

THE CENTER FOR ANTIWAR ACTION

Belgrade

Model Law

L A W
ON FILES OF THE STATE SECURITY SERVICE
OF THE REPUBLIC OF SERBIA

January 2002

LAW
ON FILES OF THE STATE SECURITY SERVICE
OF THE REPUBLIC OF SERBIA

I GENERAL PROVISIONS

Article 1
(Contents of the Law)

(1) This Law shall regulate the use of files kept by the State Security Service of the Republic of Serbia from 1945 till the day of entry of this Law into force, as well as the supervision, handling of and further action with these files.

(2) The subject of this Law shall be files that were kept in regard to political and ideological beliefs of certain citizens, groups of citizens and organisations.

Article 2
(Definition of Terms)

Certain terms used in this Law shall be taken to mean:

- 1) “citizen” shall mean a physical person to whom data from the files of the state security service pertain and who has the citizenship of the Republic of Serbia or had that citizenship at the time data on him were being collected;
- 2) “personal data” shall mean every information in files of the state security service pertaining to identified physical person or person that can be identified;
- 3) “object of surveillance” shall mean a person on whom the state security service collected personal data, either because of his activity as an individual or as a member of a group or organisation;
- 4) “third persons” shall mean all other persons whose personal data are contained in a certain file, excluding the object of surveillance, employees of the state security service and collaborators of the state security service;

5) “file” shall mean a collection of personal data or individual personal data, in case such collections or data resulted from the work of the state security service or are in its possession. A file shall be taken to refer to all forms of keeping information and all the media on which they have been recorded, including all card-files, data bases, documents, plans, films, photographed and phonographed or in some other way recorded material, mechanically or manually reproduced copies and duplicates of those materials, auxiliary evaluation means and automatic data processing programmes. The term file shall be taken to refer to files of federal state security services of the former SFRY, in case such files are in possession of republican agencies and organisations and which concern the citizens of the Republic of Serbia;

6) “state security service” shall mean the existing state security department in the Ministry of Internal Affairs of the Republic of Serbia, organised in accordance with the 1991 Law on Internal Affairs, as well as earlier organisational forms of services with identical or similar tasks that existed from 1945 to 1991 in the structure of republican organs¹;

7) “employees of the state security service” shall mean officials, managerial personnel, personnel having the status of authorised officials and other employees of the state security service from 1945 till the date of entry of this Law into force, as well as persons assigned from other agencies and organisations to work in the state security service;

8) “collaborators of the state security service” shall mean persons who supplied the state security service with information based on an accepted obligation to cooperate with the service, i.e. against remuneration or specific privileges, including promises that they would not be criminally prosecuted for committed criminal offences or that they would be granted leniency or exempted from serving a part of their sentence. A person who has supplied the service with certain information in his statement during interrogation in the police, while being held by the police, in detention or prison, i.e. under duress, threat or if blackmailed shall not be considered a collaborator of the state security service.

Article 3

(Right to information about files)

Every citizen of the Republic of Serbia shall have the right to receive, on his own request, written information whether a file has been kept on him by the State Security Service of the Republic of Serbia, as well as whether personal data on him are contained in files that same service kept on other persons, groups of citizens or organisations.

¹ Note: The valid Law on Internal Affairs of the Republic of Serbia was passed in 1991 and on the basis of that Law the present State Security Service is organised as a department within the Ministry of Internal Affairs. In that sense, 1991 is taken as a border between the present and previous organisational forms of the SDB (the State Security Service) (i.e. from 1945 to 1991 and from 1991 till entry of this Law into force).

Article 4
(Rights of the object of surveillance)

(1) A citizen on whom the State Security Service have kept a file or whose personal data are contained in a file kept on another person, group of citizens or organisation, shall have the right to gain access to his file and to be issued a duplicate of that file.

(2) A citizen shall have the right to use data from files in a manner and for purposes specified by this and other laws.

Optional addition to Articles 3 and 4: Aliens who legally resided in the territory of the Republic of Serbia at the time files were being kept on them, shall also enjoy the rights referred to in Articles 3 and 4 of this Law.

Article 5
(Rights of legal successors)

(1) Legal successors of deceased or missing persons who have been declared dead shall be entitled to the rights referred to in Articles 3 and 4 of this Law relating to files of such persons.

(2) In addition to the rights referred to in Articles 3 and 4 of this Law, legal successors shall have the right to receive, on request, special information that shall also include data on the deceased or missing person contained in other files of the state security service, in case they need such data for establishing the fate, rehabilitating or protecting the good name of the deceased or missing person.

