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PROTECTOR OF CITIZENS
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B e l g r a d e



Protector of Citizens
Ombudsman

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REGULAR ANNUAL REPORT
OF THE PROTECTOR OF CITIZENS
FOR 2015

Belgrade, 15 March 2016

TABLE OF CONTENTS:

REGULAR ANNUAL REPORT OF THE PROTECTOR OF CITIZENS FOR 2015	1
FOREWORD, OVERALL ASSESSMENT OF OBSERVANCE OF CITIZENS' RIGHTS AND KEY INFORMATION ON THE ACTIVITIES IMPLEMENTED BY THE PROTECTOR OF CITIZENS IN 2015	4
KEY STATISTICS ABOUT THE WORK OF THE PROTECTOR OF CITIZENS	37
PART I LEGAL FRAMEWORK AND SCOPE OF WORK OF THE PROTECTOR OF CITIZENS	
41	
1.1. LEGAL FRAMEWORK.....	41
1.2. COMPETENCE, SCOPE AND MANNER OF WORK.....	48
PART II A CLOSER LOOK AT THE REFUGEE CRISIS	53
PART III OVERVIEW BY AREAS / SECTORS.....	59
3.1. CHILD RIGHTS	59
3.2. RIGHTS OF NATIONAL MINORITIES.....	82
3.3. GENDER EQUALITY AND RIGHTS OF LGBTI PERSONS.....	96
3.4. RIGHTS OF PERSONS WITH DISABILITIES AND RIGHTS OF THE ELDERLY	118
3.5. RIGHTS OF PERSONS DEPRIVED OF LIBERTY, POLICE POWERS AND PREVENTION OF TORTURE.....	130
3.6. PUBLIC ADMINISTRATION SECTOR	157
3.7. LOCAL SELF-GOVERNMENT SECTOR.....	167
3.8. SECTORS OF EDUCATION AND SCIENCE, CULTURE AND INFORMATION AND YOUTH AND SPORTS.....	173
3.9. HEALTH SECTOR	193
3.10. SOCIAL SECURITY AND PENSION AND DISABILITY INSURANCE SECTORS	202
3.11. LABOUR SECTOR.....	213
3.12. INTERNAL AFFAIRS SECTOR.....	222
3.13. SECTORS OF FINANCE AND ECONOMY.....	228
3.14. JUSTICE SECTOR.....	241
3.15. DEFENCE SECTOR.....	246
3.16. SECTORS OF CONSTRUCTION AND INFRASTRUCTURE, CADASTRE, NATURAL DISASTERS AND RESTITUTION	250
3.17. SECTORS OF ENERGY AND MINING, CONSUMER PROTECTION, AGRICULTURE AND ENVIRONMENT PROTECTION	266
3.18. SECURITY SECTOR.....	280
PART IV COOPERATION BY THE PROTECTOR OF CITIZENS.....	290

4.1. COOPERATION WITH PUBLIC AUTHORITIES EXCLUDED FROM OVERSIGHT BY THE PROTECTOR OF CITIZENS.....	290
4.2. INTERNATIONAL COOPERATION AND PROJECTS.....	292
4.3. PROTECTOR OF CITIZENS IN THE MEDIA	297
PART V TOTAL NUMBER AND CLASSIFICATION OF COMPLAINTS.....	300
5.1. CLASSIFICATION OF COMPLAINTS ACCORDING TO RIGHTS VIOLATED.....	302
5.2. CLASSIFICATION OF COMPLAINTS ACCORDING TO AUTHORITIES AGAINST WHICH THEY WERE LODGED.....	305
5.3. OUTCOME OF HANDLING OF COMPLAINTS.....	307
PART VI RECOMMENDATIONS, OPINIONS AND LEGISLATIVE INITIATIVES OF THE PROTECTOR OF CITIZENS	310
6.1. RECOMMENDATIONS	310
6.2. OPINIONS.....	313
6.3. LEGISLATIVE INITIATIVES	314
ANNEX I - OVERVIEW OF PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES PROVIDED IN THE ANNUAL REPORT FOR 2015.....	317
ANNEX II - HUMAN AND MATERIAL RESOURCES.....	335
ANNEX III - FINANCIAL STATEMENT.....	339

