordje Trifunovic, who was Military Court President before the transfer of jurisdiction, the civilian judiciary was supposed to take over around 11,000 cases which were under the jurisdiction of military courts.<sup>466</sup>

Head of the Special Military Department of the District Court in Belgrade Judge Milan Birman recently requested to be relieved of his duty.<sup>467</sup> After this Birman personally informed the President of the District Court Sinisa Vazic of his decision, and he accepted

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<sup>459</sup> J. Jakovljevic: *Deserters in Civilian Court*, DNEVNIK, January 15<sup>th</sup>, 2005

<sup>460</sup> A. Savic: *Military Trials in May*, BLIC, March 25<sup>th</sup>, 2005

<sup>461</sup> *Ibid*

<sup>462</sup> *Ibid*

<sup>463</sup> K. Preradovic: *Released without Court Protection*, BLIC, April 18<sup>th</sup>, 2005

<sup>464</sup> *Deserters in Civilian Court*, see above under 459

<sup>465</sup> *Ibid*

<sup>466</sup> *Transfer of around 11000 Military Cases Begins*, see above under 444

<sup>467</sup> Statement by Ivana Ramic, spokesperson of the District Court in Belgrade, given to YIHR researcher on November 9<sup>th</sup>, 2005. Notes of this conversation can be found in the YIHR Documentation

the request.<sup>468</sup> A new president of the Special Military Department has not yet been appointed at the time of the completion of this report.<sup>469</sup>

Special Military Department of the District Court in Novi Sad pronounced five decisions in July 2005.<sup>470</sup>

Among the military cases, the case of soldiers who were killed in unclarified circumstances in the Topcider barracks in Belgrade on October 5<sup>th</sup>, 2004, and the Perisic case generated the most intensive media attention.<sup>471</sup>

## Topcider Case

Dragan Jakovljevic and Drazen Milovanovic, young men serving military service, were killed in the Topcider barracks in Belgrade on October 5<sup>th</sup>, 2004 while carrying out their duty as guards.<sup>472</sup> Military investigative bodies headed by Captain Vuk Tufegdzcic said after the investigation that the soldiers killed each other.<sup>473</sup> The Serbian public did not accept this explanation and there was mounting public and media pressure to have the case investigated by an independent commission.<sup>474</sup> On October 13<sup>th</sup>, the Supreme Defense Council formed a state commission to investigate the circumstances of the death of the soldiers in Topcider.<sup>475</sup> The chair of the Commission was lawyer Bozo Prelevic, and Minister of Interior Dragan Jovic, Head of the Security and Information Service Rade Bulatovic, lawyers of the soldiers' families and experts in ballistics, forensic medicine and other areas participated in its work.<sup>476</sup> In mid-December the Commission explicitly concluded that the soldiers had been killed by a third person or persons, but that in any case they had not killed each other.<sup>477</sup> Faced with conflicting findings of the two investigations, the Supreme Defense Council decided not to take further measures and

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<sup>468</sup> *Ibid*

<sup>469</sup> *Ibid*

<sup>470</sup> Srdjan Nikolic and Stevan Stojkov both received one-year conditional sentence for failure to respond to recruitment call-up and evasion of military service, Danko Adamovic and Zeljko Vretenar received one-year prison sentence for the same criminal offence. Norbert Fila from Horgos was sentenced to three months prison sentence for deserting the Army of Serbia and Montenegro, see: *Prison Sentence for Draft Dodging*, Radio 021, July 26<sup>th</sup>, 2005, Global Report web site:

> <http://news.global-report.com/a.php?c=gg&a=1435915&rc=us><, visited on November 6<sup>th</sup>, 2005

<sup>471</sup> R.G: *Underground Town near Uzicka*, GLAS JAVNOSTI, October 23<sup>rd</sup>, 2004; DJ.O: *Cover-up*, KURIR, May 10<sup>th</sup>, 2005

<sup>472</sup> *They Gunned Down Each Other*, BLIC, October 7<sup>th</sup>, 2004

<sup>473</sup> M. Babovic: *Key Witness Escapes*, VECERNJE NOVOSTI, August 11<sup>th</sup>, 2005

<sup>474</sup> *New Investigation on Guardsmen's Death*, BLIC, February 19<sup>th</sup>, 2005

<sup>475</sup> Press release by the then Minister of Defense of Serbia and Montenegro Prvoslav Davinic, on the formation of the commission, Ministry of Defense web site:

>[http://www.mod.gov.yu/arhiva/ministar/2004/aktivnosti\\_ministra\\_oktobar2004.htm](http://www.mod.gov.yu/arhiva/ministar/2004/aktivnosti_ministra_oktobar2004.htm)<, visited on November 6<sup>th</sup>, 2005

<sup>476</sup> *Politicians to Discuss the Report Tomorrow*, B92, November 30<sup>th</sup>, 2004, B92 web site:

>[http://www.b92.net/info/vesti/u\\_fokusu.php?id=2&start=45&nav\\_id=156930](http://www.b92.net/info/vesti/u_fokusu.php?id=2&start=45&nav_id=156930)<, visited on November 9<sup>th</sup>, 2005

<sup>477</sup> R. Femic, *EXPERTS: Soldiers Killed by a Third Person*, DANAS, December 15<sup>th</sup>, 2005

leave the case to civilian courts.<sup>478</sup> The case is currently in the pre-criminal phase in the Military Department of the District Court in Belgrade.<sup>479</sup> This case also raised many issues of the possible involvement of the Army of Serbia and Montenegro in hiding persons indicted for war crimes by the ICTY. Photos of General Ratko Mladic in front of the Topcider barracks in 2002 were published, as well as the information that his former bodyguard Branislav Puhalo works for the Army.<sup>480</sup> Some political party representatives claimed that people protecting the former commander of the Army of Republika Srpska Ratko Mladic are behind this murder.<sup>481</sup> This was also claimed by the former non-commissioned officer of the Army of Serbia and Montenegro Miroslav Petrovic in his interview for the Belgrade daily Danas on April 11<sup>th</sup>, 2005.<sup>482</sup> Considering all of this, it seems that the Topcider case will be the first big test for the work of the Military Department of the District Court in Belgrade.

## Perisic Case

In mid-November 2005 the Non-Trial Panel of the District Court in Belgrade made the decision to close the case against Momcilo Perisic, Miodrag Sekulic and Vladan Vljakovic<sup>483</sup> by applying the provision of the Law on Cooperation with the ICTY<sup>484</sup> and the request of the Prosecutor's Office to join the cases. In late 2002, General Momcilo Perisic<sup>485</sup> was indicted for espionage because he, according to the indictment, delivered classified military information to John David Neighbour, official of the American Embassy in Belgrade.<sup>486</sup> Former army officers Miodrag Sekulic and Vladan Vljakovic

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<sup>478</sup> *Topcider Case Goes to the Prosecutor's Office*, B92, May 12<sup>th</sup>, 2005, B92 web site:

>[http://www.b92.net/info/vesti/u\\_fokusu.php?id=2&start=0&nav\\_id=168334](http://www.b92.net/info/vesti/u_fokusu.php?id=2&start=0&nav_id=168334)<, visited on November 9<sup>th</sup>, 2005

<sup>479</sup> *Topcider Case*, Press releases and news from the District Court in Belgrade, web site of the District Court in Belgrade:

><http://okruznisudbg.org.yu/content/2005/saopstenja/predmettopcider/view?searchterm=Topcider%20OR%20Топчидер><, visited on November 9<sup>th</sup>, 2005

<sup>480</sup> Broadcast *Insider*, B92, January 31<sup>st</sup>, 2005, B92 web site:

>[http://www.b92.net/info/emisije/insajder.php?nav\\_id=161226&yyyy=2005&mm=01](http://www.b92.net/info/emisije/insajder.php?nav_id=161226&yyyy=2005&mm=01)<, visited on November 10<sup>th</sup>, 2005

<sup>481</sup> Statement by Danica Draskovic, published in the article *Investigations, Politicians and Generals*, November 14<sup>th</sup>, 2004, B92, November 13<sup>th</sup>, 2004, B92 web site:

[http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=11&ddd=14&nav\\_id=155719](http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=11&ddd=14&nav_id=155719), visited on November 10<sup>th</sup>, 2005

<sup>482</sup> R.D: *Ratko Mladic's Living Flesh*, DANAS, April 11<sup>th</sup>, 2005

<sup>483</sup> Press release of the District Court in Belgrade, November 11<sup>th</sup>, 2005, District Court web site:

><http://okruznisudbg.org.yu/content/2005/saopstenja/perisic><, visited on November 12<sup>th</sup>, 2005

<sup>484</sup> Law on the Cooperation with the ICTY, Article 15 Paragraph 2 prescribes that a case before a national court shall be adjourned until the completion of the case before ICTY if the criminal offence in question is one under the jurisdiction of ICTY

<sup>485</sup> General Momcilo Perisic was also indicted by the ICTY for crimes against humanity and violation of laws and customs of war. The indictment claims that Momcilo Perisic was Head of the General Staff of the Army of Yugoslavia (AY) from August 26<sup>th</sup>, 1993 to November 24<sup>th</sup>, 1998. According to the indictment, Momcilo Perisic, as the most senior officer in AY who had overall authority and responsibility for its functioning, planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation, and execution of crimes committed in three different locations: Sarajevo, Zagreb and Srebrenica, see: *Perisic Case*, ICTY web site: ><http://www.un.org/icty/bhs/frames/cases.htm><, visited on November 6<sup>th</sup>, 2005

<sup>486</sup> *Perisic Indicted*, POLITIKA, September 30<sup>th</sup>, 2002



were indicted for disclosing military secret together with Perisic.<sup>487</sup> A new criminal report was filed against Vljakovic for publishing the book *Military Secret*.<sup>488</sup>

## ***Conclusions on the Implementation of the Law on Assumption of Jurisdiction***

Based on the research of implementation of the Law on Assumption of Jurisdiction, the YIHR has drawn the following inferences:

1. Law on the Assumption of Jurisdiction was adopted on December 27<sup>th</sup>, 2004, although the deadline prescribed by the Law on the Implementation of the Constitutional Charter was the end of August 2003.
2. Law on the Assumption of Jurisdiction was implemented in practice by establishing Special Military Departments within the District Courts in Belgrade, Novi Sad and Nis. Also, Military Prosecutor's Offices within the District Prosecutor's Offices in Belgrade, Novi Sad and Nis were established. The jurisdiction of the Military Attorney's Office was assumed by the Republic Public Attorney's Office.
3. A serious shortcoming of this law is the failure to define the requirements to be met by persons who may be appointed to civilian judicial institutions dealing with military cases. It is for this reasons that the appointments to these institutions raised many issues as a result of different standpoints. The YIHR believes that it is unacceptable to appoint to such positions persons suspected of having violated human rights in the past and participating in political abuse of military institutions.
4. The belief of the public that the most sensitive cases such as the Topcider and Perisic cases will be solved has been gravely shaken because of delays in the beginning of trials before Military Departments. Such a situation further contributes to the diminishing of trust in state institutions and the rule of law in Serbia.
5. At this point, a minimal number of cases have been dealt with by Special Military Departments within District Courts. Such practice illustrates the inefficiency of the newly established bodies, and causes the public to be suspicious about the functioning of the legal system in Serbia.