(3) Legal successors shall not be able to exercise rights stipulated by this Law if the deceased or missing person has decided otherwise by the declaration of his last will.

Article 6
(Special power of attorney)

(1) The rights referred to in Article 3 through 5 of this Law shall be exercised personally or through a designed person holding the power of attorney especially authorised for that purpose.

(2) Power of attorney referred to in paragraph 1 of this Article shall state the purpose for which it is given and the personal particulars of its holder and the person granting it.

(3) Power of attorney referred to in paragraph 1 of this Article shall be notarised by the Municipal Court.

Article 7
(Rights of third persons)

(1) The legal interests of third persons shall not be violated by the exercise of the rights referred to in Articles 3 through 5 of this Law, either by disclosing personal data on them, allowing access to such data or making such data available to the public.

(2) The interests of third persons or their legal successors shall not be violated if such persons give their consent in writing for their personal data to be disclosed, made accessible or available to the public.

Article 8
(Rights of specific agencies and institutions)

(1) State agencies and organisations, scientific institutions, the media and other public institutions shall be able to use the files kept by the state security service on the citizens of the Republic of Serbia, in accordance with the provisions of this Law.

(2) Agencies and institutions referred to in paragraph 1 of this Article shall be held responsible if they use files contrary to the provisions of this Law.

Article 9
(Temporary restriction on rights)

(1) The rights of individuals, agencies and institutions referred to in Articles 3 through 8 of this Law may be temporarily restricted regarding the use of individual files, parts of files or specific information contained in them, if their use could be detrimental to the security interests of the Republic, cause a direct danger for public security or negatively influence the course and outcome of criminal investigation or court proceedings.

(2) Restrictions referred to in paragraph 1 of this Article shall last until warranted by justified grounds, i.e. until the suspension of criminal investigation or conclusion of court proceedings, but two years, at most, as of the date of entry of this Law into force.

(3) In case the agency in charge considers that even after the expiry of two years as of the date of entry of this Law into force the grounds referred to in paragraph 1 of this Article still exist, it shall hand over the file in question to the agency referred to in Article 11 of this Law for its use, giving the reasons for making illegible its controversial parts and pieces of information.

Article 10
(Exercise and protection of rights)

(1) Rights of objects of surveillance, their legal successors, third persons and individual agencies and institutions laid down by this Law shall be exercised until the expiry of five years as of the date of entry of this Law into force, at the latest.

(2) Rights and interests of objects of surveillance, their legal successors, third persons and specific agencies and institutions laid down by this Law shall enjoy court protection.

(3) Court protection referred to in paragraph 2 of this Article shall be carried out in proceedings before the District Court in whose area of jurisdiction the citizens has residence and the agency or institution their seat. For citizens who do not have place of residence on the territory of the Republic of Serbia, court's jurisdiction shall be determined according to their last address in the Republic of Serbia.

(4) Supreme Court of the Republic of Serbia shall decide appeals against decisions of District Courts.

II HANDLING AND SUPERVISION OF FILES

Article 11
(Republican Commission on Files)

(1) The National Assembly of the Republic of Serbia shall establish a special commission for handling files of the state security service and carrying out supervision over their use.

(2) The Republican Commission on Files of the state security service (hereinafter referred to: Republican Commission on Files) shall have the status of an independent republican agency with rights and obligations specified by this Law.

(3) The Republican Commission on Files shall have the status of a legal person.

(4) The seat of the Republican Commission on Files shall be in Belgrade.

Article 12
(Surrender of files by security services)

(1) The Ministry of Internal Affairs of the Republic of Serbia shall hand over all files referred to in this Law to the Republican Commission on Files within 30 days as of the day of the beginning of its work.

(2) The obligation referred to in paragraph 1 of this Article shall pertain to all mechanically or manually reproduced copies and duplicates of files, auxiliary evaluation means and automatic data processing programmes relating to files in question.

(3) Upon the expiry of the deadline referred to in paragraph 1 of this Article, no file, copy or duplicate of a file, nor an auxiliary evaluation means or automatic data processing programme from a file referred to in this Law, shall remain in possession of the Ministry of Internal Affairs of the Republic of Serbia.

