



YUCOM

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Human Rights and Democracy Violation Early Warning *Weekly Newsletter* No. 47

Consultative Meeting on the Implementation of the Access to Public Information, Data Privacy Protection Act, and Data Classification Act

On the initiative of the *Lawyers' Committee for Human Rights* – YUCOM – a consultative working meeting was held with the view to discuss the pace of implementation of three important pieces relating to human rights: Access to Public Information Act; Data Privacy Protection Act; and Document Classification Act.¹

The objective of what was conceived as a constructive exchange of participating authorities', institutions' and organizations' representatives was to:

- 1) Identify problems encountered by independent bodies, authorities, nongovernmental organizations and citizens *en route* to these laws' implementation;
- 2) Detect capacities of improving these laws and other instruments in the area of free access to information, data protection and data classification, and
- 3) Explore possibilities of advancing relations between nongovernmental organizations and public authorities in this process.

The consultative meeting was attended by:

- **Saša Janković**, Republic of Serbia Citizens' Protector (Ombudsman);
- **Rodoljub Šabić**, Commissioner for Access to Public Information and Data Privacy Protection;
- **Dragana Rajić**, Ministry of State Administration and Local Self-government;
- **Gordana Stanić**, Ministry of State Administration and Local Self-government;
- **Robert Sepi**, Office of the Ombudsman;
- **Jadranka Jelinčić**, Open Society Fund;

¹ The debate was organized within the framework of the *Strengthening citizens in realizing the right to Free Access to Information and Data Protection through public Advocacy for adoption of the amendment to the FOIA and the Law on Classified Information*, a project supported by the Institute for Sustainable Communities.



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- **Nataša Govedarica**, Civic Initiatives;
- **Prof. Stevan Lilić PhD**, Lawyers for Democracy – LawDem;
- **Dušan Dželebdžić**, Center for the Advancement of Legal Studies - CUPS;
- **Miroslav Janković**, Organization for European Security and Cooperation - OSCE;
- **Bogdan Gavanski**, Institute for Sustainable Communities - ISC;
- **Ivan Grujić**, People's Parliament;
- **Dragan Popović**, Youth Initiative for Human Rights - YIHR;
- **Nevena Dičić**, Belgrade Center for Human Rights;
- **Nemanja Nenadić**, Transparency Serbia;
- **Dr Dejan Milenković**, YUCOM;
- **Katarina Jozić**, YUCOM;
- **Novak Vučo**, YUCOM;
- **Lena Pelić**, YUCOM;

YUCOM's Dejan Milenković PhD opened the debate by underlining that, although legislation regulating freedom of access to public information, data privacy protection and data classification is in place for years, there is a need for its improvement and facilitation of its implementation. Mr. Milenković stressed that the Data Privacy Protection Act should be harmonized with the European Parliament and EU Council Directive 95/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Apart from the absence of a legal framework, participants in the debate emphasized the necessity of adequate training of state authorities' employees, as well as the question of data declassification and the problem of implementing the decisions of the Commissioner for the Access to Public Information and Data Privacy Protection. He went on to remind that a significant role has been played by the civic sector when advocating the adoption and implementation of that legislation, as well as in the process of raising public awareness of the issue.

Commissioner for the Access to Public Information and Data Privacy Protection Mr. Rodoljub Šabić pointed out at the underdeveloped awareness of these problems, as well as at the insufficient expertise in the implementation of this legislation. He added that civil society organizations can contribute tremendously in tackling these problems. The Commissioner emphasized that whatever progress has been made in the area of access to public information over the past five years is due to the firm standpoint of and cooperation between the Commissioner's Office, the civic sector and citizens. He underscored the problem of implementation of the Commissioner's rulings: it should be secured by the Government of the Republic of Serbia, but it has not acted accordingly in a single case. He also called for a speedy conclusion of an agreement with state authorities regarding the publication on a regular basis of manuals and information sheets pertaining to this area.