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<sup>487</sup> *Ibid*

<sup>488</sup> *Release from Custody for Vljakovic Requested*, B92, March 19<sup>th</sup>, 2004, B92 web site: >[http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&dd=19&nav\\_id=135756](http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&dd=19&nav_id=135756)<, visited on November 10<sup>th</sup>, 2005

6. Head of the Military Department Milan Birman has requested to be relieved of his duty after only several months of work. President of the District Court in Belgrade Judge Sinisa Vazic accepted his request.

### ***Recommendations for the Implementation of the Law on Assumption of Jurisdiction***

Based on the research of implementation of the Law on Assumption of Jurisdiction and conclusions made, the YIHR adopted the following recommendations:

1. It is necessary to check the biographies of all those who were transferred from military to civilian judiciary. In this way, the judiciary would be safeguarded against possible abuse in the future, but it would also partly regain its tarnished credibility in the public eye.
2. After completing the process of the assumption of jurisdiction, the Special Department of the District Courts, District Prosecutor's Offices and Republic Public Attorney's Office must work more efficiently on cases entrusted to them so that their formation does not remain just a formal act.
3. Practice has proved the need to amend the law in order to precisely define requirements to be met by persons who may be appointed to civilian institutions dealing with military cases, so as to avoid the appointment to such positions of persons who violated human rights in the past and participated in political abuse of military institutions.
4. All newly established bodies should make their work accessible to the public because there are cases that the citizens of Serbia are very interested in.

## 6. Implementation of the Law on Public Information

Law on Public Information was adopted on April 22<sup>nd</sup>, 2003<sup>489</sup>. This Law regulates the right to public information, as well as mutual rights and obligations of persons that participate in the process of providing public information<sup>490</sup>. The rights to public information are the following: freedom to express thoughts, freedom of press and distribution of public newspapers, freedom of production and broadcasting of radio and television programs, freedom to receive ideas, information and opinions, as well as the freedom of founding legal entities for the purpose of providing public information<sup>491</sup>. Censorship is prohibited<sup>492</sup>. Public authorities on all levels of government are obligated partly to fund public newspapers in languages of national minorities and ethnic communities, as well as the use public broadcasting space to invalids, persons with handicaps, and other persons with special needs<sup>493</sup>.

It is foreseen that journalist's position in the editorial office cannot worsen due to publishing of accurate facts, refusal to break legal or ethical codes of the profession, or because of a privately expressed opinion<sup>494</sup>. The journalist is obliged to reveal the source of information only in a case when information concerns a perpetrator, or a criminal act that warrants a penalty of minimum five years in prison<sup>495</sup>. Law prescribes that journalists must respect the principle of assumed innocence, thus they must not declare anyone guilty unless proven in the court of law<sup>496</sup>. Journalists are also obliged to pay attention to protection of minors<sup>497</sup>. Especially prohibited are hate speech<sup>498</sup> and public display of pornography<sup>499</sup>.

An interesting legal solution is were if a public media announce a person is faced with criminal proceedings, that person has a right to request without compensation, announcement on suspension of the judicial proceedings, legal rejection of the proceedings or a non guilty verdict<sup>500</sup>.

Supervision of carrying out this Law is preformed by the Republican Body of State Administration responsible for public information<sup>501</sup>.

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<sup>489</sup> Law on Public Information, *see above under 4*

<sup>490</sup> *Ibid*, Article 1, Item 1

<sup>491</sup> *Ibid*, Article 1, Item 2

<sup>492</sup> *Ibid*, Article 2, Item 2

<sup>493</sup> *Ibid*, Article 5

<sup>494</sup> *Ibid*, Article 31

<sup>495</sup> *Ibid*, Article 32

<sup>496</sup> *Ibid*, Article 37

<sup>497</sup> *Ibid*, Article 41

<sup>498</sup> *Ibid*, Article 38

<sup>499</sup> *Ibid*, Article 42

<sup>500</sup> *Ibid*, Article 74

<sup>501</sup> *Ibid*, Article 91

YIHR researched the implementation of Law on Public Information starting from December 2004 to October 2005, with the emphasis on provisions on hate speech, calling for use of violence, and other forms of banned behavior in the media.

- **Hate Speech**

Law on Public Information prescribes a ban on hate speech in media and provides injured persons or non-governmental organizations concerned with the protection of human rights an opportunity to file lawsuits<sup>502</sup>. Hate speech is defined as announcing of ideas, information, or opinions, which encourage discrimination, hate, or violence against individuals or groups of individuals based on their membership or non-membership to a particular race, religion, nationality, ethnic group, gender or sexual preference, regardless of whether the announcement itself is a criminal offence<sup>503</sup>. This provision broadly sanctions any kind of hate speech directed at individuals or groups, even to a greater degree than it is foreseen by Criminal Code<sup>504</sup>. Unfortunately, only in rare examples are these provisions applied.

An example of a combination of a threat to public media, and hate speech, is the case of putting up posters against Radio-television B92. On the posters it was written: "Boycott because of anti-Serbian activities, bad influence on Serbian youth, support to independent Kosovo, support to spread of drug use, homosexuality, and other western diseases, and support to the multiracial new world order"<sup>505</sup>. Star of David was drawn over the stations logo<sup>506</sup>. Although, in next couple of days other nationalistic and anti-Semite provocations occurred in different parts of Belgrade, as well as, in Negotin, Vrsac and some other places, police arrested only three youths<sup>507</sup>, which were charged with ten days in jail for putting up posters in prohibited area<sup>508</sup> <sup>509</sup>. At the same time, threatening messages appeared in front of Humanitarian Law Center and Helsinki Committee for Human Rights<sup>510</sup> headquarters, both non-governmental organizations from Belgrade.

Media Watch of the Media Center Press Council<sup>511</sup> in the report from May 25<sup>th</sup>, 2005 concluded that hate speech is present in Serbia<sup>512</sup>. This conclusion can also be derived

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<sup>502</sup> *Ibid.*, Article 39

<sup>503</sup> *Ibid.*, Article 38

<sup>504</sup> Basic Criminal Code, Article 14, *see above under 120*

<sup>505</sup> YIHR's Report *Two days of racism in Belgrade*, available in YIHR Documentation

<sup>506</sup> *Anti-Semite and slogans against B92*, B92, March 22<sup>nd</sup>, 2005, available on the B92 web site:

>[http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=22&nav\\_id\=164838](http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=22&nav_id\=164838)<, visited on November 8<sup>th</sup>, 2005

<sup>507</sup> T.M.S: *Three skinheads putt up posters against B92*, BLIC, March 25<sup>th</sup>, 2005

<sup>508</sup> Sentenced to ten day jail sentences are the following: Nikola Stamenkovic (19), Aleksandar Joksic (21), and Ratko Sakic (20)

<sup>509</sup> Jovan Gilgorijevic: *Ball of delusional minds*, VREME, April 7<sup>th</sup>, 2005

<sup>510</sup> *Anti-Semitic and slogans against B92*, *see above under 506*

<sup>511</sup> Media Center Press Council was formed on February 1<sup>st</sup>, 2005 as cooperation between Media Center and UNESCO. Member of the Council are: Gordana Susa, Dragan Janjic, Olja Beckovic, Lila Radonjic and Dusan Radulovic. Available at the web site of the Media Center:

><http://www.mediacenter.org.yu/code/navigate.asp?Id=661><, visited on November 8<sup>th</sup>, 2005

from the analysis of media reports on a handball match between “Zagreb” and “Partizan”. On that occasion Croatian supporters attacked guests from Serbia, while couple of Belgrade media journalists received minor injuries<sup>513</sup>. Serbian media covered the event as if it was a start of new war, and as evidence that a deeply rooted hatred exists between two nations.

As a reaction to this event, journalist of the “Kurir” daily published a text headlined “Hate!” stating the following:

“After everything we witnessed in Zagreb a question arises whether the war between Serbs and Croats is really over? Is there still any point in playing matches against Croatian teams and their national team? What else should happen for us to realize that a majority of Croats pathologically hates everything Serbian?”<sup>514</sup>

“Srpski nacional” on the same subject published a headline “Croats, Europe is far” followed by the text:

“Animosity, that borders with a sick complex, has been torturing Croats for centuries, which is not our fault. However, for how long should we put up with police escorts during transfers from hotels to sports arenas? River Sava is still going to flow through Zagreb, but they have to realize it is never going to be as wide as it is in Uscje”<sup>515</sup>

The daily newspaper “Srpski nacional” in an unsigned article from May 17<sup>th</sup>, 2005 among other things mentions:

“... goods produced by any other nation will be rather purchased than those made by “ustashe”, and “janeza” (pejorative name for Croats and Slovenians)...”<sup>516</sup>

Also daily newspaper “Kurir” in an issue from September 23<sup>rd</sup>, 2005 describes Sulejman Ugljanin, leader of the Party for Democratic Action from Sandzak using following words:

“Extreme Muslim nationalist Sulejman Ugljanin signed an agreement with Kostunica, giving three of his people government functions...Sulejman Ugljanin from a terrorist to government”<sup>517</sup>.