(4) Notwithstanding the provisions of paragraphs 1 through 3 of this Article, the Ministry of Internal Affairs may retain files and parts of files, to which Article 9 of this Law applies, provided, however, that it shall, within the period prescribed in paragraph 1 of this Article, reproduce copies of such files and submit them to the Republican Commission on Files within the deadline specified in paragraph 1 of this Article, stating the reasons and the expected period for which each file shall be retained.

(5) The files referred to in paragraph 4 of this Article shall be surrendered to the Republican Commission on Files in accordance with Article 9, paragraphs 2 and 3 of this Law.

Article 13

(Surrender of files by other state agencies and organisations)

(1) Courts, prosecutor's offices and other state authorities and organisations shall surrender all files of the state security service referred to in this Law, as well as copies and duplicates of those files which are in their possession, to the Republican Commission on Files within 30 days as of the day of the beginning of its work.

(2) In case agencies and organisations referred to in paragraph 1 of this Article require individual files for carrying out their official assignments specified by the Law, these agencies and organisations shall keep the files as required, provided that they make a copy of such files and surrender them to the Republican Commission on Files.

(3) The manner of surrendering files mentioned in paragraphs 1 and 2 of this Article shall be agreed upon between person in charge in the federal agency or organisation and the Republican Commission on Files.

(4) The provisions of Article 9 of this Law shall apply to files required by courts and prosecutor's offices for conducting criminal investigations or court proceedings, whereas provisions of Article 12, paragraphs 4 and 5 of this Law shall accordingly apply to the retention and surrender of such files.

Article 14
(Surrender of files by legal persons and individuals)

(1) Legal persons, organisations and other entities who do not have the status of legal persons, as well as individuals, shall surrender all files and copies or duplicates of files of the state security service which are in their possession on any grounds, to the Republican Commission on Files.

(2) Legal persons, entities and individuals referred to in paragraph 1 of this Article shall inform the Republican Commission on Files within 30 days as of the day of the beginning of its work on files in their possession and surrender these files to the Commission within a reasonable time it determines.

(3) The Republican Commission on Files shall send public invitation through the mass media on the day of the beginning of its work, in accordance with paragraphs 1 and 2 of this Article.

Article 15
(Documents of other organisations)

(1) The Republican Commission on Files shall have the right to gain access and receive copies of documents of the Communist Party of Yugoslavia, i.e. League of Communists of Yugoslavia, as well as of all other mass organisations in SFRY and political parties that were in power in the Republic of Serbia in the period between 1991 and the date of entry of this Law into force in case such documents pertain to:

- 1) citizens on whom the state security service had kept files;
- 2) channelling the activities of the state security service.

(2) State agencies and organisations, political parties, private institutions and individuals who are in possession of documents referred to in paragraph 1 of this Article shall grant to the Republican Commission on Files access to the mentioned documents and allow for the reproduction thereof.

(3) Copies of document referred to in paragraph 1 of this Article shall be attached to files and considered their integral part.

Article 16
(Measures for the protection and custody of files)

(1) Before surrendering files to the Republican Commission on Files, the state security service, other state agencies and organisations, legal persons, individuals, organisations and other entities referred to in Articles 12 through 15 of this Law, shall not be allowed to make any changes in the files, delete any data, copy the files or in any other way damage, destroy or dispose of files or parts thereof.

(2) Immediately upon taking over the files, the Republican Commission on Files shall record files and enter them into a register, assign duties to specific persons and determine their responsibilities in connection with the files and undertake measures, i.e. specify procedures for their custody and protection, in accordance with the principles on handling collections of personal data and the provisions of this Law.

(3) Files in possession of the Republican Commission on Files shall be protected against unauthorised access, examination, reading and other forms of use, copying, changing or deleting data contained therein, as well as destruction or disappearance.

(4) Facilities and premises of the Republican Commission on Files in which the files are deposited, as well as the equipment, means and systems for data processing in connection with the files, shall be specially secured and protected.

Article 17
(Preparation of files for use)

(1) Prior to using the file, the Republican Commission on File shall:

1) extract from the file in question personal effects unlawfully seized by the state security service and return such articles to owners or their successors;

2) extract the documents of other agencies, organisations and institutions contained in the files, which do not refer to the activities of the state security service or to the implementation of measures that these services had ordered, and return such documents to the agencies, organisations and institutions in question;

3) extract files kept before 1945 if there had been no activities of the state security services in connection thereto after 1945 and hand over such files to the competent archive services;

(2) The Republican Commission on Files shall establish a special repository for the originals and all copies of files referred to in Article 9 of this Law, and shall ensure for such files special protection until conditions for their use are created.

