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Bureaucratic Legal Consciousness: Perception of the Right to Access to Information of Public Importance in Public Authorities in Serbia*

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The article analyzes the legal consciousness of public officials who decide on the right to access information of public importance in authorities of the Republic of Serbia (authorized persons). The empirical small-scale study presented here aims to determine the characteristics of authorized persons' consciousness concerning this rights. Therefore, a qualitative research design was chosen. Through in-depth semi-structured interviews with ten authorized persons from various public authorities, an attempt was made to answer the question: what are the public officials' subjective perceptions of the right to information? Since the presented research does not belong to the legal effectiveness studies, these subjective perceptions were not compared with the statutory or doctrinal definition of the right to information. The aim was to examine whether there is a single, unique "bureaucratic narrative" or these public officials differ in how they perceive this right. Based on the data obtained from the interviews, we established four legal narratives about the right to information.

KEYWORDS: legal consciousness / legal consciousness of public officials / right to information / bureaucracy / perception of the right to information / Law on Free Access to Information of Public Importance/ legal narratives

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Introduction

For the last two decades, research on legal consciousness has attracted the attention of an increasing number of sociologists of law, especially in the United States. This notion, today most often understood as a "cognitive image of law that is constructed through the life experience of people" (Hertogh & Kurkchiyan, 2016, p. 404), has become central in studies on legal culture, or even synonymous with it (Fekete & Szilágyi, 2017, p. 326). To understand the complex concept of legal consciousness, different authors approached it from different ontological positions: from the classical liberal one, through structuralism (Ewick & Silbey, 2014, Part 1, Chapter 3, Section "Law in Society: Legal Culture and Consciousness", para. 4-16), up to modern understandings of consciousness as a cultural practice, i.e. "part of a reciprocal process in which the meanings that individuals have given to their world become patterned, stable and objectified" (Ewick & Silbey, 2014, Part 1, Chapter 3, Section "Schemas and Resources as Media for Social Construction", para. 1). Depending on the above, methodological approaches to legal consciousness research have also changed. Large quantitative studies conducted in the 1970s explored the knowledge and attitudes about law, while most recent, qualitative ones, seek to understand how people's experiences from everyday life shape their ideas about law (Cowan, 2004, p. 929).

Despite all the differences in their basic assumptions, definition of the concept, and methodological approach, there is something that studies on legal consciousness share – most of them explore legal consciousness of "ordinary" citizens (Ewick & Silbey, 2014; Nielsen, 2000; Sarat 1990; Hoffman, 2003; Engel & Munger, 2003). A small number of studies deal with the legal consciousness of legal experts, such as public officials. This seems surprising considering social sciences' traditionally great interest in the phenomenon of bureaucracy, as well as importance that these professionals have, not only as the ultimate interpreters of law but also as a factor that influences the formation of the legal consciousness of "ordinary" citizens. As correctly noted by Adam Podgorecki, citizens become familiar with the law either through a long process of internalizing legal norms, or through a process of imitating the behavior of judges, public officials, and other legal experts (Campbell et al. 1973, p. 72).

Precisely motivated by the lack of studies on legal consciousness of public officials, and guided by Silbey's observation that "the most promising work seems to look at the middle level between the citizen and the transcendent rule of law: the ground of institutional practices" (Silbey, 2005, p. 360), we decided to direct our exploratory research toward this population. However, unlike the majority of existing studies on this topic which explore general legal consciousness of bureaucrats, in this paper we will present research on public officials'[1] perception

[1] In this paper we use the term *public officials*, as a generic term for all persons performing "public service", i.e. for all persons employed in public authorities which are enumerated in the Article 3 of

of one particular right – the right to access information of public importance (hereinafter: right to information). What instigated me to explore the perception of this right was its specific purpose to make the work of state bodies transparent, on the one hand, and the nature of the bureaucratic apparatus which is traditionally associated with the epithets of secrecy and closedness, on the other hand. Indeed, there's no right that rattles so strongly the "iron cage of bureaucracy", as Max Weber vividly described that powerful structure (Ricer, 2012, p. 86). The right to information endangers almost every (negative) characteristic traditionally attributed to bureaucracy. Firstly, with its very basic purpose - to make the work of public authorities transparent – it jeopardizes its most problematic feature: secrecy and closedness. Moreover, the right to information threatens to jeopardize other pillars of classical bureaucracy as well: its rigid formalism, inflexibility, excessive uniformity in decision-making, indifferent objectivity, etc.

The Concept of Legal Consciousness and Different Approaches to its Research

The earliest empirical research on legal consciousness is related to the so-called *KOL studies*, conducted in the 1970s. Known in the literature under the aforementioned abbreviation, they got their name from the title of the famous collection of papers (*Knowledge and Opinion about Law*) in which Podgorecki et al. published their studies on legal consciousness (Campbell et al., 1973). These studies were based on a structuralist approach (Gidens, 2007), which means they treated legal consciousness as a social fact that can be observed and measured. Due to this approach, the methodological choice were large-scale quantitative studies, which aimed to determine whether there is a gap between the content of legal norms and citizens' attitudes about them. In this sense, the KOL studies can be considered a part of studies on the effectiveness of law (Hertogh, 2004).

Recent studies on legal consciousness are based on an interpretive approach. They do not see law as a social fact that shapes individual behavior and consciousness, but as a phenomenon whose meaning is constructed in the interaction between individuals (Ewick & Silbey, 2014). When law is understood in this sense, it becomes clear why this kind of legal consciousness studies focus

the Law on Free Access to Information of Public Importance. Since this Article does not name only state authorities, but also public institutions, public agencies, organizations vested with public authority, a local self-government bodies, etc. (see: footnote 5), the persons who are authorized in those bodies to act on requests for access to information, and whose legal consciousness is the subject of this research, cannot be reduced only to civil servants in the sense of the Law on Civil Servants ("Off. Gazette of the RS", 79/2005-13, 81/2005-11 (correction), 83/2005-21 (correction), 64/2007-3, 67/2007-26 (correction), 116/2008-76, 104/ 2009-27, 99/2014-7, 94/2017-5, 95/2018-366, 157/2020-3). Not all authorized persons in our sample are civil servants. Since there are also employees from other categories of public authorities, I will refer to them as *public officials*. Along with that, I will also use the term *authorized persons*.

primarily on "images of laws and legal institutions that people carry around in their heads and occasionally act upon" (Hertogh, 2004). Qualitative research methods correspond to this approach. Marc Hertogh points out that among these studies two approaches can be distinguished: *American* and *European* (2004).