By publishing such claims, daily “Kurir” marked Sulejman Ugljanin as a “terrorist”<sup>518</sup>, regardless of a ban prescribed by Law that prohibits public media from proclaiming a

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<sup>512</sup> G.Susa, *Respect of ethical standards in daily and weekly newspapers*, Report of the Press Committee of the Media Center for March 25<sup>th</sup>, 2005, April 4<sup>th</sup>, 2005, available on the web site of the Media Center:

>[http://www.mediacenter.org.yu/upload/Savet%20za%20stampu/04-04-05%20izvestaj%20Saveta%20za%20stampu%20\\_mart%202005...pdf](http://www.mediacenter.org.yu/upload/Savet%20za%20stampu/04-04-05%20izvestaj%20Saveta%20za%20stampu%20_mart%202005...pdf), visited on November 8<sup>th</sup>, 2005

<sup>513</sup> O. Nikolic: *We hope it wont happen again*, DANAS, March 25<sup>th</sup>, 2005

<sup>514</sup> DV: *Hate!*, KURIR, March 15<sup>th</sup>, 2005

<sup>515</sup> *Croats, Europe is far*, SRPSKI NACIONAL, March 15<sup>th</sup>, 2005

<sup>516</sup> *Fall of Serbian brands*, SRPSKI NACIONAL, May 17<sup>th</sup>, 2005

<sup>517</sup> D.I, J.P: *Ugljanin in the Government?!*, KURIR, September 23<sup>rd</sup>, 2005

<sup>518</sup> Terrorism is criminal act under Article 125 of the Basic Criminal Code, *see above under 120*

person a perpetrator of a criminal act before legally binding decision of the court or some other state body<sup>519</sup>.

A different daily newspaper “Glas javnosti” alluding to the national membership of the newly appointed government Minister, writes:

“Bajram Omeragic, new Deputy Minister to Velimir Ilic, painted his office in Nemanjina 11, green, and received furniture of matching color”<sup>520</sup>.

In the issue of daily newspaper “Blic” from July 5<sup>th</sup>, 2005, Nikola Milosevic<sup>521</sup>, member of the Serbian Academy of Arts and Sciences, said the following about Natasa Kandic, executive direction of a non-governmental organization, Humanitarian Law Center<sup>522</sup>:

“In order for somebody to be a public figure they need to be smart, educated and beautiful, Natasa Kandic does not fulfill any of these requirements”<sup>523</sup>.

Among the articles that promote gender discrimination, an example that could be singled out is a text printed in “Srpski nacional” titled “Lalovic’s harem”, in which the journalist comments on the fact that there are 11 women employed in Minister Lalovic’s Cabinet. The author of the text wonders if it is this fact that results in a particular Cabinet Minister having a “lead role” in the mentioned Ministry<sup>524</sup>.

One of the examples of a combination of hate speech, call for a lynching, and discrimination based on sexual orientation is a text headlined, “A revenging lesbian”, publishing in a weekly “Tabloid”, about the President of the Helsinki Committee for Human Rights in Serbia, Sonja Biserko:

“She enters Croatian Embassy as if it were her own home. She has a Croatian passport, while on Embassy’s behalf her associates spend time looking for Serb refugees from Croatia, that have been accused by their courts of war crimes, and gather all possible information about them- where they live, their telephone numbers, general movements, and all with the purpose of enabling Croatian Security Service to assassinate them. Croatian Embassy provides them with considerable fund for their intelligence work”<sup>525</sup>.

The journalist further mentions that Biserko is “a lesbian and that she is taking revenge on Serbs because of her brothers death” and accuses her of sexual exploitation of young

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<sup>519</sup> Law on Public Information, Article 37, *see above under 4*

<sup>520</sup> D. Radulovic, *Report on articles in daily newspapers*, Report of the Media Center Press Council for September 2005, October 7<sup>th</sup>, 2005, available on the web site of the Media Center:  
><http://mediacenter.org.yu/upload/Savet%20za%20stampu/10-07-05%20Izvestaj%20septembar.pdf><, visited on November 8<sup>th</sup>, 2005

<sup>521</sup> Nikola Milosevic is currently Democratic Party of Serbia representative in the National Assembly of the Republic of Serbia

<sup>522</sup> Natasa Kandic is an executive director of a reputable non-governmental organization from Belgrade, Humanitarian Law Center

<sup>523</sup> Statement made by Nikola Milosevic, section *Blic hit*, July 5<sup>th</sup>, 2005

<sup>524</sup> *Lalovic’s harem*, SRPSKI NACIONAL, February 10<sup>th</sup>, 2005

<sup>525</sup> *A revenging lesbian*, TABLOID, September 8<sup>th</sup>, 2005

refugees. Lies about personal tragedies of family members are used. In addition, the article mentions full addresses of Sonja Biserko and her parent's residence.

Law foresees that the competent District Court can, based on the proposition of the Public Prosecutor "forbid the distribution of information if it establishes that it is necessary in a democratic society in order to prevent: calls for violent destruction of the Constitutional order, violation of the territorial integrity of the Republic, propagating of war, encouragement of direct violence or inducement of racial, national, or religious hate, which represents promotion of discrimination, hostility or violence, while the release of the information proves to be a direct, and serious threat, with irreparable consequences that can not be prevented in any other way"<sup>526</sup>.

In past couple of months there were frequent media attacks on representative of non-governmental organizations, such as already mentioned, Kandic, Biserko and Biljana Kovacevic-Vuco, President of the non-governmental organization, Lawyers Committee for Human Rights.

Accordingly, "Vecernje novosti" on July 21<sup>st</sup> and 23<sup>rd</sup> published a two-part feuilleton on funding of non-governmental organizations<sup>527</sup> that rests on the speech made by President Vladimir Putin of Russia, in which he declares action against non-governmental organizations financed from abroad<sup>528</sup>. It elaborates on the existence of non-governmental organizations that operate against their own countries, and that have uncontrolled cash flow. Only persons interviewed were known to have a negative attitude towards this sector of civil society. The article from July 23<sup>rd</sup> begins with the words from sociologists Slobodan Antonic:

"Neither Milosevic, nor Djindjic, and now we see nor Kostunica were able to put non-governmental organizations under total financial control, above all, those that act against state, national, and democratic interests of Serbia, while receiving their funds from abroad"<sup>529</sup>.

Later in the article, Antonic said:

"Certain NGOs openly say that Kosovo should be granted independence, and judge that genocide occurred in Srebrenica, which would lead to abolishing of the RS. Some publicly promote hate speech, even hatred and intolerance themselves, by calling for certain media or political parties to be abolished or forbidden".

Publishing of such a point a view represents a breach of the Law on Public Information<sup>530</sup>, since even if non-governmental organizations that operate against

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<sup>526</sup> Law on Public Information, Article 17, *see above under 4*

<sup>527</sup> *Feuilleton on financing of non-governmental organization*, VECERNJE NOVOSTI, July 21<sup>st</sup> and 23<sup>rd</sup>, 2005

<sup>528</sup> D. Markovic: *Putin: Russian will not allow it*, VECERNJE NOVOSTI, July 21<sup>st</sup>, 2005

<sup>529</sup> P. Vasiljevic, B. Popovic: *Uncover the sponsors*, VECERNJE NOVOSTI, July 23<sup>rd</sup>, 2005

<sup>530</sup> Law on Public Information, Article 3 item 1: "Journalists or chief editors of a public media are obliged to check with care exemplary to the circumstances, the origins, truthfulness or completeness of information that contains facts of a particular event, occurrence or person before announcing it". *See above under 4*

“interests of the state” exist, their founders are liable to criminal prosecution. However, the media is obliged to respect the notion of presumed innocence until the end of possible criminal proceedings<sup>531</sup>.

The journalist of weekly NIN Marijana Milosavljevic, writes on the same subject, and speaks with the same interviewee<sup>532</sup>, coming to the following conclusion:

“Why then to wonder why some of the most prominent NGOs accepted, as many accused them, to propagate not only a western value system, but a western perception of reality, and western goals. It seems that it is the base for understanding the animosity that some citizens feel towards, above all, organizations for protection of human rights. Especially because many agree that their discourse at times has a flavor of racism and hatred towards their own nation”<sup>533</sup>.

Columnist in “Glas javnosti” Peter Lazic on the same subject writes:

“There is no need to spend too many words on non-governmental organizations that for a handful of dollars conduct geo-strategic research on where to move Kosovo, Vojvodina, or Sandzak. In any case, he who pays the piper calls the tune, and then everybody dances to music. Especially those who hold each others flies while dancing”<sup>534</sup>

It is not rare that similar articles use a less academic style. Chief Editor of the weekly “Tabloid”, Milovan Brkic in an issue from July 28<sup>th</sup>, 2005 writes:

“These paid vagabonds, such as Veran Matic and scums from so call non-governmental organizations, overcome by the desire for money, firmly believe that they are protecting American interests and that Uncle Sam is behind them”<sup>535</sup>.

In a similar manner, “Vecernje novosti” writes about international non-governmental organizations. In an issue from August 8<sup>th</sup>, 2005, a “Novosti” journalist writes about Swiss non-governmental organizations “Swiss Agency for Development and Cooperation”, and “Medienhilfe” as networks of paid agents that work against Serbia, with an only task of building “Kosovo Intelligence Service”.<sup>536</sup>

Chief Editor of “Kurir” in his regular column asks a question:

“Does the state of Serbia possess enough strength to oppose the destructive offensive of profit-makers that are directly working against Serbian national interests?”<sup>537</sup>

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<sup>531</sup> Article 95 of Criminal Code of the Republic of Serbia sanctions distaining by reproaching of a criminal act. Legal penalty for a severe form of this act, when information is spread through the media is fine or six months imprisonment

<sup>532</sup> Slobodan Antonic

<sup>533</sup> M.Milosavljevic, *Putin's recepy*, NIN, July 28<sup>th</sup>, 2005

<sup>534</sup> P. Lazic *You get what you pay for*, GLAS JAVNOSTI, July 25<sup>th</sup>, 2005

<sup>535</sup> M. Brkic, *The sour taste of green banknotes*, TABLOID, July 28<sup>th</sup>, 2005

<sup>536</sup> D.Jovic: *Euros are also given by Soros*, VECERNJE NOVOSTI, August 8<sup>th</sup>, 2005

<sup>537</sup> D.J. Vucicevic: *When war profiteers become moral judges*, KURIR, July 2<sup>nd</sup> - 3<sup>rd</sup>, 2005



All of these articles were written in a very harsh tone, and almost all, without exception, accuse activists of non-governmental organizations for treason, and spying<sup>538</sup>. Such media writing inevitably leads to violence in ordinary life. Persons that are exposed to daily media attacks, accused without trail, become legitimate targets for thugs on the streets and in public places. Law on Public Information, as previously mentioned, contains provisions on limitation of freedom of information, with the purpose of protecting minors<sup>539</sup>, obligation to respect the principle of assumed innocence<sup>540</sup>, prohibition of hate speech<sup>541</sup>, and public display of pornography<sup>542</sup>.