(3) Having completed the procedures referred to in paragraphs 1 and 2 of this Article, the Republican Commission on Files shall make certified photocopies of files and shall make illegible names of all third persons, employees of the state security service and collaborators of that service who worked on the establishment of files and other persons who supplied information on the object of surveillance.

III USE OF FILES BY CITIZENS

Article 18

(Application for information on files)

(1) An application for information on files, within the meaning of Article 3 of this Law, shall be filed with the Republican Commission on Files and shall specify the identity of the applicant (first name and family name, maiden name, parents' names, date and place of birth, citizen's personal identification number), as well as domicile address, i.e. place of residence. The application may also state other data of interest for easier tracing of the file (period during which it is assumed that the file had been kept, characteristic events, etc.).

(2) In addition to data on the applicant referred to in paragraph 1 of this Article, the application filed on the basis of Article 5 of this Law shall contain identical data on a deceased or missing person. The application shall be accompanied by a death certificate, i.e. copy of a judicial ruling declaring the missing person dead, as well as proof of kinship with the deceased, i.e. missing person.

(3) In case when the application referred to in paragraphs 1 and 2 of this Article, is filed through a holder of the power of attorney, the application shall be accompanied by the power of attorney certified in accordance with Article 6 of this Law.

(4) Applications which have not been duly filed shall be returned to the applicant for correction. If the applicant fails to correct the omissions within 15 days, the application shall be considered abandoned.

(5) The application for information on files shall be exempted from stamp duty.

Article 19

(Deciding applications)

(1) The Republican Commission on Files shall inform in writing the applicant of the duly filed application on the existence or non-existence of files within the deadline which cannot be longer than 60 days as of the date of receipt of application referred to in Article 18 of this Law.

(2) In case the file exists, the applicant shall at the same time be informed of the time he will be given access to the file.

(3) In determining the time when access to the file shall be given, applications for information required for the rehabilitation, indemnification, prevention of invasion of privacy or establishing the fate of a deceased or missing person, shall be accorded priority.

(4) Notice referred to in paragraph 1 of this Article shall be a final administrative decision which can be appealed against in administrative proceedings in case it is not issued within the prescribed deadline.

Article 20
(Access to files)

(1) A person requesting access to a file shall so inform the Republican Commission on Files seven days prior to the date set in the notice referred to Article 19, paragraph 2 of this Law, at the latest. Within that same deadline, the person in question may request for another date to be set for his access to the file if he is unable to examine his file on the set date for justified reasons.

(2) Files shall be made accessible only in the premises of the Republican Commission on Files. Only files prepared in accordance with Article 17, paragraph 3 of this Law, shall be made accessible.

(3) Before granting access to files, the person in charge in the Republican Commission on Files shall inform the person applying for access to files on his obligations under Article 7 of this Law, as well as the obligation to return the file undamaged after examination.

(4) No other persons may be present while the applicant is examining his file, unless a person requiring the assistance of another person to examine the file, is in question.

(5) A person in need of assistance referred to in paragraph 4 of this Article (blind or other persons needing professional assistance) shall inform thereon the Republican Commission on Files in the application mentioned in paragraph 1 of this Article.

(6) A person who so wishes shall be given required explanation concerning the contents of the file while examining the file. The Republican Commission on Files shall provide expert personnel for such assistance.

Article 21
(Issuance of duplicate files)

(1) A person who has gained access to the file may, at his request, be issued a duplicate of the file or of individual documents from the file, against payment of reproduction costs.

(2) A duplicate of the file or individual documents from the file shall be prepared in accordance with Article 17, paragraph 3 of this Law.

Article 22
(Obtaining special information)

(1) A person who had access to a file shall be able to receive information on the names of employees and collaborators of the state security service who worked on establishing a file, i.e. supplied information during the establishment of a file, under the following conditions:

1) to file a separate written application for obtaining such information and to state the reasons warranting the application,

2) to sign a statement to the effect that he has been informed of the legal requirements for using the obtained information,

3) that it is possible to positively identify persons disclosure of whom is requested from documents contained in files available in the Republican Commission on Files,

4) that persons whose names are to be disclosed were not below 18 years of age at the time they supplied information contained in the file.

(2) Application for obtaining information referred to in paragraph 1 of this Article shall be deemed justified in case data contained in the file are of such nature as to be injurious to the interests of the person who is the object of surveillance.