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In regard of data privacy protection, the Commissioner is of the view that the situation gives no reason for satisfaction. He pointed out that the Republic of Serbia should implement the obligation stipulated in Art. 81 of the Stabilization and Association Agreement signed with the EC, as well as other obligations and standards in this area. He reminded that the Finance Ministry has not earmarked funds necessary for the Commissioner's Office to hire personnel trained in the area of data privacy protection, nor does the Office employ qualified IT personnel to deal with the issue. Increased NGO support was also needed, he added. The Commissioner quoted several concrete examples of bad practice recorded when entering members of ethnic minorities into voters' registry, publishing personal data without prior consent of persons in questions, etc.

Commissioner Šabić reminded that the law prescribes that all classified documents have to be reexamined by state authorities within two years (until mid December 2011). Unfortunately, says the Commissioner, the opportunity was missed to provide in that law for a rule that all documents not found to be declassified should automatically become public after the expiration of that deadline, which is an example of good practices in Romania, for example. The law does not provide for sanctions to be imposed on state authorities in cases of disregard of that deadline - another ground to cast a shadow of doubt on their genuine commitment to transparency in performing their duties.

Citizen's Protector Saša Janković accentuated that passing the legislation in this area represents a significant step forward in regulating this sphere of citizens' rights uphold and protection, but it still lags way behind the desired stage and level of proper implementation. Although there was much resistance to the inclusion in the Data Privacy Protection Act of a provision that both the Ombudsman and the Commissioner for the Access to Public Information and Data Privacy Protection should have access to classified data, that clause has been provided for – thanks to the pressure brought to bear by the NGO sector and the media, too.

Republic's Ombudsman reminded that his recent visit to the Security and Information Agency (BIA – formerly known as the notorious State Security, UDBA) was very important due to the fact that – for the first time ever – a control visit has been made by an institution which is not part of the executive branch.

The Ombudsman said that his Office has received 600 complaints related to state authorities' conduct. However, his Office does not have sufficient capacity to work, nor does it dispose of necessary office space. It thus runs the risk of losing citizens' confidence due to these problems. It is in this respect that the Ombudsman expect NGOs' support as well.

Mr. Janković announced that the OHCHR will issue a ruling on Citizens Protector's status depending on the level of harmonization of his/her competences and real powers with the Paris Principles.



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Jadranka Jelinčić (Open Society Fund) underlined that more expertise is needed now that at the beginning of the transition process. Great responsibility is shouldered by the civic society, she said. Underlining the necessity of closer cooperation between NGOs and professional associations, she deemed it indispensable to look for allies in professional associations with a view to compensate the lacking expertise in certain areas. She also emphasized the urgent need to educate and train state authorities' employees, as well as to elevate the public awareness of the importance of these three laws to a higher level.

Ms. Jelinčić announced that the Open Society Fund will launch an initiative to amend six key articles of the Constitution of the Republic of Serbia – a necessary step to finally complete the institutional framework of a modern democratic society in Serbia.

Speaking on behalf of the Ministry of State Administration and Local Self-government, Ms. Gordana Stanić recalled that the amended Free Access to Public Information Act (2009) stipulates that that Ministry is entrusted with supervision over the Act's implementation. However, the Ministry disposes of insufficient capacity to perform the supervision: only one employee in the Ministry is charged with this task.

* * *

Participants in the meeting held at the Belgrade Center for Cultural Decontamination agreed that full, consequent and responsible implementation of these three laws urgently requires education and capacity strengthening of the state administration. They also stressed that the nongovernmental sector is insufficiently trained in the area of data privacy protection, as well as that raising the awareness of independent state agencies' role in consolidating the democratic order in the society.

Outlook:

This debate was yet another to indicate Serbia's slow advancement in an exceptionally important and delicate area of human rights protection, such as the right to know, data privacy protection and data classification. The state of affairs in this field is all the more alarming inasmuch as Serbian authorities fail to fulfill clear international obligations they have subscribed to. Should a consequent, full and unconditional implementation of existing legislation and its accelerated harmonization with European and international standards not be made a top priority in upholding and promoting human rights, Serbia's advancement towards EU membership and her integration in contemporary international processes will be hampered significantly.