- **Diminishing Importance of Crimes and Manipulating with Victims in Serbian Media**

Besides hate speech and call for violence, a serious problem of Serbian journalism is negating of crimes, even in cases when legally binding court decisions exists. Law on Public Information also does not precisely define this ban.

Through analysis of the media treatment of the worst crime committed during the wars in former Yugoslavia- the crime of genocide against Bosnians in Srebrenica<sup>543</sup>, YIHR is going to illustrate its proposal for amendments of the Law that it believes are necessary:

Video footage of an execution of six young men from Srebrenica that was committed by “Scorpions” unit in July, 1995, and filmed by members of the same unit, came into position of non-governmental organization Humanitarian Law Center during its investigation of war crimes and sent to Prosecutors Office of the ICTY and War Crimes Prosecutors Office in Belgrade. The tape was shown for the first time on June 1<sup>st</sup>, 2005 by the Prosecutor Jeffery Nice during the cross questioning of the defense witness Obrad Stevanovic, in the trial of the former President of Serbia and Yugoslavia Slobodan Milosevic<sup>544</sup>.

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<sup>538</sup> Basic Criminal Code, Article 128, *see above under 120*

<sup>539</sup> Law on Public Information, Article 41, *see above under 4*

<sup>540</sup> *Ibid*, Article 37, *see above under 4*

<sup>541</sup> *Ibid*, Article 38 and 39

<sup>542</sup> *Ibid*, Article 42

<sup>543</sup> Verdict of an Appeal Council of International Criminal Tribunal in Hague against Radoslav Krstic that proclaims him responsible for genocide in Srebrenica is available on the web site of the ICTY:  
><http://www.un.org/icty.bhs/krstic/judgements/040419/krs-aj040419b.htm><, visited on November 8<sup>th</sup>, 2005

<sup>544</sup> B. Mihajlovic, interview with executive director of the Humanitarian Law Center Natasa Kandic, *Official in Serbia new about the film on murders in Srebrenica*, RFE, June 5<sup>th</sup>, 2005, web site RSE:  
>[http://www.slobodnaevropa.org/article/2005/06/05/9f72066a-0170-4f6e-8c7e-ef1a11c96c2b.html?text\\_only=F](http://www.slobodnaevropa.org/article/2005/06/05/9f72066a-0170-4f6e-8c7e-ef1a11c96c2b.html?text_only=F)<, visited on November 7<sup>th</sup>, 2005;

*Record of killing Muslims showed*, B92, June 1<sup>st</sup>, 2005, B92 web site:  
>[http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=06&dd=01&nav\\_id=](http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=06&dd=01&nav_id=)<, visited on November 7<sup>th</sup>, 2005

In July 2005, a ten-year anniversary of genocide in Srebrenica was marked. At the time, eight largest non-governmental organizations in Serbia<sup>545</sup> started a campaign for Serbia to acknowledge the crime of genocide, and clearly define itself towards it.

These events led to reactions in printed media that frequently came down to negating crimes in Srebrenica, or at least, diminishing its importance through referring to crimes committed against Serbs.

Most media in Serbia covered the events connected with marking of 10 years of Srebrenica genocide by trying to equate this crime with crimes in which victims were of Serbian nationality. During this period, a great number of articles were published about crimes committed against Serbs, especially in Podrinje region.

Accordingly, daily paper “Vecernje novosti” in addition to regularly published texts on Serbian victims, in an issue from July 9<sup>th</sup> gives large coverage to stories on apparent over inflating of numbers of killed Bosnians in Srebrenica in July 1995<sup>546</sup>. The article is continued in the next day’s issue with stories by Zepa brigade of the Army of Bosnia and Herzegovina deserters that accuse their compatriots of crimes against Serbs, and praise Serbia for giving them sanctuary<sup>547</sup>. The article states:

“After detailed inspections upon arrival at collective centers, all the refugees were given adequate medical care. Together with constant medical care, contacts with relatives were provided, banking and currency exchange services, telephone calls, visitations and parcel deliveries”<sup>548</sup>

The word genocide is never used in reports printed in “Novosti”, except when international official talk about it. Journalist-commentator of “Novosti” Djuro Bilbija tries to prove that the only person to mention genocide on that July 11<sup>th</sup> in Srebrenica was Croatian President Stjepan Mesic, deriving from this the conclusion that the genocide did not happen. Bilbija further adds:

“Croatian President publicly requests that Serbs and Serbia should acknowledge what – neither for Anan, or Prosper, or Straw, or Solana or anyone else – occurred in Srebrenica”<sup>549</sup>

On July 10<sup>th</sup>, a day before marking the tenth anniversary of the crime in Srebrenica, and the funeral of a great number of victims whose bodies were previously exhumed from a mass grave sites, daily newspaper “Glas javnosti” in an issue from July 10<sup>th</sup>, 2005 printed an interview with Milan Bulajic, an investigator of crimes against Serbs, who states:

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<sup>545</sup> Humanitarian Law Center, Lawyers Committee for Human Rights, Women in Black, Helsinki Committee for Human Rights, Belgrade Circle, Center for Cultural Decontamination, Civic Initiatives, and YIHR

<sup>546</sup> B.S.P: *Thousands of added victims*, VECERNJE NOVOSTI, July 9<sup>th</sup>, 2005

<sup>547</sup> Radoje Andric: *They deserted into the world*, VECERNJE NOVOSTI, July 9<sup>th</sup>, 2005

<sup>548</sup> *Ibid*

<sup>549</sup> Djuro Bilbija: *Mesic apart from the world*, VECERNJE NOVOSTI, July 14<sup>th</sup>, 2005

“It is important that the Army of the Republic of Srpska did not commit genocide in Srebrenica! Crimes were committed by both sides, but it should be precisely established who committed those crimes in the name of the Army of RS. It is known that Croats Drazen Erdemovic and Marko Boskic that were members of the Army of RS and killed a few dozens of Muslims are free. The point is that there was no intent to commit genocide and that the genocide simply did not occur!”<sup>550</sup> In the article titled “Massacre in Srebrenica-a conspiracy against Serbs”, “Glas javnosti” publishes an overview of “group of Canadian analysts” that explain: “The Srebrenica massacre was only a part of a propaganda conspiracy in the war USA and NATO fought against former Yugoslavia”<sup>551</sup>.

A week later “Kurir” reports a section from a text by a Canadian General Louise McKenzie in which it is claimed that there was no genocide, backed up by statements from military analyst Aleksandar Radic and lawyer Toma Fila.<sup>552</sup>

In the weekly edition of “Svedok” a regular columnist, member of the Serbian Academy of Sciences and Arts Nikola Milosevic also claims that the genocide did not happen. He harshly criticizes Serbian President Boris Tadic for attending the commemoration in Potocari<sup>553</sup>, objecting that by doing so he is taking a collective guilt on behalf of Serbs and Serbia. Milosevic is also criticizing Tadic for using the wrong script on the note written over the wreath he laid:

“Moreover, on the wreath that was laid on his behalf in Bratunac, there was no Serbian script – Cyrillic, but Latin alphabet, one used by Bosnians and one they consider their own.”<sup>554</sup>

Similar observations concerning the relationship of media towards the crime in Srebrenica were made by the Media Center Press Council<sup>555</sup> that states the following in the report for June:

“Much space would be taken to deal in detail with all the newspaper articles, or supplements in which coverage is given to individuals or all sorts of experts that in its mildest version, attempt to diminish the importance of the crime in Srebrenica – the biggest after Second World War in Europe. These are just a couple of main thesis on the subject: bidding on numbers of victims “on both sides with an attempt to achieve some sort of equilibrium or reciprocity of crimes”, generalization and ranking of own and responsibility and guilt of others”. (“Politika”, June 19<sup>th</sup>) There is also a “theory” of an “understandable reaction to the crimes committed by the other side”, statements that the

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<sup>550</sup> P. Pasic: *The Storm is a bigger crime even then Srebrenica*, GLAS JAVNOSTI, July 10<sup>th</sup>, 2005

<sup>551</sup> *Massacre in Srebrenica -a conspiracy against Serbs*, GLAS JAVNOSTI, August 3<sup>rd</sup>, 2005

<sup>552</sup> D. Isailovic: *The other side*, KURIR, July 16<sup>th</sup> – 17<sup>th</sup>, 2005

<sup>553</sup> President of Serbia Boris Tadic was invited by the Presidency of Bosnia and Hercegovina to attend the marking of the 10 years of the genocide in Srebrenica, see: *Srebrenica: 10 years since the crime*, B92, July 11<sup>th</sup>, 2005, web site B92: >[http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=07&dd=11&nav\\_id=172392](http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=07&dd=11&nav_id=172392)<, visited on November 7<sup>th</sup>, 2005

<sup>554</sup> Nikola Milosevic: *The trip to Srebrenica*, SVEDOK, July 19<sup>th</sup>, 2005

<sup>555</sup> Media Center Press Council, *see above under 511*

crime occurred outside our state territory, that above all, causes that led to crimes should be discussed, and these are destruction of Yugoslavia and secession of some former republics, and that we should not admit the crimes because that would mean having to pay large reparation...”<sup>556</sup>

- **Preconditions for implementation of the Law**

Law on Public Information represents an important instrument for establishing professionalism and preventing abuse of media. Another current problem is failure to implement the laws that should regulate relations in the media area, such as Law on Broadcasting<sup>557</sup> and Law on Telecommunications<sup>558</sup>. Republican Broadcasting Agency is burdened with the problems concerning legality of appointment of its members, which diminishes its legitimacy in the eyes of the public, and slows down its work<sup>559</sup>. Agency for Telecommunications, competent for establishing the number and kind of frequencies that are later to be allocated on public tender has not started its work yet, because National Parliament did not elect members of the Board of Directors of the Agency until May 23<sup>rd</sup>, 2005<sup>560</sup>. Republican Broadcasting Agency failed to establish itself as a credible body that would succeed in influencing the media area. Although certain public media received cautionary measures this did not have an influence on the editorial policy, nor did it lead to the change of behavior of these broadcasters<sup>561</sup>. Republican Broadcasting Agency has in its description of competencies supervision of media with the purpose of protecting minors and preventing hate speech. It is these very occurrences that are common in Serbian media, but the Agency has never used a single measure it has on its legal disposal (caution, warning, and revoking of the broadcasting licenses).<sup>562</sup>

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<sup>556</sup> Hari Snajder: *Report of the Media Center Press Council for June 2005*, July 1<sup>st</sup>, 2005, available at the web site of the Media Center: ><http://www.mediacentr.org.yu./upload/PDF/07-01-05%Izvestaj%20za%20jun.pdf><, visited on November 8<sup>th</sup>, 2005