Article 23
(Depersonalisation of personal data)

(1) A person who had access to a file may file a written application requesting that all personal data on him, i.e. a deceased or missing person be depersonalised after the expiry of five years as of the date of entry of this Law into force. The depersonalisation of personal data shall be carried out by deleting the first name and family name of the person who is the object of surveillance in the original and all copies of the file, as well as in all other records established by the Republican Commission on Files.

(2) An application for depersonalisation shall be rejected in case:

1) information from the file are required as evidence in the ongoing judicial proceedings, until the conclusion of such proceedings;

2) the application for depersonalisation is in conflict with the interests of legal or physical persons who may use such information as evidence, until such interests exist;

3) information from the file are required for research conducted in accordance with Article 31 of this Law.

Article 24
(Correction of personal data)

(1) A person who had access to a file may request in writing to have personal data on him, a deceased or missing person corrected, if he considers that data to be incorrect.

(2) Pursuant the request from paragraph 1 of this Article, the Republican Commission on Files shall make a special note in the file and enclose the request for correction to be entered into the file.

(3) If the data the correctness of which is disputed, have already been submitted to an institution pursuant this Law, the Republican Commission on Files shall inform such institutions on the correction made.

Article 25
(Rights of employees and collaborators of the state security service)

If the names of employees of the state security service and collaborators of this service have been revealed in accordance with Article 22 of this Law, such persons shall be entitled to be given access to the reports they submitted on the person who was the object of surveillance, if required for the protection of their rights.

IV USE OF FILES BY AGENCIES AND INSTITUTIONS

Article 26
(General rules for the use of files)

(1) State agencies and organisations, scientific institutions, the media and other public institutions (hereinafter referred to as: agencies and institutions) may be given information on certain files of the state security service, gain access to the files and be allowed to use documents from the files when that is required for discharging their duties and in accordance with the provisions of this Law.

(2) Personal data from the files that have been revealed, i.e. made accessible to an agency or institution, shall be used only for the purposes for which they have been revealed, i.e. made accessible. If an agency, i.e. institution intends to use personal data from a file for a different legal purpose, it shall previously obtain an approval of the Republican Commission on Files.

(3) The person in charge of the agency and institution that received certain documents from a file for its use, shall return these documents to the Republican Commission on Files after they are no longer needed.

Article 27
(Deciding applications)

(1) In its application for information, access or acquisition of a document from a file, the agency, i.e. institution shall state the purpose for which the information, access or a document from the file is necessary, to be signed by a person in charge and authenticated by the stamp of the agency, i.e. institution.

(2) The Republican Commission on Files shall bring a decision rejecting the application referred to in paragraph 1 of this Article if it establishes that the application does not refer to a legally allowed purpose or if it establishes that the use of a file in the required extent is not in accordance with that purpose.

Article 28
(Information on personal data supplied)

(1) If the Republican Commission on Files reveals personal data of a person who was an object of surveillance or makes such data accessible to an agency or institution, it shall inform that person thereon, i.e. legal successors of a deceased or missing person.

(2) Notwithstanding the provision of paragraph 1 of this Article, the information shall not be issued in case when personal data are revealed, i.e. made accessible for the purposes of conducting criminal prosecution or preventing a direct threat to public security.

Article 29
(Use of files by state agencies and institutions)

(1) Within their legal jurisdiction, state agencies and organisations may use files of the state security service for the following purposes:

- 1) rehabilitation of the victims of political repression;
- 2) indemnification of damages to the victims of political repression;
- 3) protection of privacy of persons who are object of surveillance and third persons;
- 4) establishing the fate of missing and deceased persons;
- 5) revision and recognition of rights on account of pension and disability insurance;
- 6) investigation by assembly committees of inquiry;
- 7) initiating criminal prosecution for certain criminal offences; and
- 8) preventing a direct threat to public security.

(2) The law may also lay down other purposes for the use of files of the state security service by state agencies and institutions.

Article 30

(Use of files in criminal prosecution)

(1) State agencies in charge of criminal prosecution may use files of the state security service for the purpose of criminal prosecution of perpetrators of criminal offences that are punishable by law up to five years in prison or a more severe sentence.

(2) If in discharging its duties the Republican Commission on Files establishes that there are indications of criminal offences from paragraph 1 of this Article in the files, it shall inform thereon state agencies in charge of criminal prosecution.

Article 31

(Use of files by scientific institutions)

(1) Scientific institutions and their scientific research personnel may use the files of the state security service for the purpose of historical and other scientific research.