The so-called American approach to the study of legal consciousness is based on Roscoe Pound's distinction between law found in statutory provisions (*law in books*) and the norms that guide judges' decision-making in reality (*law in action*; Pound, 1910). Studies based on the *American* approach deal with the question of whether there is a gap between *law in books* and *law in action*. In other words, these studies are looking for an answer to the question: How do people perceive law found in the regulations? Or, in Roscoe Pound's terms: What does "official" *law in action* look like (Hertogh, 2004)?

On the other hand, certain European sociologists of law start from Eugen Ehrlich's idea of the existence of *living law* when studying legal consciousness (Hertogh, 2009). According to Ehrlich, *living law* consists of norms that describe the actual behavior of citizens, which can be different, both from norms found in statutory provisions (*law in books*) and those applied by courts (*law in action*; Faso, 2007). Studies based on this, so-called *European* concept of legal consciousness, treat law as an independent variable: the researcher does not enter the research process with a predetermined definition of law (statutory or doctrinal) but rather allows the respondents themselves to "discover" what they perceive as law. Therefore, the goal is not (as with the *American* approach) to compare people's attitudes with the official definition of law, but an attempt to discover the respondent's subjective definition of law (Hertogh, 2004).

As for the content of the concept, it is usually considered that legal consciousness consists of two elements: legal awareness and legal identification (Richards, 2015). The first element is equal to the knowledge of legal provisions, while the second element refers to moral evaluation of law. Contemporary researchers mainly focus on identification, and some authors equate legal consciousness with that component (Richards, 2015). Of course, the distinction between these two components of legal consciousness is important in studies based on the *American* concept of legal consciousness, because both identification and knowledge must always be oriented toward some kind of pre-given definition of law.

As mentioned before, the largest number of studies explored legal consciousness of "ordinary" citizens. Much less was written about the legal consciousness of public officials. In this regard, it's worth mentioning Davina Cooper's (Cooper, 1995) study on public officials' attitudes towards the phenomenon of *juridification*, which affected Great Britain in the period from 1980 to 1990. The term *juridification* refers to the expansion of laws and/or legal interventions. Based on the data obtained from approximately 60 semi-structured

interviews with public officials, Cooper (1995) constructed six different narratives about law: law as a colonizing force, law as a game, law as a facilitator/resource, law as a discourse, law as an environmental nuisance, and law as means for of conflict resolution and social consensus. Cooper also found that legal consciousness of many public officials corresponds to that of the lower class, which speaks in favor of the absence of some uniform "bureaucratic consciousness".

Marc Hertogh took a different approach in his study. His research aimed to determine how front-line officials understand and relate to the *Rechtsstaat*, an essential ideal of the Dutch system of administrative justice (Hertogh, 2009). To investigate this, Hertogh conducted a field study in the small city of Zwolle in the east of the Netherlands, which included interviews with public officials gathered around the newly formed public agency (so-called *Neighborhood Intervention Team Zwolle* [NITZ]), to which the municipality transferred some of its competences in order to solve social problems in the city's most troubled neighborhood. To find out how the members of the NITZ Team relate to the *Rechtsstaat*, Hertogh operationalized this highly abstract concept through two legal principles: legality and equality. The findings showed that members of the NITZ Team do not attach great importance to the principle of legality in their work. They were more prone to informal solutions that didn't necessarily fit into the system of general legal rules. Those solutions were based on their understanding of justice (Hertogh, 2004). When making decisions, NITZ Team members often adapted legal provisions to the circumstances of each specific case, which sometimes led to the complete disregard of the legal provisions. In doing that, they were guided by the values of compassion and material equality. In other words, these public officials gave primacy to *individual* justice, as opposed to *general* (Hertogh, 2004).

Besides showing the difference between doctrinal and "living" concept of the *Rechtsstaat*, Hertogh also categorized public officials using two criteria: legal awareness and legal identification (2009). He established four profiles of bureaucrats: legalists (high awareness of law and strong support for it), loyalists (low awareness of law, but strong support), cynics (high awareness of law but high level of criticism towards it) and outsiders (low legal awareness and low level of support; Hertogh, 2009).

While Hertogh measured levels of identification with law, Sally Richards' (Richards, 2015) study sought to determine whether a high identification with law among bureaucrats corresponds with idealization of certain meta-legal values. After conducting 30 in-depth semi-structured interviews with former members of the Refugee Appeals Tribunal of Australia, the collected data showed that low identification with law existed among those officials who highly valued personal experience and truth in their work. On the other hand, those officials who

emphasized the importance of intellect and information processing showed a higher degree of trust in law (Richards, 2015).

In contrast to the mentioned studies which investigated the public officials' consciousness about the law as such, or about some of its most general principles (such as the aforementioned *Rechtsstaat*), the topic of the research presented in this paper will be bureaucratic consciousness about one specific right. Moreover, unlike Hertogh and Richards, we would not measure either knowledge of the provisions of the Serbian Freedom of Information Act (hereinafter: FOI), or identification with its core values. Instead, we will try to discover how public officials who are authorized to act on requests for access to information of public importance in Serbian authorities (hereinafter: authorized persons) perceive this specific right. Not wanting to measure the frequency of the phenomenon (prevalence of a certain type of legal consciousness or its magnitude), but to determine its characteristics, we chose a qualitative research design. The obtained results could be further used to establish hypotheses that would be tested using quantitative methods. Before presenting the research results, we will briefly overview the FOI normative framework in the Republic of Serbia.