FOREWORD, OVERALL ASSESSMENT OF OBSERVANCE OF CITIZENS' RIGHTS AND KEY INFORMATION ON THE ACTIVITIES IMPLEMENTED BY THE PROTECTOR OF CITIZENS IN 2015

The Annual Report contains general and specific assessments and information on the observance of the rights of citizens (including in particular human and minority rights), deficiencies identified in the work of public authorities, proposals for improvement of citizens' status vis-à-vis public authorities and account of the activities carried out and the costs incurred by the Protector of Citizens.

The status of citizens' rights in Serbia in 2015 was marked by economic strife faced by many citizens and a lack of legal certainty. The government and the public administration have been preoccupied with their own reforms, which are yet to produce any tangible benefits for the citizens.

Compared with the previous reporting year, complaints pertaining to social and economic rights have outnumbered complaints relating to the so-called maladministration- including delays, negligence, obvious inadequate implementation of law and other cases of deviation from good governance – as the most common complaints filed with the Protector of Citizens.

Particularly vulnerable groups and citizens included: the extremely poor, children and the youth, persons with disabilities, elderly persons, refugees and other migrants, internally displaced persons, national minorities (with the Roma as the most vulnerable among them), persons deprived of liberty (including patients at psychiatric hospitals and beneficiaries of residential institutions), persons with severe diseases, victims of domestic and intimate partner violence, organisations and individuals advocating human rights, organisations and individuals who express critical attitudes, journalists and members of the LGBTI population. As many have pointed out to the Protector of Citizens, the “ordinary person” is at the greatest risk in Serbia.

STATISTICAL TRENDS

The number of complaints in 2015 increased by 28% compared to the previous year (6,231 complaints).

As citizens are becoming more familiar with the powers of this institution, their complaints are increasingly specific and efficiency of contacts with citizens increases: the number of investigations initiated pursuant to complaints and on own initiative was 47.5% higher (!) and reached 1,669.

This institution has achieved greater efficiency in conducting investigations by completing 34.5% more investigations than in 2014 (in 2015, the Protector of Citizens completed 6,457 investigations pursuant to complaints and on own initiative).

The number of submissions other than complaints as well as the number of telephone conversations decreased by 22% and 17.1% respectively. The number of citizens who came to the offices of the Protector of Citizens in person to raise their grievances was also lower (-6.7%).

Unfortunately, due to austerity measures and at the expense of efficiency and preventive and awareness-raising efforts of this institution, the number of control and preventive visits was 6.15% lower, as 107 such visits were conducted in total.

The share of implemented recommendations has declined slightly from 87.9% to 86.3% (there were 1,447 recommendations issued in 2015, of which 1,102 are due for implementation and 951 have been implemented). Another noteworthy development is the high rate of compliance of relevant administration bodies with the recommendations issued by this institution in its

statutory capacity of the National Preventive Mechanism. There were 265 such recommendations issued, of which 167 are due for implementation and 155 have been implemented, which means the rate of compliance is 92.8%.

The efficiency of activities undertaken by this institution pursuant to legislative initiatives submitted by citizens has increased by 27.5% (with 65 such initiatives examined). The number of legislative initiatives and motions submitted to the National Assembly and other authorities by this institution remained the same as in 2014 (15). Four of those initiatives were adopted, as opposed to zero in 2013.

The existing capacity has been overwhelmed by the number of complaints for years now, as noted repeatedly in the Annual Reports. Notwithstanding all the strategies, action plans and promises, the capacity of the Secretariat has not been increased due to a number of administrative and political obstacles. The independence of the Protector of Citizens, which is guaranteed by the Constitution (as well as the independence of some other human rights institutions otherwise guaranteed by organic laws) has been gravely violated by the Law on the Manner of Determining the Maximum Number of Public Sector Employees, although the same Law has managed to preserve the independence of some other authorities (specifically the Government, the President, the National Bank of Serbia, the High Judicial Council, the State Prosecutorial Council).

