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International Right to Know Day – worrying situation in BiH

General research findings show that the level of implementation of Freedom of Information Act is still low, where less than 50% of requests resulted with replies that are within the time limit and form proscribed by the law

Banja Luka, September 28, 2009 – September 28 is celebrated in many countries as the International Right to Know Day. The right of free access to information is considered as one of fundamental human rights in all democratic countries and is guaranteed by all relevant international documents that guarantee basic human rights. In Bosnia and Herzegovina there are three Freedom of Information Acts (FOIA), on national and entity levels.

Within its research during 2009, TI BiH issued 352 requests for access to information, for the purpose of gathering data on the number of received, accepted and rejected requests for access to information during 2008. Those requests were sent out to all municipalities in BiH (over of 144), and all ministries, on cantonal, entity and national levels (136), while other requests were issued within regular processing of citizens' complaints within anti-corruption Advocacy and Legal Advice Centre.

Even eight years since the laws had been adopted, implementation of the right of freedom of access to information is still unsatisfactory. General research findings show that the level of implementation of Freedom of Information Act is still low, where less than 50% of requests resulted with replies that are within the law-binding time limit and form. Institutions still have not got adequate capacities for the implementation of the laws, the right to have judicial protection of the right of free access to information has been relativized considerably, and the Ombudsman's role in realisation of rights proscribed by FOIA has been marginalized. A particular problem represents the access to information regarding the privatization process, public companies' businesses, financial aspects of state institutions' functioning, where most often it is practically impossible to get appropriate information.

The level of FOIA implementation is somewhat better in the case of state level institutions (73%). While the FOIA implementation level in Federation of BiH institutions is 55%. The law implementation by government institutions in RS is considerably worse and amounts to 43%, while cantonal administrations are least transparent with the implementation level of 38%.

When it comes to municipalities, overall of 53 (36.8%) municipalities, of 144 that were involved in the research, replied to requests within law-binding time limit of 15 days, where 29 (20.1%) municipalities are in F BiH and 24 (16.6%) in RS, which leads to a conclusion that in 91 (63.1%) local administration

units the law provisions regarding the time limits for processing requests have not been followed. These municipalities delivered the information only after urgencies had been issued, and TI BiH filed complaints against 14 municipalities to entity ombudsmen for administration silence and breaching the FOIA provisions, specifically against 8 municipalities from Federation of BiH, and 6 of them from Republic of Srpska. In one case (municipality Ravno), TI BiH did not receive any reply, even after Ombudsman's intervention, therefore F BiH Ombudsman filed a report against them for human rights violation.

What is especially worrying is the fact that of 143 replies, only 8 (5.5%) of them satisfied the form proscribed by the law, that is in this case very important so that citizens can use their right to appeal or enter the administrative procedure if they are dissatisfied with the form or the content of information delivered.

From 33 (22.9%) municipalities, 15 from F BiH and 18 from RS, TI BiH received official statements that during 2008 they did not receive any requests for access to information. However, according to TI BiH activity records, it has been established that requests for access to information were sent out to all local administration units, including these 33, and that official replies were received from most of them. What can be concluded from all this, is that almost one fifth of municipalities do not make records on the number of requests received.

The research also showed that in RS 76% municipalities have their own Web presentation, while in F BiH this percentage is higher and amounts to 92%. However, most of the local administration units' Web sites do not have necessary elements that would enable citizens to easily communicate and access the information. The information on web sites are out of date, the sites are irregularly or not at all maintained, therefore citizens cannot rely on this form of communication with local authorities

Alongside the FOIA Implementation Research, TI BiH carried out a public opinion survey in BiH, where results showed that 49.7% of citizens are familiar with the existence of Freedom of Information Act. The overwhelming majority (90%) of them have never called upon or used this law in any way and requested information from the authorities. The majority of those who have requested information (9%) did receive an official reply (67.5

Institutions that continually and systematically violated provisions of this law are Radio-Television of Republic of Srpska (RTRS), Medical Faculty of Banja Luka, Ministry of culture and sports of F BiH. TI BiH will regularly comprise so called black list of institution that violate these laws and will inform the authorised institutions and the public about this issue.