The Right to Information Legislative Framework in the Republic of Serbia

The right to information is one of the basic human rights. Doctrine defines it as "the right of everyone to request and receive relevant information of public interest from the holders of state power, and organizations vested with public authority, in order to effectively enable insight into the work and actions of those subjects whom the citizens trusted in free and democratic elections to perform the function of government on their behalf and for their account and, regarding that, to manage other public affairs" (Milenković, 2009). This right is often understood as an essential feature of the rule of law, which gives citizens role of the fourth branch of government, by enabling them to directly supervise the work of public authorities (Milenković, 2015). In addition to being a mechanism for controlling legality and expediency of government bodies' work, the right to information also enables active participation of citizens in the government, because based on accurate, complete, and timely information, citizens can launch initiatives and give concrete proposals to the government to solve issues of general importance, which brings contemporary democracy closer to its ancient ideal (Milenković & Rakić, 2005).

The constitutional basis for this right in the Serbian legal system can be found in Article 51 para. 2 of the Constitution[2]. Its statutory elaboration is the Law on Free Access to Information of Public Importance (hereinafter: LFAIPI)[3].

LFAIPI defines information of public importance as any information held by a public authority body, created during work or related to the work of the public authority body, contained in a document, and related to everything that the public has a justified interest to know (Article 2, paragraph 1 of the LFAIPI). The obligation to act on requests for information disclosure rests with everyone who exercises public authority, either originally or entrusted, and those entities founded or financed by the state (Article 3 of the LFAIPI).[4]

However, as the right to information is not an absolute human right, there are cases in which the authority can limit or completely deny access to a document containing requested information. These cases refer to endangering some of the important individual and general societal interests, which could potentially outweigh the interest of the public to know the requested information. Those interests are listed by the method of closed enumeration in Articles 9 and 14 of the LFAIPI, and they refer to: life, health, safety, or other vital interest of a person; prevention or detection of criminal offence, indictment for criminal offence, pretrial proceedings, trial, execution of a sentence or enforcement of punishment, any other legal proceeding, or unbiased treatment and a fair trial; defense of the country, national or public safety; international relations; state, professional or business secret; intellectual or industrial property rights; right to privacy, right to protection of personal data, etc.

[2] Constitution of The Republic of Serbia ("Off. Gazette of the RS", No. 98/2006, 16/2022)
[3] Law on Free Access to Information of Public Importance ("Off. Gazette of the RS", No. 120/2004, 54/2007, 104/2009, 36/2010 и 105/2021)
[4] LFAIPI in Art. 3 exhaustively enumerates what is meant by public authority body: 1) a state body of the Republic of Serbia; 2) territorial autonomy body; 3) body of the municipality, city, city municipality and the city of Belgrade; 4) public enterprise, institution, organization and other legal person, which was established by regulation or decision of the authority referred to in point. 1) to 3) of this paragraph; 5) a company whose founder or member is the Republic of Serbia, an autonomous province, a local self-government unit, or one or more authorities from point 1) to 4) of this paragraph with 50% or more shares or stocks in total, or with more than half of the members of the management body; 6) a company whose founder or member is one or more authorities from point 1) to 5) of this paragraph with 50% or more shares or shares in total; 7) a legal person whose founder is a company from point 5) or 6) of this paragraph; 8) a legal person or an entrepreneur who performs activities of general interest, in the sense of the law regulating the position of public enterprises, in relation to information referring to the performance of those activities; 9) a legal or natural person vested with public authority powers, in relation to information referring to the exercise of those powers; 10) a legal person that, in the year to which the requested information relates, generated more than 50% of its income from one or more authorities from point 1) to 7) of this paragraph, in relation to the information referring to the activity financed by those revenues, with the exception of the church and religious communities.

Despite the existence of a long list of reasons for rejecting the request to disclose the information, none of the above-mentioned interests fall into the category of absolute exceptions. This means that, before rejecting a request because of endangering one of the stated interests, the authority is obliged to implement the so-called *public interest test* from the Article 8 of the LFAIPI. *The public interest test* requires public authority not only to prove there is a threat to a specific interest, but also that the threat is serious, and that the need to protect that interest prevails over the public's interest to know requested information. In short, LFAIPI does not exempt any information from free access *a priori*.

Everyone, under equal conditions, has the right to be informed whether a public authority holds specific information, i.e. whether it is otherwise accessible (Articles 5 and 6 of the LFAIPI). At the same time, there is an irrebuttable assumption of a legitimate interest of the public to know the information in the possession of the public authority (Article 4 of the LFAIPI)[5], which means that the authority cannot ask the information seeker to explain the reasons, motives, and interest in requested information. This means that those applicants who can obtain the requested information on some other legal ground (Poverenik za informacije od javnog značaja i zaštitu podataka o ličnosti, 2021, p. 52), cannot be rejected because of that.

When it comes to the procedure for exercising the right to information, it is relatively simple. Two modalities of exercising this right are: examination of the document containing the information and issuance of its copy. Information can be requested in writing or verbally on the record. When submitting a request in writing, Serbian legislator did not prescribe the obligation to sign it. At the same time, it is not possible to apply the provision of Article 58 of the Law on General Administrative Procedure[6], which prescribes a signature as a mandatory element of every submission, because LFAIPI is a *lex specialis* in this administrative proceeding. This is not a legislator's omission, since this solution is completely in accordance with the purpose of the LFAIPI. Namely, the *titular* of the right to information is *the public*. The seeker

[5] If we were to stop at the linguistic interpretation of Article 4 of the LFAIPI, we could conclude that the irrebuttable presumption exists only with regard to information related to endangering the health of the population and the environment, while the presumption is rebuttable with regard to other information. However, when systematically and logically interprets this provision, one will realize that it contradicts the norm from Art. 8 of the LFAIPI, which prescribes that the authority will deny access if it proves it is necessary for the protection of one of the interests from Art. 9 and Art. 14 of the LFAIPI. Proving that disclosing requested information would harm some of the interests from the aforementioned articles does not mean a rebuttal of the presumption of the existence of publics' justified interest to know the information. Namely, the interest to know the information can exist at the same time as the interest to protect information. This kind of conflict can only be resolved by balancing opposing interests by applying the so-called *public interest test* from the Article 8 of the LFAIPI. Due to the above, we believe that this contradiction should be resolved in favor of the Article 8 of the LFAIPI, which is closer to the legislative intentions/purposes.