<sup>557</sup> Law on Broadcasting, *see above under 5*

<sup>558</sup> Law on Telecommunications, adopted on April 24<sup>th</sup>, 2003, Official Gazette of RS, number 44/03

<sup>559</sup> More on this the chapter of this book: Implementation of the Law on Broadcasting

<sup>560</sup> Decision on the appointment of the President and members of the Board of Directors of the Republican Telecommunication Agency, adopted on the May 23<sup>rd</sup>, 2005

<sup>561</sup> BK Television was cautioned for biased reporting on behalf of its owner Bogoljub Karic during the 2004 Presidential Elections; however this media house has not altered its reporting, and does not show much concern for the causation

<sup>562</sup> Law on Broadcasting, Article 17, *see above under 5*

## **Conclusions on the Implementation of the Law on Public Information**

Based on the research of implementation of the Law on Public Information, the YIHR has drawn the following inferences:

1. Hate speech is present in public media in Serbia. This represents violation of provisions of the Law on Public Information, but also of other legal acts (The Constitution of the Republic of Serbia, Basic Criminal Code and European Convention for the Protection of Human Rights).
2. Offenders of the restriction on spreading hate speech do not bear any legal consequences, or at most bear consequences not adequate to the committed offence (they are punished for minor infractions of the law instead for criminal infraction).
3. The Parliament did not provide conditions for full implementation of the Law on Public Information, considering that it did not provide normal working conditions to other subjects responsible for regulating the media space, such as Telecommunications Agency, and Republican Broadcasting Agency.
4. Republican Broadcasting Agency has an authority to control media, especially concerning prohibitions prescribed by the Law on Public Information, above all, protection of the minors and spreading of hate speech. Despite this, not a single proceeding has been initiated in order to punish numerous media violations of rights of minors or spreading of hate speech.
5. Hate speech is frequently combined with verbal assaults and media calls for lynching of certain individuals. There still has not been a single recorded case of a reaction of state authorities to these occurrences.
6. Present in the Serbian media is an organized campaign with purpose of diminishing the importance of crimes committed by Serbs. These campaigns are amplified whenever discussions are opened on war crimes committee against non-Serbian nationals.

## **Recommendations for the Implementations of the Law on Public Broadcasting**

Based on the research of implementation of the Law on Public Information and conclusions made, YIHR adopted the following recommendations:

1. Hate speech present in Serbian media must be strictly sanctioned. Besides private lawsuits failed by citizens, individuals and representatives of non-governmental organizations, hate speech must be sanctioned under criminal legislation and by official proceedings of the Public Prosecutor's Office.

2. Persons that spread racial, religious or national hatred should be subjected to criminal prosecution. It is unacceptable for persons that were putting up anti-Semitic posters to be trail for minor infraction of justice.
3. The Parliament is obligated to create working conditions for the Republican Broadcasting Agency. It is necessary to form, as soon as possible, the Telecommunications Agency.
4. Republican Broadcasting Agency is obliged to sanction all infringements of the Law, especially concerning protection of the minors, and hate speech. Failure to uphold legal provisions is the responsibility of the members of the Agency, since this job has been entrusted to them.
5. Persons responsible for hate speech in the media must face criminal prosecution.
6. The Government of the Republic of Serbia must clearly state its position on the hate speech, and calls for violence present in the some media. Failure to react by state institutions largely contributes to further development of violence.
7. The truth about wars in former Yugoslavia and justice for victims of war crimes must be protected as highest value of the society. Diminishing their importance, which occurs in large number of media, must not be tolerated.
8. A provision should be added to the Law on Public Information that forbids diminishing the importance and negating of facts established in court proceeding, such as the fact that in July 1995 in Srebrenica Army of Republika Srpska committed a crime of genocide of more then 8.000 Bosnians.

## 7. Implementation of the Law on Broadcasting

The Law on Broadcasting was adopted in July 2002<sup>563</sup>, a year and a half after the constitution of the Government that came to power as a result of October 5<sup>th</sup>, 2000 changes, despite the fact that representative of the newly founded authorities claimed that regulating the media sphere is of the highest priority.<sup>564</sup> The Law regulates area of Broadcasting that is terms for emitting programs, establishing of Broadcasting Agency, establishing Public Broadcasting Services, and other issues of importance for the latter. <sup>565</sup> Among the principles that regulate the relationships in the sector of Broadcasting, and that Law adopts, as very important standard that should be stressed out, is a ban on discrimination, and the full respect of civil rights and freedoms.<sup>566</sup>

### • Republican Broadcasting Agency

The Law prescribes founding of the Republican Broadcasting Agency (in further text: Agency), and Agency Council that is competent for establishing and carrying out of broadcasting policies in Serbia.<sup>567</sup> The Agency is defined as an independent body or a private organization. <sup>568</sup> The Agency (or The Council that is heading it) is competent for allocating broadcasting permits, proscribing rules for program emitting, supervision of broadcasters work, as well as undertaking adequate measures towards broadcasters that are placed at its disposal by the Law<sup>569</sup>. Due to these facts, the solution to the question of the composition of Agency Council and election of its members represented a very complex process that was followed by numerous conflicts of different opinions and interests.<sup>570</sup>

The initial proposition of the Government that was supported by the largest media associations and civil sector institutions<sup>571</sup> foresaw that a Council should consist of 15

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<sup>563</sup> Law on Broadcasting, *see above under 5*

<sup>564</sup> Professor Cedomir Cupic in the article: *The final working version of the Law on Broadcasting*, from December 2<sup>nd</sup>, 2002 said: "Do you remember that one of the most important pre-election promises of DOS was urgent regulation of the media sphere, introduction of free press, and maximal protection of the journalist, so that it could never be repeated that infamous Law on Information adopted by a coalition of SPS, JUL, and SRS can exist in Serbia?" text is available on the web site of Directorate for Information of the Council of Ministers of the State Union of Serbia and Montenegro:

>[http://www.ssinf.sv.gov.yu/saveznavlada/list\\_komentar.php?idteksta=5213](http://www.ssinf.sv.gov.yu/saveznavlada/list_komentar.php?idteksta=5213)<, visited on November 9<sup>th</sup>, 2005

<sup>565</sup> Law on Broadcasting, Article 1, *see above under 5*

<sup>566</sup> *Ibid*, Article 3

<sup>567</sup> *Ibid*, Article 6, Item 1, and Article 7, Item 2

<sup>568</sup> *Ibid*, Article 6, Item 2

<sup>569</sup> *Ibid*, Article 8

<sup>570</sup> Veran Matic in the article: *The annual council meeting of ANEM was held*, on July 5<sup>th</sup> and 6<sup>th</sup>, 2002 notes: "One of the members of the Council of the Agency for Radio-diffusion is proposed by The National Assembly of the Republic of Serbia, which by the way, elects all 9 members of the Council, but in this case it should propose to itself two candidates, and then elect one of them?" text available on the ANEM web site:

>[http://www.anem.org.yu/regulative/godisnja\\_skustina.jsp](http://www.anem.org.yu/regulative/godisnja_skustina.jsp)<, visited on November 9<sup>th</sup>, 2005

<sup>571</sup> ANEM, NUNS, Media Center

members most of which would not be proposed by state authorities.<sup>572</sup> Such a solution would, by all means, result in an increased public trust, and would reduce fear of Agencies abuse. However, the Government decided on a different solution that to a large degree devalued the reputation of that body, even before it was formed. Thus, the Law prescribed a solution in which Agency Council consists of nine members, four of which are proposed by the Republican and Autonomous Province bodies.<sup>573</sup> In addition, four members would be elected based on the proposal of a civil sector<sup>574</sup>, while the ninth member would be appointed by the Council itself with the only condition that the individual has residency on territory of Kosovo<sup>575</sup>. This solution was immediately criticized by the largest media associations such as an Association of Independent Electronic Media (ANEM), as well as other organizations and associations<sup>576</sup>. Election of Council members lasted until April 2003, which is not in accordance with time limits prescribed for this procedure by the Law<sup>577</sup>. The process of election of Council members Nenad Cekic and Vladimir Cvetkovic was not conducted publicly, contrary to the legally prescribed procedure<sup>578</sup>, while Goran Radenovic during the election for a Council member gave incorrect data of his educational background<sup>579</sup>, and did not fulfill the conditions stated in the Law that he should be residing in Kosovo<sup>580</sup>. Due to the mentioned violations of legal conditions and procedures, two members of the Council, elected on the proposal of media and non-governmental organizations – Snezana Milivojevic<sup>581</sup>, and Vladimir Vodinelic<sup>582</sup> resigned.

The new government elected at the beginning of 2004 proposed amendments to the Law on Broadcasting that the Parliament adopted<sup>583</sup> and announced a new competition for

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<sup>572</sup> *Analysis by ANEM of proposed amendments on the Law on Broadcasting*, July 25<sup>th</sup>, 2005, ANEM web site: ><http://www.anem.org.yu/download/ANEM-ova%20analiza%20predlozenih%20amandmana%20Zakon%20%20radio-difusija.DOC><, visited on November 8<sup>th</sup>, 2005

<sup>573</sup> Law on Broadcasting, Article 23, *see above under 5*

<sup>574</sup> Non-governmental organizations, religious communities, Universities, media and professional associations

<sup>575</sup> *The Broadcasting Agency Council is elected*, Media Center, February 17<sup>th</sup>, 2005, text available on Media Center web site: ><http://www.mediacycenter.org.yu/code/navigate.asp?Id=560><, visited on November 9<sup>th</sup>, 2005

<sup>576</sup> Pronouncement of ANEM from July 1<sup>st</sup>, 2002, ANEM web site:

><http://www.anem.org.yu/regulative/povodom.jsp><, visited on November 9<sup>th</sup>, 2005.