The government has not established a functional horizontally and vertically ramified remedial system in which the Protector of Citizens would only exceptionally be called upon to remedy irregularities and illegalities prejudicing citizens' rights (which is the underlying idea behind the institution of the ombudsman), while all other cases would be addressed through internal control and through the use of available remedies before administrative and judicial authorities. Without an available and effective means of raising and addressing their grievances in this way, citizens mostly tend to contact the Protector of Citizens as the first, rather than the last, place of resort in the hierarchy of oversight authorities. The long overdue and duly elaborated and planned amendments to the Law on the Protector of Citizens, which were, among other things, supposed to put in place internal control mechanisms in administrative authorities, have not been drafted or enacted.

EXTERNAL INFLUENCES

A multitude of the existing and emerging issues, both in the region and globally, have combined to impair and hinder compliance with human rights standards and observance of human rights. A historic wave of refugees and migrants from Asia and Africa, which caught virtually all European countries and societies off-guard, has also brought to light an unwillingness to respect in practice the long-established human rights standards when a real-life crisis situation unfolds. This has caused suffering among refugees and other migrants, while also inflicting pain on the local population.

Serbia has treated refugees and migrants fairly, humanely, albeit sometimes haphazardly, mostly due to the *ad hoc* approach to tackling strategic challenges. The presence and the activities of international organisations and partners (including in particular specialised UN agencies and the European Commission) have proven to be of invaluable assistance. Cooperation with the authorities of the neighbouring countries of Macedonia and Croatia has been crucial in this process, coupled with close cooperation between national ombudsmen of all countries along the so-called "Balkan route". Serbia is a "transit" country for migrations from the South and the East. It can reasonably be assumed that even greater human rights challenges concerning the refugee and migrant situation, affecting both those people and the local population, are yet to follow.

Terrorist attacks and stepped-up counter-terrorism measures and powers have narrowed down the scope of citizens' freedoms to a thin line between hammer and anvil. Serbia has so far bucked the trend of imposing statutory restrictions on citizens' freedoms and rights on the pretext of ensuring a more effective response to terrorism. However, practical implementation of laws has seen an increasing number of agencies invading privacy and other citizens' freedoms, as they gain access to ever-increasing technical and financial resources, while democratic civilian oversight has faced funding shortage and has been gradually deprived of its ability to raise awareness, prevent and detect disproportionate, unjustified and otherwise irregular and unlawful invasions of citizens' rights.

The work of instruments of international justice, including in particular the International Criminal Tribunal for Former Yugoslavia and the international judiciary in Kosovo and Metohia, has not always inspired trust in their ability to fairly and efficiently, free from any political, ethnic or other bias, shed light on war crimes from the past and bring about a reconciliation in the region. However, certain officials have thwarted the purpose of the tribunal through their actions: on his return after serving a ten-year sentence for war crimes, a former high-ranking military officer was met ceremonially by top government and military officials, with the Minister of Justice saying he hoped that person's actions would inspire future generations.

There have been fewer new applications against Serbia before the European Court of Human Rights. By the end of 2015, there were 1,142 applications filed against Serbia. According to the statistical information provided by the ECHR, Serbia has 1.74 cases before the court for every 10,000 inhabitants, which is still above the average of other Council of Europe member states. In 2015, the ECHR passed 17 judgements in cases against Serbia, only one of which was exonerating. The most frequent causes for applications made by Serbian citizens to the ECHR include non-enforcement of final and enforceable judgements of national courts, violation of the right to a fair trial, excessive duration of judicial proceedings and discrimination. Since Serbia became a full member of the Council of Europe, the European Court of Human Rights has passed 132 judgements, 117 of which found violations of the European Convention on Human Rights. The Committee of Ministers of the Council of Europe, as the body in charge of overseeing compliance with ECHR judgements, took into account the opinion of the Protector of Citizens and at its 1250th session held from 8 to 10 March 2016 encouraged the Serbian authorities to address the outstanding issues and concerns of parents of "missing babies", as pointed to its attention by the Protector of Citizens.¹ In typical cases before the ECHR, Serbian citizens have received invaluable assistance from Serbian non-governmental organisations, such as YUCOM and the Belgrade Centre for Human Rights.