[6] Law on General Administrative Procedure ("Off. Gazette of the RS", No. 18/2016, 95/2018 – authentic interpretation)

of information (applicant) appears in the process of exercising this right only as the public's representative, and that is why his identity is unimportant.

LFAIPI facilitated access to information even more by exempting the request for access to information from the Law on Republic Administrative Fees[7]. However, the public authority may demand compensation for the necessary costs of copying the requested document and sending its copy to the information seeker.

Research on Authorized Persons' Perception of the Right to Information in Serbia

Basic Assumptions, Research Design, and Methodology

The study presented in this paper is based on the assumption that law is not only a social structure that appears as some kind of external force that directs people's behavior and shapes their consciousness, but also a product of individuals' actions. Therefore, we decided not to orient this research toward law's effects in society, but toward finding the meaning that public officials gave to the notion of *law*. This kind of interpretive (Bryman, 2012) approach allows us to displace ourselves for a moment from the area of *official* law (statutory provisions and its doctrinal interpretations) and try to understand authorized persons' subjective perceptions of the right to information.

Most of the previous research based on the interpretative approach investigated subjective images of law among citizens (Richards, 2015). A possible reason for this lack of interest in legal professionals' consciousness may be the widespread belief that these experts (judges, public officials, etc.) interpret statutory rules strictly in accordance with the doctrine and accurately determinated social needs and values, in a unique, uniform, and consistent manner. We have assumed here that public officials are also "humans of flesh and blood" who have their understanding of law, regardless of the greater degree of legal knowledge compared to "ordinary" citizens. As much as they adhere to the *law in books* in decision-making process, they are under the influence of these subjective images of law. In other words, we consider Ehrlich's concept of *living law* as important for understanding the behavior of legal professionals as it is for understanding the behavior of "ordinary" citizens.

However, the presented research did not aim to put the obtained "living" right to information (according to which authorized persons act), in a relationship with the "official" right to information (the one from LFAIPI and doctrine), in order to detect potential gap between them. Because of that, we decided not to start the

[7] Law on Republic Administrative Fees ("Off. Gazette of the RS", No. 53/2004, 42/2005, 35/2010, 70/2011, 55/2012, 47/2013, 57/2014, 45/2015, 50/2016, 61/2017, 50/2018, 38/2019, 98/2020, 62/2021)

research with a pre-given definition of the right to information, but to apply a *bottom-up approach* and let the respondents construct their definition of the right to information. Following the advice of Rodger Cotterrell, not to "close off inquiry before it begins, by conclusively specifying the nature of the object of study in the definition" (Hertogh, 2004), we entered the research only with the working (open) definition of the right to information.

This approach conditioned the choice of the data collection technique, so the semi-structured interview was used. The chosen technique enabled us to avoid receiving socially desirable answers from the respondents, which can be a significant problem when the respondents are experts who are familiar with the legal and doctrinal conception of the right in question.

The semi-structured interview allowed the respondent to direct the conversation to what they considered important, which was in line with the research objective (revealing the respondent's subjective definition of the right to information), while the interview guide served us only to maintain a minimum of structure. This structure referred to the division of questions into two blocks:

1. Questions about the value of transparency, and
2. Questions about values that derive from the value of transparency (the principle of maximum openness, the principle of non-discrimination, the principle of facilitated access).

The sample consisted of 10 authorized persons from various state authorities. Seven respondents were from public administration and three were representatives of the judiciary. The representation of these two groups of authorities in the sample is unintentional, given that there was neither the possibility (a very small sample) nor the intention (qualitative research) to achieve representativeness. We used the method of convenience sampling, i.e. participants who were easiest to access were chosen for inclusion in the sample. Namely, due to the low response rate of public officials who were sent an email to their official address, some of the participants were reached informally (colleague researchers from the field recommended us participants who were willing to participate). The interviews lasted between half an hour and an hour and a half. Nine interviews were held live, while one was by telephone. All ethical standards in scientific research were respected, as well as all relevant regulations of the Republic of Serbia. Confidentiality was guaranteed to all research participants.[8]

[8] In order to ensure confidentiality, not only are interview transcripts presented in the paper in an anonymized form, but they were also collected in such form (without documenting identifiers such as the first and last name of the respondent or the name of the authority). This guaranteed the complete protection of the respondent's identity. All interviews were conducted with the prior informed consent of the respondents.

We used thematic analysis method to analyze obtained data because its flexibility gave us the opportunity to put the participant's subjective experience at the center of data interpretation. That was in accordance with our research goal – to discover authorized persons' subjective images of the right to information. After a careful reading of the interview transcripts, we first derived codes from the text and then grouped the codes into thematic units. Coding was inductive, that is, guided by the data itself and not by pre-prepared categories. The codes had paraphrasing form. As soon as we finished coding, the themes emerged: it was easy to notice four narratives about the right to information.

Results and Discussion

Based on the data obtained from the interviews, we established four profiles of authorized persons, regarding how they perceive the right to information. The criterion for distinction was the interest-orientation of the authorized person when deciding on the applicant's request for access to information. Do authorized persons correspond to Weber's ideal-type bureaucrat characterized by impartiality and cold objectivity? Or do they move away from this ideal, sliding on the scale of impartiality toward one of the opposite poles: identification with the position of a citizen, or immersion in the role of authority and power?

