

THE TOPIC OF THE ISSUE

INTERVIEW: RODOLJUB SABIC, THE FIRST AGENT OF THE GOVERNMENT OF SERBIA FOR INFORMATION OF PUBLIC IMPORTANCE



OPENNESS OF THE WORK OF STATE BODIES – BIGGEST INTEREST OF SERBIA

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A great variety of things was said on the Serb national character: they were placed to heavenly heights, there was their famous heroism, their sacrifice and suffering (the myth on Kosovo) all the way to somewhat less poetical observations on Serb ethnocentrism, inability to rationally comprehend things, conservative traditionalism, etc. Whatever is true, or is not, one of the dominant national characteristics of the Serbs surely is – conspiracy, plot. Serbia is a country with a culture of conspiracy, which has its foundations in both the tradition and reality. Who would even superficially study Serbian history could not disregard the fact that it is to a great extent a history of conspiracies, although the Serbs like to believe that they have a glorious past. Conspiracy was almost an imperative of life, in order to save one's head. A half-century long communist ideological and political regime strengthened and developed this feature to unprecedented proportions. Conspiracy was the religion of communism.

Many foreigners identified this unusual Serbian inclination towards conspiracies. There from also the anecdote, the true story on an English diplomat who, leaving Serbia a few years ago, admitted to his Serbian acquaintance: nice country, but I did nowhere see so many conspiracy theories as here. Maybe – was the answer – but the fact that I am paranoiac does not mean that I have not been followed!

How does such a Balkan inclination to secrecy and conspiracy of ours fit in with the Law on Free Access to Information of Public Importance, which Serbia, too, finally got some year and a half ago?

The first Agent of the Government of Serbia for Information of public Importance, Rodoljub Sabic, says: «In 2004 Serbia has finally got the Law on Free Access to Information of Public Importance, although the idea existed for some time. Of course, anyone who knows our mentality, our conspiracy tradition and our tradition regarding the relation between the authorities and the public, sees ideas which in their foundations have free access to information on the conduct of the authorities as completely dissonant. When this Law is concerned, many think that this was exclusively the request of the international community, which is partly true. This was the request of the international community but here, in the country, there too were people who understood the importance and significance of such a law, as a very important step towards democratization of the country. These two reasons together resulted in passing the Law on Free Access to Information of Public Importance in November 2004, and six weeks later we also got the first agent for information of public importance, whose basic task is to protect rights guaranteed by this law.

Such a Law is complete novelty to Serbia, how does its implementation look like?

- I am no beginner in politics, I have big experience and I was expecting that there will be serious problems, but I must say there were much more problems than I could even expect. First of all, the first six months after the Law was passed were literally wasted because we could not get even the basic premises for our work, we had no employees, because the budget of Serbia had no money for us. We had to make it somehow possible, in spite of that, for the institution to start its work. In this period there was valuable assistance on part of the OESC Mission in Serbia and Montenegro, as well as a number of nongovernmental organizations. With their help we managed in the first few months to have an intensive campaign to educate and inform the public in Serbia in regard to the provisions and the essence of this Law, which actually is one of the basic functions of the Agent. We held some thirty seminars, round tables, panel discussions. We visited almost all bigger towns in Serbia and this gradually began to bring results. We began piecemeal to introduce into the public life of Serbia the idea that the right of the citizen to be informed is one of the basic human rights. It should not be expected to be a rapid and easy process, but the first steps have been made. Here are some good examples: a small TV network, through this Law, after a long period has finally acquired the documents which confirm that a pharmaceutical company in their town is dangerously polluting the environment. After that the leadership

of the firm stopped further production and promised not to continue until adequate filter equipment be installed. Interesting is also the case of a seventeen-year old young man, a pupil of the third class of secondary school who, using also this Law and with assistance from the Agent for Information of public Importance, asked for documents which contain results of an internal control in his pupils' institution. The revelation of the information that he was asking to get resulted in UBPOK (Department for Fight Against Organized Crime) coming to this institution, the dismissal of the director and filing nine criminal charges. The only objection of the authorities to my order and their demand to abolish it is based on the fact that the young man has no locus standi since he is a minor. Then, there is the huge plunder on the highway and the spectacular related action of the Ministry of the Interior: prior to that, a citizen asked for these very data on the pay tolls, citing the exact day and spot. The firm refused to give the information, invoking business secret. They did not give the data, and they did even file charges to the Supreme Court. However, a few days later, the police have gone there and we saw what kind of business secret this was. There are a number of similar, encouraging examples.

Unawareness and ignorance have always been the basis of any regime's tranquility. How do the authorities in Serbia deal with this problem, since nobody will easily give away monopoly on information?

- First, nowadays nobody is given this tranquility anymore, and second, the regime is always looking upon such requests with reluctance. In a country in transition, which is facing alarming proportions of corruption, of course that there are a significant number of people and structures which are interested to keep this monopoly and they do not like the idea that anybody has the right to ask and get the information.