<sup>577</sup> Law on Broadcasting, Articles 114-116, *see above under 5*

<sup>578</sup> *Request for failing motion for dismissal of the members of the Republican Broadcasting Agency Council*, April 16<sup>th</sup>, 2003; *Frajmut Duvce for a re-election of members of the Broadcasting Council*, August 1<sup>st</sup>, 2003; *FRY concerned with governments pressure of the press*, June 12<sup>th</sup>, 2003; *Proposition to repeat the election of the members of Broadcasting Council*, July 15<sup>th</sup>, 2003; *NGO: There is no replacement for the Law*, July 15<sup>th</sup>, 2003. All the articles available on the B92 web site: ><http://www.b92.net/special/rds/vesti.php#1><, visited on November 9<sup>th</sup>, 2005

<sup>579</sup> Law on Broadcasting, Article 29, Item 1, Point 2, *see above under 5*

<sup>580</sup> *Wife claims that Radenovic's biography contains falls data*, B92, May 12<sup>th</sup>, 2003, B92 web site:

><http://www.b92.net/special/rds/supruqa.php><, visited on November 9<sup>th</sup>, 2005

<sup>581</sup> Snezana Milivojevic resigned from the Broadcasting Council, B92, June 5<sup>th</sup>, 2003, B92 web site:

><http://www.b92.net/specijal/rds/transkript.php><, visited on November 9<sup>th</sup>, 2005

<sup>582</sup> *Vodinelic resigned from the Broadcasting Council, announced Radojkovic*, B92, June 11<sup>th</sup>, 2003, B92 web site:

><http://www.b92.net/special/rds/vesti#1><, visited on November 9<sup>th</sup>, 2005

<sup>583</sup> Law on amendments on Law on Broadcasting, adopted on August 24<sup>th</sup>, 2004, come in to effect on September 1<sup>st</sup>, 2004, Official Gazette of RS, number 97/04



members of the Council<sup>584</sup>. ANEM, Independent Society of Journalist of Serbia, as well as other media and non-governmental organizations condemned this action, questioning independence and permanence of the Council members, if they can be recalled by a parliamentary majority at any time<sup>585</sup>. It seems that the only purpose of changes of Law adopted in August 2004 was an election of new members of the Council, since the only difference in the text of the Law concerned the election of Council members, three of which were now proposed by a Committee for Culture and Education of the National Assembly of Serbia instead of the Government, Executive Council of Vojvodina, and Parliament, as was the case in the previous version of the Law<sup>586</sup>. Due to this legal intervention the Council was disband, causing even those members whose election was undisputable to lose mandates. YIHR believes that such Government's behavior has set a serious precedent that can be used by any future parliamentary majority for replacing members of the Council, thus for an indirect pressure on the media. ANEM, NUNS, Independent Society of Journalists of Vojvodina (NDNV), professional association of theatre and music artists decided not to propose their candidates for members of the Council, and informed the public about it<sup>587</sup>. This did not stop the Parliament to elect in February 2005 a new Agency Council consisting of the following people: Aleksandar Vasic, Vladimir Cvetkovic, Nenad Cekic, Goran Karadzic, Svetozar Stojanovic, Slobodan Djoric, Velimir Milosevic, and bishop Porfirije (Peric)<sup>588</sup>. In May of the same year, the Parliament elected the ninth member of the Council, Tomislav Trific<sup>589</sup>

However, the newly elected Council was also unable to perform its duties without disturbances, because soon a question arises about the length of mandates of certain members. In a report from July 25<sup>th</sup>, 2005 ANEM stresses:

“The Law prescribes that mandates of Council members should last six years, but as a special case, during the first election, three members of the Council are elected for two, three for four, and three for six year term, while the lists from which the candidates will be elected for two and four year terms are determined by draw, before the election. Election of the Council members was preformed by a draw, however, nobody was able to comprehend the results, so the Decision on election was published in the “Official Gazette” without data on the lengths of individual mandates.”<sup>590</sup>

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<sup>584</sup> I. Zivkovic: *Disillusions of the Broadcasting Council*, GLAS JAVNOSTI, February 16<sup>th</sup>, 2004

<sup>585</sup> ANEM: *The authorities desire to manipulate the Council*, B92, October 29<sup>th</sup>, 2004, B92 web site:

>[http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=10&dd=29&nav\\_id=154540&nav\\_category=11](http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=10&dd=29&nav_id=154540&nav_category=11)  
<, visited on November 9<sup>th</sup>, 2005

<sup>586</sup> Law on amendments on Law on Broadcasting, *see above under 583*

<sup>587</sup> *Agreements about the Council have been broken*, B92, October 22<sup>nd</sup>, 2004, B92 web site:

>[http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=10&dd=22&nav\\_id=153925&nav\\_category=11](http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=10&dd=22&nav_id=153925&nav_category=11)  
<, visited on November 9<sup>th</sup>, 2005

<sup>588</sup> Decision on elections of the members of the Broadcasting Agency Council, adopted on February 17<sup>th</sup>, 2005, Official Gazette of RS, number 2/05

<sup>589</sup> Decision on the election of the ninth member of the Broadcasting Agency Council, adopted on May 23<sup>rd</sup>, 2005, Official Gazette of RS, number 38/05

<sup>590</sup> ANEM analysis of proposed amendments to the Law on Broadcasting, *see above under 572*

The Government soon proposed new amendments to the Law on Broadcasting that changed the lengths of mandates of the already elected members<sup>591</sup>. This alteration caused protests not only from media and non-governmental organization, but also from OSCE<sup>592</sup>. Amendments of the prescribed term length of the members depend on who proposed them<sup>593</sup>. It is determined that the candidates with the longest term are those proposed by Committee for Culture and Information of the Parliament<sup>594</sup>

- **Transforming the RTS in a Public Service**

Law on Broadcasting also regulates transformation of Radio-television of Serbia (in further text: RTS) into public broadcasting systems of Serbia and Vojvodina<sup>595</sup>. This process is very important to the public in Serbia, especially considering the role RTS played during the rule of Slobodan Milosevic<sup>596</sup>.

After parliamentary election of 2003, the newly formed government<sup>597</sup> named Aleksandar Tijanic, the former media adviser to the then President of SR Yugoslavia Vojislav Kostunica, the Director of RTS<sup>598</sup>, contrary to the procedure foreseen by Law on Broadcasting that states that the appointment of the director of a public service is carried out through a public competition<sup>599</sup>. The new director did not fulfill the requirement written in Statute of the RTS that a person that performs the function of a director must hold a bachelor degree<sup>600</sup>. Due to a great number of irregularities during the election of the director, the entire Board of Director of RTS resigned<sup>601</sup>.

Protests against appointment of Tijanic were made by media and journalist associations as well as by a working group responsible for creating media laws<sup>602</sup>. Rade Veljanovski, <sup>603</sup>President of one working group, said:

“I remind you that Milosevic’s Government also liked to call upon the Law on Public Enterprises when media was concerned. This is a great mistake, which

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<sup>591</sup> Law on amendments on Law on Broadcasting, *see above under 583*

<sup>592</sup> Announcement by OSCE from August 29<sup>th</sup>, 2005, OSCE web site: >[http://www.osce.org/sam/item\\_1\\_16128.html](http://www.osce.org/sam/item_1_16128.html)<, visited on November 9<sup>th</sup>, 2005

<sup>593</sup> Law on amendments on Law on Broadcasting, Article 1, *see above under 583*

<sup>594</sup> *Ibid.*, Article 1, Item 2

<sup>595</sup> Law on Broadcasting, Article 76, *see above under 5*

<sup>596</sup> M. Thompson: *Production of war: Media in Serbia, Croatia, Bosnia and Herzegovina*, Media Centre, Free B92, Belgrade, 2000

<sup>597</sup> Government of the Republic of Serbia was formed on March 3<sup>rd</sup>, 2004 by naming Vojislav Kostunica for its President. See web site of the Government: ><http://www.srbija.sr.gov.yu/vlada/sastav.php><, visited on November 9<sup>th</sup>, 2005

<sup>598</sup> *Aleksandar Tijanic becomes the new director of RTS, the board of directors resigns*, B92, March 18<sup>th</sup>, 2004, B92 web site: >[http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&ddnav\\_id=135630](http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&ddnav_id=135630)<, visited on November 9<sup>th</sup>, 2005

<sup>599</sup> Law on Broadcasting, Article 89, Item 2, *see above under 5*

<sup>600</sup> M. Jevtovic: *Dejan Mijac: The concept of the public service abandon*, DANAS, March 20<sup>th</sup>, 2004

<sup>601</sup> *Aleksandar Tijanic elected the new director of RTS*, *see above under 598*

<sup>602</sup> Protests were made by: ANEM, NUNS, GSS... see: M.Z.: *An imposed director*, DNEVNIK, March 20<sup>th</sup>, 2004

<sup>603</sup> Rade Veljanovski was at the time a Director of Radio Belgrade and a Head of a working group for creating a Law on Broadcasting

unfortunately shows the intention of the government to behave in a manner that is easier at a given moment, and it is entirely clear in this particular situation, that they appoint a person they consider close to them.”<sup>604</sup>

Government Ministers also did not hide the fact that this act was illegal. For example, Minister of Culture, Dragan Kojadinovic, responsible for the sector of information, while answering a question on legality of Tijanac’s appointment responded that Government needed to act quickly, stressing that maybe it would have been more appropriate to appoint the new Director for a period of six months as an acting director.<sup>605</sup>

Tijanac himself has shown no desire to transform RTS into a public service. For instance, RTS does not give airtime to themes that are of great public importance such as questions of responsibility for crimes committed in the past. RTS has not shown readiness to dedicate time to this subject, even in cases that due to their shocking value, regardless of a theme, traditionally attract media attention<sup>606</sup>, such as showing the tape of killing six Bosnians from Srebrenica<sup>607</sup>. According to the Director of the Humanitarian Law Center, Director of RTS, Tijanac, refused to broadcast that footage with following argument:

“Yes, I viewed the recording, it is awful. We must take care about how to show this, but the problem is in the fact that it only represents only one side.”<sup>608</sup>

At the end, RTS did broadcast the mentioned recording, but only the censored version explaining that it wished to protect the viewers from scenes of brutal murders<sup>609</sup>.