(2) Scientific institutes and researchers from paragraph 1 of this Article may be granted access to copies of files that do not include personal data, i.e. in which personal data are made illegible.

(3) The use of files that contain personal data shall be subject to written approval of the object of surveillance or his legal successors. The approval shall be obtained through the Republican Commission on Files and kept in the documentation of this Commission.

(4) Notwithstanding the provision of paragraph 3 of this Article, an approval for the use of files that contain personal data shall not be required if personal data refer to persons who were employed in the state security service or were collaborators of this service, as well as persons who held political or state posts – except for persons who were object of surveillance.

(5) Publication of personal data on the persons from paragraphs 3 and 4 of this Article shall not cause damage to legal interests of these persons.

Article 32

(Stimulation of scientific research)

The Republican Commission on Files shall stimulate research aimed at new historical evaluation of the activities of the state security service and the character of the political regime this service operated under. For that purpose it shall prepare, i.e. organise the preparation of information on the structure, methods and consequences of the operation of the state security service and make them available to researchers.

Article 33
(Use of files by the media)

(1) The press, radio and television stations and their journalists and editors may use the files of the state security service in discharging their duties.

(2) The provisions of Article 31 paragraphs 2 through 5 referred to in this Law shall apply to the use of files by the press, radio and television stations and their journalists and editors.

(3) If after the publication or broadcasting of personal data, the object of surveillance or his legal successors file an application for correction, this application shall be published in the standard way, whereas personal data may be published again but only together with the contents of the application for correction.

V USE OF FILES FOR THE PURPOSES OF LUSTRATION

Article 34
(Information on persons by the Commission)

(1) At a written request, the Republican Commission on Files shall inform an authorized agency and organisation whether employees of the state security service and federal security services or collaborators of these services whose checks have been requested, have participated in proposing, ordering, executing or, with their information or in any other way contributed to the execution of acts in violation of guaranteed freedoms and rights of man and the citizen.

(2) The information from paragraph 1 of this Article shall be issued in writing and may be given only if the data from the file include clear evidence on the activities of a person in respect of whom a check has been requested. The information shall not be issued if the person whose check has been requested was under 18 years of age at the time of the activities in question.

(3) Information from paragraph 1 of this Article may refer to the period from 1945 to the day of entry of this Law into force.

(4) For the purpose of collecting facts and data needed for issuing information from paragraph 1 of this Article, the Republican Commission on Files shall establish cooperation with the federal agency in charge of the use and handling of files.

Optional paragraph 3: Information from paragraph 1 of this Article may refer to the period from September 28, 1990 to the day of entry of this Law into force.

Article 35

(Persons whose checks may be requested and empowered agencies)

(1) The check referred to in Article 34 of this Law may be requested for persons who hold or are about to assume one of the following posts or discharge the following duties:

1. deputies to the National Assembly, councillors of the assemblies of territorial autonomy and local self-government, as well as officials of these assemblies and managerial personnel in their services;

2. President of the Republic and managerial personnel in the service of the President of the Republic;

3. Prime Minister and members of the Government, officials in charge of republican agencies and organisations, Assistant and Deputy Ministers and other officials and managerial personnel in republican agencies and organisations and Government services appointed by the Government;

4. President and members of executive agencies of territorial autonomy and local self-government and managerial personnel in their services.

5. President and judges of the Constitutional Court of Serbia, President and judges of courts of general jurisdiction and specialised courts, and holders of offices in public prosecutors' offices and offices in infraction organs;

6. directors and members of management boards of public enterprises and holders of corresponding offices in public services, at the university, in state media and banks with state capital;

7. members of State Security Department, employees in organs of internal affairs and institutions in charge of executing criminal sanctions.

(2) Agencies in charge of the election, appointment or employment shall have the right to request checks about persons from items 2 through 6 of paragraph 1 of this Article.

(3) Inquiries on the deputies of the National Assembly and councillors of the assemblies of territorial autonomy shall be made by the Republican Commission on Files *ex officio*, which shall inform the respective assembly about the results of checks within 60 days as of the day of the beginning of its work.

(4) Inquiries on candidates for the duties of deputies and councillors shall be made according to the determined lists of candidates submitted to the Republican Commission on Files by the election commissions immediately after the lists of candidates had been determined. The Republican Commission on Files shall publish the results of checks in the media within seven days as of the day the lists of candidates have been submitted.

Article 36
(Rights of persons subject to checks)

(1) The Republican Commission on Files shall simultaneously inform the agency and organisation requesting the check and the person subject to checks on the results of performed checks.