The conducted analysis showed that only one type of bureaucrat had a completely unbiased attitude in the decision-making process. We named them *Professionals*. The other two types, *Empaths* and *Guardians*, were characterized by being radically on the position of the citizen, and radically on the position of the state, respectively. The least differentiated in the analysis, although noticeable, was the *Pragmatist* type. It is important to note that the term *biased* is not being used here in the sense of being arbitrary and *contra legem* (although we do not exclude that possibility either), but rather in the sense of being *biased in the interpretation* of the law. This is because, as already said, this study won't measure the extent to which the views of authorized persons are aligned with the legal and doctrinal conception of the right to information. It will rather try to discover their subjective perceptions of the right.

It is also important to say that the legal consciousness of the respondents in this study wasn't consistent. Authorized persons perceived the right to information from different value positions, depending on the context in which they were placing it in their stories. They were also switching their interest orientations toward this right depending on the role they themselves played in a concrete story. So, when acted from the position of the state, the respondents described the right to information as an obstacle for state authority to efficiently perform their regular daily tasks, as a "distraction from important work", "bullying the authority", etc. By immersing themselves in the role of a citizen, their consciousness would change towards greater support for the value of transparency. Although a few

interviewees could be said to represent pure types, the rest of them changed their value orientations during the interview, although generally, one orientation was dominant. For example, one authorized person who was initially classified as a *Guardian* occasionally showed strong sympathy toward a certain type of information seeker or full support for disclosing one particular type of information. This incoherence of legal consciousness was already noticed by Silby and Ewick in their study of legal consciousness of "ordinary" citizens:

> *(...) Consciousness is neither fixed, stable, unitary, nor consistent. Instead, we see that legal consciousness is something local, contextual, pluralistic, filled with conflict and contradictions (...) To the extent that consciousness is emergent in social practices and forged in and around situated events and interactions (...), a person can express, through words or actions, a multi-faceted, contradictory and variable consciousness. (Halliday & Morgan, 2013; Silbey & Ewick, 1992).*

Because of what has been said, it is important to underline that the obtained classification represents ideal-types and not actual types of authorized persons. Perhaps, this is why it might be more precise to name listed categories as *legal narratives*, but for the sake of vividness, we decided to make them sound like personifications of personality types.

Empaths

This narrative characterizes high compassion for the citizen's position in the proceeding before the public authority. Even though they are representatives of the state, these public officials often immerse themselves in the role of a citizen. It means they are both critical of the state, considering it prone to abusing power, and confident that public control over state bodies is necessary and effective way to reduce these abuses.

For example, Respondent 2 was convinced that "*the public authorities would be less efficient, employees would work less, there would be more corruption and crime*" if citizens did not interfere in their work. He said the following about his colleagues who are "*bothered*" by the LFAIPI:

> *"My stance is this: if someone is against the LFAIPI, and they work in a state body... You can't be against it! You can't do that job. You shouldn't be given the right to decide on other people's rights and freedoms, to manage the property and money of all of us, without being accountable to anyone. So, if you are there... I mean, no one forced you to be there…If you are already there, doing the job, you simply have to accept the obligation to be accountable to someone. I think the LFAIPI is excellent, and that its basic purpose is exactly that."*

Similarly, Respondent 1 explained the need for public control of authorities, by referring to the nature of the right to information, which stems from a democratic understanding of the legitimacy of the state power:

> *"They* [the citizens] *pay taxes and they have the right to know what is being done with their money, how the administrative body spends the funds, what contracts it concluded, with whom, whom it hires and why...Simply, they have the right to know everything."*

When asked to compare institutional control of the state authorities and control by the public, Respondent 2 was skeptical of the former:

> *"Those people* [public officials] *are socially networked. Those are the people who know each other... They will always find some common interest and they will protect each other. That type of control* [institutional] *should exist, but experience shows it is insufficient. I don't think this* [control by the LFAIPI mechanism] *bothers anyone, except illegal behavior. And I think there must be extra-institutional control."*

When asked what they think about the hypothetical introduction of fees for submitting requests for access to information, Respondent 6 and Respondent 1 spoke from the citizen's interest position:

> *"I would not introduce taxes...I am absolutely against charging. They already make us pay for everything in this state administration…I wouldn't prevent people from seeking* [information]*." [Respondent 6]*

> *"In such a way, we limit people from getting the information, and they are our 'employers'...citizens of Serbia. So, we should take from them, just to give them information about what we do with their money?"* [Respondent 1]

Empaths showed a tendency to interpret the LFAIPI very extensively, expanding its scope as much as possible for the benefit of citizens. In this sense, unlike other types of authorized persons, *Empaths* understood this right, not only as a mechanism for controlling public bodies but also as a way to help citizens realize their individual interests (even when those interests do not coincide with the public ones). In this regard, when asked what he thinks about the fact that citizens often request information they personally need, and not the one of public interest (for example, a party to a proceeding requesting an inspection/copy of the case file in accordance with LFAIPI), Respondent 10 replied that he had no problem with this practice:

> *"I think that the LFAIPI is the kind of law that simply gives citizens the opportunity to get some information they need, in a simpler and easier way... Indeed, it is also a segment of public control, but I think that the segment of helping the citizens is also quite important."*

Respondent 2 had the same opinion on requesting court files using the LFAIPI mechanism. Interestingly, Respondent 2 was an authorized person in court, so the positive attitude toward this practice was not something one would expect:

> *"Many say it is a bad thing. They say it affects the court proceedings, the outcome of the proceedings, the position of the parties in the proceedings... I don't even agree with that (...) LFAIPI says the court may reject the request if disclosing the information would affect the proceeding and parties' rights. So the Law regulated that!"*

When asked if there is another way for litigants to access court files, besides using the LFAIPI mechanism, Respondent 2 answered:

> *"There is another way. That's our procedural law and it should be the first means. However, the court is not up to date, the clerk's office is not up to date, and the post office, too... Until it is sorted, brought to the judge, until the recorder puts the files in... And for the judge, everything is more important than answering someone who requests to see the case files. As a rule, no file inspection is done within a month, two, three, or five... This* [accessing the files in accordance with LFAIPI] *is the simplest, fastest, and easiest way for them* [parties]. *There is a deadline of 15 days. They receive all the answers within 15 days...If they use the procedural law, it is questionable whether they will be even able to exercise their right. Here, the realization of their right is guaranteed in a short period (...) because responsibility is foreseen here. There is no responsibility in the first case. You can make a complaint, violation of the right to a trial within a reasonable time... But even when the violation is established, there are no consequences."*

The other respondents also showed a high level of empathy toward citizens in the described situation. They were tolerable toward parties requesting an inspection or copy of the case file in accordance with the LFAIPI:

> *"If someone is interested in a case which is five or six years old, it is logical they will ask what is happening with their case."* [Respondent 5]

> *"This is another tool you can use... Because when you are a party, you should use all available means to get what you are requesting."* [Respondent 8]

Several interviewees pointed out the frequent practice of citizens asking for interpretation of legal provisions in the form of request for access to information of public importance. According to Article 2 of the LFAIPI, information of public importance is the one embodied in the document at the time of submission of the request. It means that the authorities are not obliged to create a new document on request, but only to give the applicant the information they already have. Given the fact that interpretations of legal provisions and opinions on their application generally do not exist at the time of request submission, and therefore would need to be created, the authority is only obliged to inform the applicant of not having

the information. Surprisingly, Respondent 2 answered that even in such situations, he tries to help citizens without referring to formal procedures:

> *"We cannot interpret* [the regulation] *because it is not information of public importance. They need to find a lawyer. But I still help them…I refer them to a specific regulation. One day we spent two hours looking throughout the Law, since I wasn't sure myself... We found all the provisions, quoted them, and I even told them my opinion."*

Empaths highly valued flexibility in their work. They preferred informal communication with citizens over formal (for example, by telephone calls instead of written correspondence) and they used to meet their needs regarding the method of inspection and delivery of requested documents. Providing assistance in formulating and submitting requests was their common practice, together with avoiding rejection of unintelligible or incomplete requests. Several times during the interview, Respondent 1 emphasized that he tries to meet the applicant's needs as much as possible:

> *"We always answer. Even when I don't understand what they want...what kind of information. We always respond, and if we haven't provided complete information, then we invite the applicant to come to* [name of authority] *or ask them to send an additional request."*

Respondent 2 was also a supporter of informal procedures when it is favorable to the information seeker:

> *"If a person says they can be contacted by email or phone... we contact them by phone. Let's not complicate things. Let's not waste time. If it's in their interest... we do it that way (...) You can come here to submit it, you can send it by mail in written form, or you can send an e-mail. However you want, it's flexible."*

Professionals

This narrative is characterized by strong support for the principle of transparency, as a form of control over the public authorities' work. However, this group of authorized persons did not show as much empathy with the applicants as the previous one, but rather objectivity and impartiality. This objectivity did not mean denying the applicant's interest, but rather an unemotional approach: they didn't overly immerse themselves either in the role of the citizen or in the role of the authority. Instead, these authorized persons were trying to reconcile: individual and general (state) interests, realization of the right and efficiency of work, the principle of legality and the principle of equity. This was manifested through the more frequent issuing of a decision for refusal, strict adherence to formal procedures, as well as criticism of those provisions of the LFAIPI which (according to these authorized persons) had a negative impact on the efficiency of

the authority's work (yet not improving the position of a citizen in any way). One could say that this narrative best fits Weber's ideal-type bureaucrat.

When asked what he thought about Serbian legislator's decision to prescribe a legal presumption that justified interest of the public to know requested information exists and that the applicant does not have to provide evidence for that, Respondent 4 (authorized person in a court) showed that he highly valued the principle of facilitated access:

> *"We should recognize the public interest. Naturally, the authority has more professional knowledge than the person who submitted the request. So, I don't understand how do I benefit from the applicant explaining the reason for the request submission."*

This respondent showed the same attitude commenting on the fact that LFAIPI does not prescribe a signature as a mandatory element of the request:

> *"I don't have a problem with that because I'm absolutely not interested in whether you, X, or Y submitted it. Either there is a public interest, or there is not. I don't see why a signature would be needed for such a thing."*

The same respondent was critical of the practices in the judiciary that harm transparency:

> *"We had a situation where a party sought minutes of deliberations and voting. According to our law… It doesn't say it is a secret document. It just says that only the court of legal remedy has the right to inspect the minutes of a lower court. It's a secret document...But I personally don't see why information on how someone voted should be a secret. I really don't understand the legislator's logic here."*

Despite the strong support for the principle of transparency and the belief that extra-institutional control of the public authorities is needed, Respondent 6 wasn't convinced that citizens knew the purpose of the right to information. He was also unsure if they knew how to interpret the information they had received. Consequently, he was skeptical of citizens being capable of directly controlling the work of the state:

> *"I think that control should be carried out by a competent authority. How many things can citizens control using the right to information? But it's good that it exists, I think... It doesn't affect the legality or the efficiency of work much, but maybe someone will become aware of how they behave and what decisions they issue."*

In contrast to *Empaths*, *Professionals* were critical of the fact that the LFAIPI allows the parties in the proceedings to request an inspection/copy of the case files. They thought such a solution supported neither the interest of the party, nor the one of the public, while potentially putting the state authority in a position to

risk jeopardizing the procedure, personal safety, privacy, nor some other general or individual interest. Respondent 4 said that he does not immediately reject requests for access to such documents, but first teaches the applicant that he has more rights in accordance with the procedural law. If the applicant continues to insist on getting the information according to LFAIPI, then Respondent 4 "tries to manage something":

> *"That's actually a situation where you can't anonymize* [the requested document]. *How can you anonymize when he* [applicant] *submitted the request and said: > In my case< ? Tomorrow, if someone were to ask for an inspection of the same document in accordance with LFAIPI, even if we anonymized it, that person would be able to understand who the party in the case is. And then we try to find our way... We mostly go with the explanation that he* [applicant] *doesn't do that for the sake of protecting the public interest, but for the sake of protecting his own interest and party rights (...)"*

Finally, he concluded:

> *"As for the courts, I think the biggest problem for them is created by the parties. We would be able to focus on real requests* [for information of public importance] *if we didn't have that problem."*

Unlike *Empaths*, these authorized persons were inclined to formal procedures when dealing with requests: they strictly took care of the orderliness of requests, communicated with the applicants exclusively in writing, set the deadlines for applicants' actions, etc.