Apart from that, another phenomenon is present here; we have the idea that is generally accepted – we want to Europe. We understand that in the realization of this idea we have to harmonize our judicial system with the European one and then we adopt different laws which often are almost copies of these European laws. These laws contain sometimes new provisions unknown to our society, but we adopt them. This is all right, but this is not enough. The real problem is the harmonization of our real order with the European one, the harmonization of standards of life. Our way of thinking unfortunately is such – we adopt a law and think to have ended our task, and continue to behave in the old manner. So, also the first reaction of the authorities in regard to the demands of the citizens or the Agent for accessing some information or document were completely in accordance with such a standpoint. What do they want after all? However, I must say that this kind of thinking did begin to change. To a big extent the media contributed to this, although not sufficiently, or at least not to an extent that we would like them to do. It is a big success that Serbia has got this institution at all – the Agent for Information of Public Significance. A growing number of citizens, media, nongovernmental organizations addressed this institution. During the entire past year we had some 450 cases. Only in the first four months of this year were registered twice as much. In April there were more than 300. More than 700 cases were completed in one way or the other. Almost half of the cases was ended because the authorities gave the requested information or document already upon the first intervention of the Agent. This shows that what was needed is only a little good will in order to have more satisfied citizens, a better image of the public organs and, of course, less bureaucratic procedure.

In the part where I had to issue an order by which an information or document are to be given to those who demanded them, the number of voluntary execution is also very high. I am an attorney with many years of experience and I know that Serbia is not a very disciplined country when it comes to executing of state organs' decisions. I expected this attitude to be much more unfavorable, particularly in regard to a new organ which is being established and for which almost a half of the population did not even here about. However, at least in 90 percent of the cases these things are solved.

It is all about the Internet

There is yet another form of communication between the public and state organs, which I shall be insisting upon in the forthcoming period. This is the Internet as a, no doubt, most attractive media of the century. The Law, among others, contains also the obligation of the authorities to publish an informative leaflet on its work, which should offer even to a layman a more or less clear picture on what this organ does, how it functions, what is its structure, then the data on the leadership, on the rights that the citizen can realize etc. I sent to all of them the instruction with the order to place these leaflets on the Internet. This is certainly the most democratic way of presentation. The state of affairs in this field was completely chaotic, but if it is of any comfort, the authorities in Slovenia have also reacted very unfavorably to a similar obligation. Now all our ministries have information leaflets in the electronic form, and all public enterprises in Serbia are now working on them. However, here must be established certain standards regarding quality, expedience, contents, etc.

In regard to media and a more intensive communication with the broadest public, maybe it would be good to have, for instance, a constantly open line of communication or a column, a broadcast, where we

could communicate directly with the citizens. The problem is, however, the great bulk of work to be done and the small number of people that we have at our disposal.

Was any of these cases dealt with by a court?

- There were some twenty cases where the order was not respected. This is not much, but this number will certainly be rising. And here comes the question – what now? The Law says that the decisions and orders of the Agent are of a binding nature, and that if necessary the Government is to secure the execution of the Agent's orders. This is a problem to which I have drawn attention of the Government of Serbia many times. In a written form I suggested the Government to amend its Rules of Procedure and create some active mechanism which would secure the basic means for this. For the time being there is no reaction. This is not yet an acute problem in view of the fact that recently some neuralgic cases were being opened, such as the demand for the BIA (Security and Information Agency) to deliver data on the number of wire-tapped persons in the previous year.

BIA has not only refused this demand, it also filed charges against the Agent's orders to the Supreme Court of Serbia.

- This has gained big publicity mainly because of our known inclination to mystify everything that is connected with the secret services. Let me put this in a simple way: more than half a year ago a nongovernmental organization – Youth Initiative for Human Rights – addressed the Agent for Information with the demand for protection of rights. Namely, they have asked BIA to give information on the number of demands for wiretapping and on the number of performed wiretappings in the previous year. This was an orderly demand, in accordance with the Law. There was no legal reason which would present the basis to limit access to this information. It was all about only the number of demands and nobody could see in this anything which could possibly endanger the work of the service, some operational task they perform. I brought a decision along these lines and ordered BIA to act upon this demand. Not only have they not acted in this manner, they also made use of a provision in the Law on Information of Public Importance which says that against the Agent's orders charges can be filed with the Supreme Court. This is what they did; however, as I expected, the Supreme Court has rejected the charges of BIA as unfounded. Now I expect BIA to finally do what the Law orders – to make this documentation public. If it does not do so, the Government of Serbia should secure the implementation of this order. There can no longer exist either people, or state organs, to which the law does not apply. This is truly a very comfortable position, but in the future it will be a non-sustainable position: whatever you do you declare to be secret and you think you have solved the problem.