(2) The person from paragraph 1 of this Article shall have the right to be granted access to files and all the documents based on which the Republican Commission on Files has determined the facts in the information within seven days as of the day of receiving the information, and the Republican Commission on Files shall make that access possible within three days as of the date of the expiry of this person's request.

(3) After having examined the file, the person referred to in paragraph 1 of this Article shall have the right to appeal to the Republican Commission on Files within 15 days and submit evidence and facts denying its findings, and to use legal assistance in appeal proceedings. The Republican Commission on Files shall decide on the appeal with majority of votes of all its members within 15 days as of the date of receiving the appeal.

(4) An administrative procedure may be instituted against this decision within 30 days as of the day of delivery of the decision.

Article 37
(Effects of checks carried out)

A person for whom it has been established that as an employee of the state security service, or as a collaborator of this service has participated in proposing, ordering, executing, or with his information or in any other way significantly contributed to execution of an act in violation of guaranteed rights and freedoms of man and the citizen, cannot assume the posts, i.e. discharge the duties specified in Article 35, paragraph 1, items 2 through 7 of this Law within five years as of the day of entry of this Law into force.

Option: The restriction referred to in this Article may last ten years.

VI REPUBLICAN COMMISSION ON FILES

Article 38
(Composition and election of the Commission)

(1) The Republican Commission on Files shall consist of president and eight members elected by the National Assembly for a term of five years.

(2) Persons of age who are citizens of the Republic of Serbia and who at the time of the election or at any time before that were not employed in the state security service nor were collaborators of this service, may be elected president and members of the Republican Commission on Files.

(3) Candidates for president and members of the Republican Commission on Files shall be nominated by groups of deputies.

(4) The groups of deputies that nominate candidates for president and members of the Republican Commission on Files, along with the nomination, shall submit a written statement of the candidates on the facts from paragraph 2 of this Article.

Options for paragraphs 3 and 4:

(3) Candidates for president and four members of the Republican Commission on Files shall be nominated by deputy groups, and candidates for the remaining four members of the Republican Commission on Files shall be nominated by the High Judicial Council from the ranks of prominent lawyers.

(4) Deputy groups and the High Judicial Council shall, along with the nomination of candidates for president and members of the Republican Commission on Files, submit written statements of candidates on the facts from paragraph 2 of this Article.

Article 39 *(Oath)*

Upon assuming duty, the president and members of the Republican Commission on Files shall take the following solemn oath at the National Assembly:

“I swear that I shall discharge my duty conscientiously, impartially and responsibly, that I shall consistently implement the Constitution and the law and that I shall devote all my strength to serving truth and justice”.

Article 40 *(Incompatibility of offices)*

(1) The office of the president of the Republican Commission on Files is incompatible with any other duty or professional activity, or membership in any political party.

(2) On the day of assuming duty, the president of the Republican Commission on Files shall cease to perform all other duties and activities, and cease to be a member of a political party.

Article 41

(Status of the President and members of the Commission)

(1) The president of the Republican Commission on Files shall be permanently employed in the Commission with a salary computed on the basis of the existing salary scales for officials in charge of special republican organisations.

(2) The members of the Republican Commission on Files shall receive remuneration for their work in the Commission in the amount determined by the agency in charge of administrative affairs of the National Assembly.

Article 42

(Responsibilities of the President and members of the Commission)

(1) The president and members of the Republican Commission on Files shall answer for their work to the National Assembly.

(2) The president or a member of the Republican Commission on Files may be relieved of duty only at his own request, if convicted of a criminal offence, if he becomes permanently disabled to perform his duties or if he incompetently, partially and unconscientiously performs his function.

(3) The proceedings for relieving the president or a member of the Republican Commission of Files of post shall be instituted at the proposal of a group of deputies, which shall become effective if a majority of all deputies of the National Assembly vote in favour.

(4) The duty of the president or a member of the Republican Commission on Files shall be terminated immediately after it is determined that his written statement on the data from Article 38, paragraph 4 of this Law is incorrect. The agency in charge of administrative affairs of the National Assembly shall state the termination of his duty and inform the National Assembly thereon.

Article 43

(Supervision of the work of the Commission)

(1) The National Assembly shall supervise the work of the Republican Commission on Files.

(2) The Republican Commission on Files shall submit the report on its work to the National Assembly at least once a year.