From the collected data, it is obvious that this type of authorized person is principally for disclosing documents to the public, but in a way that does not interfere with the performance of authority's regular tasks and does not endanger other important general and individual interests.

Guardians

Despite knowing the purpose of the LFAIPI, and partially supporting the value of transparency, this type of authorized person is the most immersed in the role of authority and power and the least empathetic to citizens. As a result, *Guardians* are more inclined toward rejecting requests because of the violation of general social (state) interests from Article 9 of the LFAIPI. In addition, these authorized persons show the least independence in their work. Unlike other narratives, *Guardians* always turn to the head of the authority to obtain consent for disclosing information if they find it "politically sensitive". A certain fear of opening up to the public is present, as noticeable in the statement of Respondent 9:

> *"I am very careful when I give information. I carefully look over what I have written, because the significance of the information is clear to me."*

Although *Guardians* didn't deny that authorities abused their power and that a way should be found to prevent that, they expressed skepticism as to whether control by the public was the best way to do so. More than others, *Guardians* had trust in institutional control:

> *"We said: every person for whom the court or prosecution requests any information,* [name of the authority] *is ready to give. But not to* [name of the applicant], *who is an unauthorized person. In every response to the complaint, we said that* [the applicant's name] *was not authorized to be given such data."* [Respondent 7]

When asked why he thinks the public could not effectively control the state, Respondent 8 answered:

> *"I don't think they* [citizens] *are capable to do that...I think the people who really deal with it* [submitting the requests] *are just angry at certain state body which fired them, or they are angry at the system, or something like that… So they turn it into an abuse of right because they dig to infinity…"*

As opposed to *Professionals* who stated that journalists and civil society organizations use this right in accordance with its purpose, Respondent 7 was suspicious of the motives behind the requests submitted by civil society organizations:

> *"They do that [submit the requests]…that is what they do...I mean, it's in their job description. And why they do that, only they know..."*

Respondent 8 had a similar attitude when it comes to journalists, suggesting that they potentially abuse this right to pursue some of their interests:

> *"(...) the media are absolutely divided 'for' and 'against' the government, so that image of the public is made to suit them, and that law [LFAIPI] is just a tool for that."*

The *Guardians* are formalists when handling the requests. However, this formalism is not, as with *Professionals*, in the service of preserving impartiality in the proceeding, but often works for rejecting the applicant. Authorized persons belonging to the *Guardian* type may have shown the highest level of knowledge of the LFAIPI, but they often used this knowledge instrumentally, to protect the interests of the authority/state. Thus, Respondent 7 expressed his regret for not writing a better rationale for decisions on rejection. However, this regret was out of concern for the authority's image in public, and the subsequent success in the appeal procedure before the Commissioner, and not out of sympathy for the citizen he had just rejected:

> *"Management says: I don't like the Privacy Act. I mean, I don't like it either. So, what can I do? We don't have a better one… I have to apply it. But since it exists, as long as it exists... Let's try to use it in the best possible way, to our*

advantage! And we don't use it in the right way at the moment, although we have the possibility to do so... And then we would have a clear decision!"

When processing a request, *Guardians* strictly adhere to the procedures prescribed by law. They communicated with the applicants exclusively in writing and avoided communication via electronic means, considering that e-mail enables abuses. They also criticized the LFAIPI because it didn't prescribe a signature as a mandatory element of the request:

"I think everybody should be a little more serious. If you are requesting some serious things, you have to be serious...not to mess with your identity, while digging into state secrets." [Respondent 8]

Although not denying the importance of the right to information, Respondent 3 pointed out that LFAIPI is too "liberal" for the benefit of information seekers. She gave the example of an applicant being able to choose between two modalities of exercising this right (to receive a copy of the document containing requested information or to inspect it):

"This law has made it very broad. Every applicant can choose how the information will be made available to him. Isn't it enough if the information is publicly available in the archive? Isn't that an open opportunity to exercise the right? If it is available in a certain way in our offices, why do we have to send a bunch of photocopies at the expense of the authority?"

Pragmatists

The *Pragmatist* narrative was the most difficult to differentiate. It seems that authorized persons who use it do not take any ideological position while deciding on someone's right to information, or they simply do not have one. They often aren't even aware of the purpose of the LFAIPI, as can be seen in the statement of Respondent 9. When asked whether the control by the public is a suitable way to prevent state power abuses, she answered:

"The public has the right to know what the state body has done, in the individual proceeding. I don't see it... I haven't for one moment seen it as the way of controlling the work of the state body."

Pragmatist narrative is characterized by a solid level of informality and immediacy in communication with citizens. Because of that, on the surface, officials with this narrative make the impression of being *Empaths*. However, impartiality in the treatment of an applicant is constantly varying. Sometimes these officials act as strict guardians of the "state interests", yet sometimes they extensively interpret the provisions of the LFAIPI to help citizens. It seems that this alternation of two interest positions is not a consequence of these officials being immersed in different roles in different situations, but a consequence of a

purely pragmatic approach they have toward the work they perform. They are aware that "the request must be processed" and they routinely complete that task. It seems they perceive it as one of the many, purely administrative tasks they must perform during working hours.