What prevents them from giving completely arbitrarily data?

- On the one hand, the Agent has the right to see all requested documents. However, if we start from your supposition, of course that they can deceive me as well. Still, this is not very probable: they know very well that times have been changing and that this country, albeit slowly but unstopably is heading towards democratization of the entire life. Nobody will be the chief of the services for lifetime. Somebody else will come, who will go through the archives and will see that things were somewhat different. I am convinced that very soon nobody will get the idea to do such things.

What are the sanctions for not executing the orders of the Agent for Information?

- The Law envisages sanctions. Failure to act upon the demand of the citizen or the media is a misdemeanor; the punishment is a small one, but still is a punishment. This is a very acute problem, to which I have also drawn attention to both the Government and the Assembly of Serbia. There was even a conclusion of the Assembly committee which was fully supporting my demands and asking for amendments to the Law in the relevant direction. However, nothing was done in this regard. Control over the implementation of the Law is within the competences of the Ministry of Culture of the Republic of Serbia, which has not even the basic preconditions to perform it – either logistic, or professional, or locus standi. I will tell you only about the misdemeanors that came to our desk, and we transferred them to the Ministry of Culture, since it is them who perform control, to initiate misdemeanor procedures before a competent organ – no proceedings were initiated. Two key issues illustrate the attitude of the Government of Serbia to this issue: one is the implementation of decisions of the competent organ, the other is sanctioning of the perpetrator. If these two mechanisms are not activated, having in mind that it is more than a year that the Law was passed – this can already be interpreted as a specific attitude of the Government of Serbia in this matter.

How much have the media in Serbia up to now made use of the possibilities opened to them by this Law?

- It was surprising that in the first year the media have practically made no use of it. To be more precise, only the Gradjanski list from Novi Sad had from the very beginning used in a systematic way the

possibilities opened by this Law. However, after the well known demand of TV B92 to get the note on the talks of the Ministry of Police Dragan Jovic with Milorad Ulemek Legija in the night when he was arrested – this changed. Now we have quite a number and ever growing number of requests of media. These are different media – from those big ones from Belgrade, to the small, local ones.

For all the media the problem is the time which elapses from the time when they file a demand to the time when they get the information. However, not everything is written for daily use, and the journalists must also themselves create the attitude of the authorities to them. Until the journalists, as representatives of the public, do not invoke their rights, the authorities will treat them in this way.

This Law starts, first of all, from the right of the citizens, namely the public, to have information of public significance. On the other hand, when it comes to the burning problems of the Serbian society – war crimes, organized crime, corruption – all is further on kept sealed in blue?

- Not even any of the most democratic countries in the world can enable access for the public to all information the whole time. Our Law on accessibility of information is also starting from these premises, but it does not treat them as absolute ones. As absolute it treats the right of the citizens to have access to information, of course with certain limitations. These limitations generally relate to informing the public on some data which can prejudice some other interest, protected by law, and one which is superior in relation to this. These include certainly the prosecution and finding of those who committed criminal acts, including war crimes, and criminal proceedings, national security, protection of privacy, official, state or business secret – hence, reasons which are listed in the Law.

The demand can also not be ignored, it must be dealt with and a decision must be made in which the reasons for a possible rejection for access to information will be elaborated. Hence, it is not the type of document, but rather the content of the document, which determines whether or not the access can be limited.

Our country is facing drastic corruption, and for the time being there was no better remedy found for this than is the public. This is like when you enter a dark, damp room and hear the cockroach and when you turn on the light – they run away. This is the state of affairs. It is in the best interest of Serbia to make the openness of the work of state organs a principle. There must not at all be any discussion on whether, for instance, the monthly income of the public functionaries is a public issue, or whether public procurement should be available to the public eye. This is your money, the money of the tax-payers, and people should have this constantly in mind. Just one example: according to World Bank's estimates, even after all improvements that we made in the field of reorganization of the public procurement system, our potential for savings in public procurement is still around three hundred million dollars a year! For this poor society this is huge money, which is staying somewhere in the grey zone and for which we can only suspect into whose pockets it went. Therefore, any story on whether we need to raise the level of openness in the work of public organs is – meaningless. Of course, this asks for new efforts, means, investment into human resources, logistics, but everywhere in the world fight against corruption is treated as an investment, and not as a cost.

What we need the most is truth

In regard to the issue of war crimes I think we find it most difficult to comprehend what is most obvious: it is in our interest, much more in ours than of the international community, to get rid of that past and all its prejudices. Sometimes it seems that the people are so bitter that they refuse to adapt to the reality, for their own good. Crimes are hidden under the carpet, and we all suffer the consequences. You cannot become part of the democratic society and keep all these mechanisms of hiding and limiting the public. What we need the most is exactly the truth, however uncomfortable it might be. We must make an effort to make the public the criterion of the legitimacy of the authorities' conduct.