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<sup>604</sup> Veljanovski: *Tijanac the imposed director of RTS*, B92, March 19<sup>th</sup>, 2004, B92 web site:

>[http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&dd=19&nav\\_id=135730&nav\\_category=12](http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&dd=19&nav_id=135730&nav_category=12) <, visited on November 8<sup>th</sup>, 2005

<sup>605</sup> *Kojaninovic: Crkvenjakov sacked because of a bad report*, B92, March 20<sup>th</sup>, 2005, B92 web site:

>[http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&dd=20&nav\\_id=135865&nav\\_category=12](http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&dd=20&nav_id=135865&nav_category=12) < visited on November 8<sup>th</sup>, 2005

<sup>606</sup> See: *Media in Serbia: war criminals*, IWPR, June 2005, IWPR web site:

>[http://www.iwpr.net/index.pl?archive/bcr3/bcr3\\_200506\\_hr\\_2\\_ser.txt](http://www.iwpr.net/index.pl?archive/bcr3/bcr3_200506_hr_2_ser.txt)<visited on November 7<sup>th</sup>, 2005

<sup>607</sup> Video footage of the execution of six young men from Srebrenica that was committed by the unit “Scorpions” in July 1995, and was filmed by the members of this unit, come in to position during investigation of the war crimes of the non-governmental organization Humanitarian Law Center, and was delivered to Prosecutors Office of the ICTY, and the Prosecutor Office for War Crimes in Belgrade. The tape was played for a first time on the June 1<sup>st</sup>, 2005 in courtroom of the ICTY by the Prosecutor Jeffery Nice during the cross questioning of the witness of the accused Obrad Stevanovic during the trial of former President of Serbia and Yugoslavia Slobodan Milosevic. See: RSE, B. Mihajlovic, interview with the executive director of the Humanitarian Law Center, Natasa Kandic: *Official in Serbia new about the film showing murders in Srebrenica*, June 5<sup>th</sup>, 2005, RSE web site:

>[http://www.slobodnaevropa.org/article/2005/06/05/9f72066a-0170-4f6e-8c7e-ef1a11c96c2b.html?text\\_only=F](http://www.slobodnaevropa.org/article/2005/06/05/9f72066a-0170-4f6e-8c7e-ef1a11c96c2b.html?text_only=F), visited on November 7<sup>th</sup>, 2005; B92, The film of killing Muslims was shown, June 1<sup>st</sup>, 2005, B92 web site:

>[http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=06&dd=01&nav\\_id=2005](http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=06&dd=01&nav_id=2005)<, visited on November 7<sup>th</sup>, 2005

<sup>608</sup> *Executions on two sides*, B92, June 6<sup>th</sup>, 2004, B92 web site:

>[http://www.b92.net/info/vesti/index.php?nav\\_category=12&dd=6&mm=6&yyyy=2005](http://www.b92.net/info/vesti/index.php?nav_category=12&dd=6&mm=6&yyyy=2005)<, visited on November 8<sup>th</sup>, 2005

<sup>609</sup> *Lies and video tapes*, DANAS, June 7<sup>th</sup>, 2005

Law on Broadcasting, in addition to creating the public service of Serbia, prescribes transforming RTV Novi Sad into a public service of Vojvodina<sup>610</sup>. However, there are no visible efforts to create a serious public service for citizens of the Autonomous Province.

Consequently, in October 2004, broadcasting of a Croatian Language program “Path of Croatia” was put of the air without any explanation<sup>611</sup>. Members of the production team of the “Path of Croatia” called a press conference in which they accused RTV Novi Sad of discrimination of Croatian national minority. The Director of the Autonomous Province Television filed a hate speech lawsuit against them<sup>612</sup>. This program was already banned three times in the past, because the editorship was not satisfied with its content<sup>613</sup>. This case also caused reactions of the authorities of the Republic of Croatia, hence during the end of 2004 the Prime Ministers of Serbia and Croatia, Vojislav Kostunica and Ivo Sanader, reached an agreement to put the program back on air. After this, Director of RTS, Aleksandar Tijanic, made a statement on Croatian National Television that the show would be placed back in the program scheme<sup>614</sup>. Public promises on return of the program were also made by Prime Minister Kostunica and the President of the State Union of Serbia and Montenegro Svetozar Marovic<sup>615</sup>, however, re-emitting of the program has not occurred yet<sup>616</sup>.

The relationship of the editors of RTV Novi Sad towards other minority communities does not seem to be very different. For example, in 2004 a decision was made not to cover the festival of Slovakian culture in Pivnice. This caused a dispute between RTV Novi Sad and The National Union of the Slovakian national minority<sup>617</sup>.

The single result achieved by cooperation of the Broadcasting Agency and the management of RTS was the introduction of obligatory TV license payments that were prescribed by the Law. However, initially it was foreseen that the obligatory payments would not be introduced before RTS is transformed into a public service<sup>618</sup>. The Agency Council assumed responsibility in July, 2005 to introduce TV license as soon as

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<sup>610</sup> Law on Broadcasting, Article 94, *see above under 5*

<sup>611</sup> Zvonko Saric: *Equality is requested for Croatians also*, HRVATSKA RIJEC, February 25<sup>th</sup>, 2005, text available on the web site ><http://www.hrvatskarijec.co.yu/arhiva.php?yg=2217902&no=107><, visited on November 9<sup>th</sup>, 2005

<sup>612</sup> *Still without the Croatian language program*, B92, January 27<sup>th</sup>, 2005, B92 web site: >[http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=01&dd=27&nav\\_id=160933&nav\\_category=12](http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=01&dd=27&nav_id=160933&nav_category=12)<, visited on November 9<sup>th</sup>, 2005

<sup>613</sup> On previous bans see: Dubravka Ivkovic: *No trace of “Path of Croatia”*, HRVATSKA RIJEC, January 14<sup>th</sup>, 2005, available on the web site of HRVATSKA RIJEC: ><http://www.hrvatskarijec.co.yu/?yg=2217731&no=101><, visited on November 9<sup>th</sup>, 2005

<sup>614</sup> *Still without the Croatian language program*, *see above under 612*

<sup>615</sup> *No trace of “Paths of Croatia”*, *see above under 613*

<sup>616</sup> *Still without the Croatian language program*, *see above under 612*

<sup>617</sup> *The criticism of the RTV Novi Sad*, B92, February 1<sup>st</sup>, 2005, B92 web site:

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<sup>618</sup> Law on Broadcasting, Article 80, *see above under 5*

possible<sup>619</sup>. In September 2005, the Parliament adopted amendments on Law on Broadcasting that introduce the obligatory payment of TV license even before the transformation of RTS into a public service<sup>620</sup>. Such decision caused a number of protests from professional associations, opposition parties, and the public<sup>621</sup>. Concerning this subject ANEM stated the following:

“In a situation in which RTS is only one of many public organizations whose directors and board of executives are appointed and dismissed directly by the Government, TV license can not perform its function, instead it is a toll, not a guarantee of independence from direct political meddling”<sup>622</sup>

Management of RTS and Electric Company of Serbia signed a contract at the beginning of November 2005, in which it was agreed that TV license shall be paid through the electricity bill<sup>623</sup>. By this, it was established through which public institution shall the mentioned TV license be made payable.

## **Conclusions on Implementation of the Law on Broadcasting**

Based on the research of the implementation of the Law on Broadcasting, the YIHR has drawn the following inferences:

1. Law on Broadcasting was adopted a year and a half after October 5<sup>th</sup> changes. No Government has shown interest in the implementation of this Law.
2. Provisions of the Law that regulate the procedure of election of the Broadcasting Agency Council have been greatly violated even during the first election of the Council. Government elected in March 2004 continued with illegal behavior changing the Law in order to change members of the Council. This has introduced a dangerous precedent that allows parliamentary majorities simply to change members of the Council that are not to the liking of the ruling political parties.
3. Radio television of Serbia and Radio television of Novi Sad did not undertake even the basic steps towards transforming into the public broadcasting institutions.
4. Management of RTS and RTV Novi Sad through their actions and statement given in public created an aversion in parts of society towards institutions that should become public services. Decision to introduce TV license payments for RTS even before it was transformed into a public service caused numerous

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<sup>619</sup> *ANEM: Government wants control*, B92, July 22<sup>nd</sup>, 2005, B92 web site:

>[http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=07&dd=22&nav\\_id=173131&nav\\_category=12](http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=07&dd=22&nav_id=173131&nav_category=12)  
<, visited on November 7<sup>th</sup>, 2005

<sup>620</sup> Law on amendments on Law on Broadcasting, Article 7, *see above under 583*

<sup>621</sup> *ANEM: Governments wants control*, *see above under 619*

<sup>622</sup> *Ibid*

<sup>623</sup> *EPS seeks 20 percent cost increase*, DANAS, November 5<sup>th</sup> and 6<sup>th</sup>, 2005

revolts, because the public perceives RTS as a governmental and not as a public institution.

## **Recommendations for the Implementation of the Law on Broadcasting**

Based on the research of the implementation of the Law on Broadcasting and conclusions made, the YIHR adopted the following recommendations:

- 1.** The Government of the Republic of Serbia is obliged to protect the integrity of institutions such as Broadcasting Agency. Members of the Agency Council must have a mandate that cannot be influenced by a simple parliamentary majority.
- 2.** Time limits prescribed by the Law must be complied with. All breaches of legal time limits represent destruction of the rule of law in Serbia. Failure to respect legal time limits also shows the relationship of the political elite in Serbia towards independent press.
- 3.** RTS and RTV Novi Sad must be transformed into a public service as soon as possible. These public services must have independent sources of income (TV license), however before that, they must gain the trust of the public, and prove to be sources of true and objective information.
- 4.** It is inadmissible for directors of public services to participate in media battles with those of different opinions, spread hate speech, or violate minority rights. Numerous illegal actions of directors of RTS and RTV Novi Sad must be sanctioned with their dismissal from these functions. Election of new directors must be conducted in a legally prescribed manner, through public competition that is announced by the Board of Executives of the RTS.