When asked about the hypothetical introduction of fees for request submission, Respondent 9 stood for that, but for purely practical reasons. As a reason for supporting such a solution, she cited the fact that a large number of applicants use the request for access to information of public importance to seek opinions/interpretations of different laws, or simply to seek information "*out of boredom*". She thought that the fee might act as a deterrent to such applicants:

> *"Human resources are being used for meaningless things. They* [applicants] *should have a valid and good reason, not a reason to bully the state authority!"*

During the interview, respondents from this group didn't talk much about the substantial provisions of the LFAIPI. Therefore, they didn't give much material for the analysis. They directed the conversation mainly toward explaining the practical (organizational) problems that the authority was facing when dealing with requests, as well as toward criticism of the procedural provisions of LFAIPI which caused them problems in decision-making process. However, regardless of the little data they provided about their value orientations, it was clear that they were differentiated from other narratives by their strictly pragmatic approach to decision-making process.

Instead of Conclusion: Limitations and Further Research Directions

In the presented research, we established four narratives about the right to information. It has been shown that it is possible to position authorized persons on a scale of impartiality, on which the central point would be Weber's ideal-type bureaucrat, characterized by an unemotional, objective, and rational approach to decision-making. The obtained typology can be used for some future research in which quantitative methods would be used to check the frequency of occurrence of a certain narrative in the population of all, or a certain group of public authorities.

More generally, the results from the study demonstrate that knowledge of law does not guarantee its uniform application, because depending on the value orientation of its interpreter, one legal norm can take on completely different meanings. This is particularly noticeable in the case of legal provisions which define relatively new legal institutes. In our case, neither doctrine nor practice has fully defined the meaning of some of the LFAIPI provisions or answered the question regarding the nature of the right to information. That is why our interviewees, all of whom showed a solid knowledge of the LFAIPI, gave different, even opposite meanings to some of its provisions.

The biggest limitation of this study is the small sample. A small sample probably made it impossible to see all the nuances of the researched phenomenon and to potentially detect more narratives about the right to information. Regarding that, the question arises whether the obtained results were a consequence of the empirical context in which they were observed, that is – whether the narratives differ in relation to the type of public authority. Namely, legal consciousness about the right to information is probably shaped both by the general administrative culture and the specific administrative subculture. General administrative culture consists of a "pattern of beliefs, attitudes, and role understandings that prevail among members of the public sector workforce" (Schröter & Röber, 2007). Despite the fact that there are beliefs and attitudes common to the entire administrative apparatus, bureaucratic culture is not completely homogeneous but somewhat segmented (Dwivedi, 2005). One of the reasons for the existence of subcultures within the administrative culture is the fact that the state administration is a conglomerate of different organizations that differ in terms of their goals, internal structure, position in the bureaucratic hierarchy, client groups, etc. Another possible criterion for subcultural stratification of the bureaucracy is profession. Public officials come from diverse professional backgrounds (lawyers, economists, sociologists, engineers, etc.). Every profession has its own specific professional culture, which consists of different values and practices.

We can hypothesize that both type of organization and professional (sub)culture influenced how our respondents understood the right to information. Authorized persons from different public authorities and of different professional backgrounds probably have different normative references to what it means to be a good bureaucrat. Therefore, it would be particularly interesting for some future research to explore the distribution of these narratives in different groups of authorities and among different professions. Is there a difference in the dominant narrative of the state administration in relation to the judiciary, lower administration in relation to the higher, repressive (military, police) in relation to other authorities, lawyers in relation to economists, etc.? The presented research possibly provides a basis for one such hypothesis. Namely, all authorized persons who came from the judiciary were dominantly *Empaths* and *Professionals*. Authorized persons from the public administration belonged to the type of *Guardian* and *Pragmatist* or they were a combination of different types. This could speak in favor of the stance that employees in the judiciary are more sensitive to the needs of citizens, compared to employees in the public administration.

Because of the methodological design of our study (exploratory research) and the small convenient sample, we couldn't address these issues here. It is necessary to conduct research on probability sample to explore the effect of bureaucratic subculture on the narrative about the right to information. Since to our knowledge, this is the first study in Serbia that deals with the bureaucratic legal consciousness of authorized persons, it was necessary to start with the description of the

phenomenon at the most general level, hoping that it will generate hypotheses for some future study on causal relations.

This research shows what meanings authorized persons give to the right to information. Furthermore, it would be interesting to investigate how these meanings correspond with the actual behavior of authorized persons. That way, it would be possible to determine how much influence legal consciousness has on a legal decision-making process, and how much other, external factors have.

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Birokratska pravna svest: Percepcija prava na pristup informacijama od javnog značaja u organima javne vlasti u Republici Srbiji*

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Rad je posvećen empirijskom istraživanju pravne svesti javnih službenika koji u organima vlasti Republike Srbije u prvostepenom postupku odlučuju o pravu na pristup informacijama od javnog značaja (ovlašćena lica za postupanje po zahtevima za pristup informacijama od javnog značaja). Predstavljena analiza usmerena je na utvrđivanje karakteristika svesti javnih službenika o pravu na pristup informacijama od javnog značaja, zbog čega je odabran kvalitativni istraživački dizajn. Kroz dubinske polustruktuirane intervjue sa deset ovlašćenih lica u različitim organima javne vlasti, nastojalo se odgovoriti na pitanje kakve su subjektivne predstave ovih javnih službenika o pravu o kojem odlučuju. Kako prezentovano istraživanje ne spada u studije o efikasnosti prava, dobijene subjektivne predstave nisu stavljane u odnos sa zakonskom ili doktrinarnom definicijom prava na pristup informacijama od javnog značaja, radi njihovog poređenja. Cilj istraživanja bio je da sami ispitanici konstruišu svoju definiciju prava, kako bi se utvrdilo postoji li jedan, jedinstven, „birokratski narativ", ili se javni službenici razlikuju u tome kako doživljavaju ovo pravo. Na osnovu podataka dobijenih iz intervjua utvrđeno je postojanje četiri narativa o pravu na pristup informacijama od javnog značaja.

KLJUČNE REČI: pravna svest / pravna svest javnih službenika / pravo na pristup informacijama od javnog značaja / percepcija prava na pristup informacijama od javnog značaja / birokratija / pravni narativi

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