Article 44
(Method of work of the Commission)

(1) Duties from the field of competence of the Republican Commission on Files, within the jurisdiction specified by this Law, shall be discharged by the Commission as a collegiate body, the president of the Commission and the Commission service.

(2) The Republican Commission on Files shall, by majority of votes of its members, adopt general enactments which regulate custody, protection and the procedure for the use of files, lay down the rules for the organisation and work of the Commission service, adopt measures of significance for the implementation of this Law and submit the report on its work to the National Assembly.

(3) The president of the Republican Commission on Files shall represent the Commission, convene sessions of the Commission and chair them, organise the work and head the work of the Commission service, pass individual documents from the Commission's field of competence and discharge other duties specified by this Law and general enactments of the Commission.

(4) The Commission service shall carry out professional and other duties in connection with taking over, organisation, protection, custody and use of files.

Article 45
(Commission Service)

(1) Persons who, at the time of employment or at any other time before that, were employed in the state security service or who were their collaborators shall not be able to work in the service of the Republican Commission on Files.

(2) Employment terms of employees of the service of the Republican Commission on Files shall be regulated by the provisions of the regulations on labour relations in state agencies.

(3) Salaries of the employees of the service of the Republican Commission on Files shall be determined by a general enactment of the Commission in accordance with the law and the general collective contract.

Article 46
(Requirement of secrecy)

(1) The president and members of the Republican Commission on Files and employees of the Commission service shall keep as official secret all the data they acquire knowledge of in discharging their duties and tasks in connection with files.

(2) The requirement from paragraph 1 of this Article shall continue to apply after the expiry of their term of office, i.e. after the termination of their work in the Republican Commission on Files.

(3) The rules of procedure of the Republican Commission on Files shall determine the measures for ensuring controlled access to files by the employees in the Commission service and for recording this access, and other measures aimed at preventing unauthorized access to files and to systems for processing data on them.

Article 47
(Financing of the Commission)

The resources for the work of the Commission on Files shall be provided from the budget of the Republic of Serbia.

VII FURTHER DISPOSAL AND USE OF FILES

Article 48
(Surrender of files to the Archives)

(1) After expiry of five years as of the day of entry of this Law into force, the Republican Commission on Files shall, within six months, hand over to the Archives of Serbia all originals, copies and duplicates of files, and all archival material resulting from the work of the Commission.

(2) The Archives of Serbia shall establish a separate repository and determine special measures for the protection and custody of the files surrendered to it.

Article 49
(Use of files)

After being surrendered to the Archives of Serbia, files referred to in Article 48 of this Law, may be used within time limits and according to the rules laid down in regulations on archival materials.

VIII PUNITIVE PROVISIONS

Article 50

(Violation of the secrecy)

A person who grants access to or publicly reveals personal data from a file without written approval of the object of surveillance, a third person or their legal successors and thus causes damage to the person who is the object of surveillance or to a third person, shall be sentenced to up to three years in prison or fined.

Article 51

(Violation of integrity of files)

A person who makes any changes in the files, deletes data from them, copies the files or in any other way damages, destroys or removes files or their integral parts (Article 16, paragraph 1 of this Law), shall be sentenced to up to three years in prison or fined.

Article 52

(Offences by persons in charge)

A person in charge of a state agency and organisation, legal person, political party or private institution acting contrary to the provisions of Article 9, paragraph 3, Article 12, paragraph 1, Article 13, paragraphs 1 and 2, Article 15, paragraph 2, Article 26, paragraphs 2 and 3, Article 31, paragraph 3 and Article 33, paragraph 3 of this Law, shall be fined between 50,000 and 500,000 dinars.

Article 53

(Offences by individuals)

A person who acts contrary to Article 14, paragraphs 1 and 2, Article 15, paragraph 2 and Article 20 paragraph 3, of this Law shall be fined between 5,000 and 50,000 dinars for the committed offence.

IX TRANSITIONAL AND FINAL PROVISIONS

Article 54

(Foundation and the beginning of work of the Commission)

(1) The National Assembly shall elect the president and members of the Republican Commission on Files within 30 days as of the day of entry of this Law into force.

(2) The Republican Commission on Files shall begin its work within 30 days as of the day of the election of its president and members.

Article 55

(Entry into force)

This Law shall enter into force on the eighth day as of the day of its publication in the Official Gazette of the Republic of Serbia.

(This model of the Law was drafted by a group of experts of the Center for Antiwar Action headed by Bogoljub Milosavljević, Ph.D.)