## 8. Implementation of the Law on Lustration

Almost all countries that experienced authoritarian regimes attempted, in various ways, after the fall of these regimes to deal with the burden of the past and strengthen a new democratic system<sup>624</sup>. In Europe, lustration became the most common mechanism of establishing transitional justice. This measure presumes a ban on performing public functions during a limited period for individuals that in the past participated in violations of human rights<sup>625</sup>. Lustration has so far been applied in East Germany, former Czechoslovakia, Hungary, Lithuania, Latvia, as well as other east-European countries. Lustration measures vary from country to country, ranging from so-called hard lustration in Check Republic, to so-called soft lustration in Hungary.<sup>626</sup>

In Serbia, discussions on a need to employ lustration measures were actualized after the fall of Slobodan Milosevic's regime in 2000.<sup>627</sup> However, at that stage great differences emerged between democratically orientated parties on the level of necessity, and the views concerning the implementation mechanism of transitional justice, one of which is considered to be lustration.<sup>628</sup> The Parliament on May 30<sup>th</sup>, 2003 with 111 votes out of 127 present representatives adopted a Law on Lustration.<sup>629</sup> From the moment it was adopted it seemed that the implementation of this Law would be made difficult mostly due to strong resistance from opposition parties<sup>630</sup>, but also from parts of professional community<sup>631</sup>. The change of Government that occurred after the end of 2003 election<sup>632</sup> led to a complete halt in the implementation of the Law on Lustration.<sup>633</sup> The opposition

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<sup>624</sup> A Zidar, *Lustration*, Belgrade centre for human rights, Belgrade 2001

<sup>625</sup> *Ibid*

<sup>626</sup> *Ibid*

<sup>627</sup> *Controversies over lustration*, Centre for advancement of legal studies, Journal for questioning the past HERETICUS, number I, 2003, pages 9-87

<sup>628</sup> *Ibid*

<sup>629</sup> Law on Lustration, *see above under 3*

<sup>630</sup> Serbian Radical party, Socialist Party of Serbia, Democratic Party of Serbia, see: Lustration in Serbia, Program Index finger, B92, B92 web site:

>[http://www.b92.net/info/emisije/kaziprst.php?nav\\_id=110761&yyyy=2003&mm=06](http://www.b92.net/info/emisije/kaziprst.php?nav_id=110761&yyyy=2003&mm=06)<, visited on November 8<sup>th</sup>, 2005

<sup>631</sup> N. Jovanovic, T. Djakovic, *Lustration with the held of BIA's dossiers*, BLIC, June 7<sup>th</sup>, 2003; *Kostunica: who will lustrated the lustrators*, B92, May 30<sup>th</sup>, 2003, B92 web site:

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<sup>632</sup> Elections of representatives of the National Assembly were held on December 28<sup>th</sup>, 2003. After the election Government was formed by a coalition made from Democratic Party of Serbia, G17 Plus, Serbian Renewal Movement, New Serbia, with the minority support of the Socialist Party of Serbia. All the results can be found on the web site of the Centre for Free and Democratic Elections (CESID):

>[http://www.cesid.org/rezultati/sr\\_dec\\_2003/index.jsp](http://www.cesid.org/rezultati/sr_dec_2003/index.jsp)<, visited on November 7<sup>th</sup>, 2005

<sup>633</sup> YIHRs Documentation, Interview of YIHR's researcher with Sima Radulovic, President of the Lustration Commission, April 21<sup>st</sup>, 2005, and Report from a conference on the implementation of the Law on accountability for Human Rights Violation, May 17<sup>th</sup>, 2005

party, Serbian Radical Party submitted to the Parliament a proposition of the Law on Cease of Validity of the Law on Accountability for Human Rights Violations.<sup>634</sup>

- **Lustration as a New Legal Institute**

Law on Lustration contains precise measures that are undertaken towards persons that violated human rights starting from ratification of a Pact on Civil and Political Rights of 1079<sup>635</sup>, but wish to get involved or become candidates for important public functions<sup>636</sup>. These functions were stated in the Law in a precise order.<sup>637</sup> Among others, the functions in question are: President of the Republic, Prime Minister, Cabinet Minister, Parliamentary representatives, Judges of General Authority Courts, and of the Constitutional Court of Serbia, Dean of faculty at a University, Head of National Security Agencies, and a Chief of Staff of the Army of SCG, as well as directors and board members of public organizations and institutions.<sup>638</sup>

The above-mentioned proceedings are initiated by official prosecution or proposition and it consists of inspection of candidates for mentioned public functions<sup>639</sup>. The proceedings are carried out by the Commission for Inspection of Accountability for Human Rights Violations (hereinafter: Lustration Commission) that reaches resolutions on individual cases<sup>640</sup>. Commission makes decision in closed sessions, based on National Security Agencies documents, court files, and other documentation received from bodies that carry public authority<sup>641</sup>. The Decision is communicated to the candidate and to the possible proposers<sup>642</sup>. In case it is established that the candidate violated human rights in the past, he/she is given an opportunity to inspect all the documents and files on which the decision has been made, and is given a seven days withdraw the candidature or file an appeal to the Commission<sup>643</sup>. Decision passed by the Commission can be appealed to the Supreme Court, however, only new evidence can be presented, such as those the candidate was unaware of, or that were gained or appeared after the Decision was passed<sup>644</sup>.

Later proceedings are undertaken towards persons that already hold one of the mentioned public functions, and it is carried out as official proceeding<sup>645</sup>. The procedure is the same as in previous example, except that in this there is a possibility of verbal discussion, which as a rule is not public, but can be based on a request of person holding public function<sup>646</sup>.

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<sup>634</sup> *Ibid*

<sup>635</sup> Law on Lustration, Article 4, *see above under 3*

<sup>636</sup> Law on Lustration, Article 10, *see above under 3*

<sup>637</sup> *Ibid*

<sup>638</sup> *Ibid*

<sup>639</sup> *Ibid*, Articles 14 to 17

<sup>640</sup> *Ibid*, Article 22

<sup>641</sup> *Ibid*, Article 15, Item 1

<sup>642</sup> *Ibid*, Article 15, Item 4

<sup>643</sup> *Ibid*, Article 16, Item 32, Point 1

<sup>644</sup> *Ibid*, Article 17

<sup>645</sup> *Ibid*, Article 18 to 21

<sup>646</sup> *Ibid*, Article 20



If a person for whom it has been established in a mentioned proceedings to have violated human rights in the past does not withdraw the candidature or does not resign within seven days of passing of a resolution, a measure of publicly announcing violation of human rights is brought<sup>647</sup>. This measure consists of public announcement in the media and in the Official Gazette of RS<sup>648</sup>. If after 30 days the candidate or a public official does not withdraw, Constitutional Court of Serbia acknowledges that for that person order of prohibition of holding a public function has assumed, and passes a Decision on that matter<sup>649</sup>. Prohibition on holding the office lasts for five years.<sup>650</sup>

- **Lustration commission**

Lustration Commission was constituted with eight out of nine foreseen members, because none of the opposition party members wanted to participate in the work of this body<sup>651</sup>.

Members of the Commission requested from the Parliament to provide means of work, but the Parliament did not answer to this request.<sup>652</sup> Commission was not granted premises, members did not receive salaries, nor was skillful assistance service formed that could aid them in their work<sup>653</sup>. Despite these problems, the Commission succeeded in establishing three working groups and Rules of Conducts<sup>654</sup>. On the last session held before the parliamentary elections of December 2003, two members requested that advanced check of candidates for representatives should be performed according to the Law. However, other members of the Commission rejected that proposal<sup>655</sup>. After this, the Commission never held another session, and a member of the Commission Vesna Rakic-Vodinelic resigned<sup>656</sup>.

Since the Law prescribes that the function of a member of a Commission lasts until the end of his/her term in the Parliament<sup>657</sup>, President of the Lustration Commission ceased to perform this function after parliamentary elections were held in Serbia on December 28<sup>th</sup>, 2003.<sup>658</sup> The Parliament still has not proceeded in electing a new representative to a position of a President of the Lustration Commission<sup>659</sup>.

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<sup>647</sup> *Ibid*, Article 32

<sup>648</sup> *Ibid*

<sup>649</sup> *Ibid*, Article 33

<sup>650</sup> *Ibid*

<sup>651</sup> V. Rakic-Vodinelic, *Unsuccessful attempt of lustration in Serbia*, Journal for questioning the past, HERETICUS, number I, 2003, pages 75-76

<sup>652</sup> YIHR's Documentation, Interview of YIHR's researchers with Sima Radulovic, president of the Lustration Commission, April 21<sup>st</sup>, 2005

<sup>653</sup> V. Rakic-Vodinelic, *Unsuccessful attempt at lustration in Serbia*, see above under 651

<sup>654</sup> *Ibid*

<sup>655</sup> *Ibid*

<sup>656</sup> Interview with Sima Radulovic, see above under 652

<sup>657</sup> Law on Lustration, Article 25, see above under 3

<sup>658</sup> *Lustration aided by files*, see above under 631

<sup>659</sup> *Ibid*

The problem that occurred even during adopting of the Law concerned the question of whether Commission's work, even if it were constituted, would be possible without adopting the Law on disclosing Secret Services files<sup>660</sup>. Namely, the Commission should base its work on the information received from secret services, above all Security-Information Agency<sup>661</sup>. Since there is neither mechanism of verification of authenticity of those files nor a real control over the work of this agency, suspicion rises on quality of decision based on documentations received from unreformed security services<sup>662</sup>. Besides this, there is fear based on experiences from other east European country that carried out this process<sup>663</sup>, that without a strong and independent judicial system abuse of lustrational measures can occur, as well as their public relativising.

## **Conclusions on Implementation of Law on Lustration**

Based on research of the implementation of the Law on Lustration, the YIHR has drawn the following inferences:

1. Law on Lustration is not applied although it has been adopted for past two years.
2. Representatives of the Parliament did not elect all nine members of the Lustration Commission, nor did they provide the Commission with basic material means.
3. Lustration Commission has not reached a single decision on violation of human rights since its formation. The only suggestion for verification of candidates for representatives of the Parliament was rejected by a majority of members of the Lustration Commission.
4. One member of the Lustration Commission resigned, while the President's mandate expired. Unless new members are elected, its work is impossible.
5. There is no readiness among government representatives in Serbia to apply provisions of the Law on Lustration. Most representatives in the newly elected Parliament do not support this Law, also an initiative has been submitted on adopting a Law on Cease of Validity of Law on Accountability for Human Rights Violations.

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<sup>660</sup> Program Index finger, B92, *Lustration in Serbia*, June 9<sup>th</sup>, 2003, *see above under 630*; M. Radulovic, Lustration in Serbia-illustration of incapability of democratic change, Journal for questioning of the past, HERETICUS, no I, 2003

<sup>661</sup> Election for representatives for the National Assembly of Serbia, December 28<sup>th</sup>, 2003, *see above under 632*

<sup>662</sup> *Lustration aided by files, see above under 631*

<sup>663</sup> *Lustration, see above under 624*

## **Recommendations on the Implementation of the Law on Lustration**

Based on the research of the implementation of the Law on Lustration and conclusions made, the YIHR adopted the following recommendation:

1. The Parliament must as soon as possible elect new members of the Lustration Commission for the three unoccupied seats without which normal functioning of this body is impossible.
2. Government must publicly declare itself towards breaking of the Law on Lustration. As long as that Law is functional its provisions must be respected by all state authorities.
3. Lustration Commission must start an initiative to regulate its work, as well as provide all necessary conditions in order to be able to conduct work defined by the Law on Lustration.
4. It is necessary that representatives of highest state institutions clearly and unquestionably support the implementation of the Law on Lustration and lustration itself as one of the mechanisms for establishing of transitional justice. That is the only way to achieve social consensus on concerning this question.



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