"HUMAN RIGHTS" VERSUS HUMAN RIGHTS; FREEDOM OF EXPRESSION AND THE MEDIA

Extremist movements with ideological platforms that oppose equality, respect for differences and other foundations of human rights have been gaining momentum, increasingly by abusing the human right to freedom of expression, which has not been met by an efficient response from administrative authorities (it should be noted that a public announcement does not constitute efficient response, unless it is capable of preventing the offensive behaviour from re-occurring, which has so far not been the case). There have been attempts to relativize

¹ For more information see: *Zorica Jovanović v. Serbia* (Application No. 21794/08), *Supervision of the execution of the Court's judgments*, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2016\)1250/H46-23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=ED](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2016)1250/H46-23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=ED).

and trivialise the core terms and values such as non-discrimination, presumption of innocence, rights of the child, constitutionality and legality.

Certain public officials have invoked their freedom of expression as citizens as justification for using their official position to spread officially unconfirmed information or offensive and inappropriate personal opinions, all the while acting in their official capacity.

In an interview for the “Nedeljnik” weekly, the Minister of Interior, when asked – quite appropriately – whom he, as a government official, perceived as the most credible opposition, answered: “The most prominent figures of the would-be opposition are a make-up artist and an actress, together with an assortment of failed scribblers.” Another statement made by Minister Stefanović, PhD, in the same interview: “The fact of the matter is that the feeble opposition has largely shifted to the non-governmental sector”, is representative of the systematic efforts to dismiss criticism of the government and freedom of expression, as the fundamental values of a free society and the essence of being a free citizen, as mere party-political smear campaigns and thus make them repulsive to the average citizen, while at the same time discrediting the non-governmental sector as motivated by daily politics, thus depriving it impartiality and serving the common interest.

Implementation of the three reform laws in the media sphere (the Law on Public Information and the Media, the Law on Electronic Media and the Law on Public Service Broadcasting, effective since 1 July 2015) has in practice done little to strengthen the freedom of the media and the citizens’ right to complete, impartial and timely information. The media remain crucially influenced by a non-transparent convergence of politics and money, formally posing as funding for broadcasting and advertising money. The expectations that the sale of all state-owned media outlets to private investors and a shift towards competitive funding of public interest broadcasting from municipal, city, provincial and national budgets, as provided for in the new media laws, would significantly increase the protection of public interest in the media sphere have largely been thwarted by the manner in which those laws have been implemented in practice. There is no true transparency of ownership. Judging by the structure of new owners of media outlets, it appears that Serbia now has party-political media outlets instead of public ones.

The process of the sale of state-owned media outlets to private investors was initially delayed by four months due to an obstruction by public media enterprises. Of the 70 such public enterprises, 50 complied with the requirements for auctioning of their capital within the specified timeframe, while the destiny of those that did not meet the requirements remains unknown. Over the course of the following four months (by the end of October 2015), 36 media companies found new owners, while 14 – including the state-owned news agency Tanjug – failed to do so even after two rounds of privatisation. Following the repeal of the Law on Tanjug and the explicit Decision passed by the Government², this agency was shut down; however, it continues operating and using the state symbols and other resources. As regards the press company “Politika AD”, the government included it in the list of 17 strategic public enterprises, thus effectively freezing its status. On the other hand, the press company “Novosti”, in which the state is a minority shareholder, was not even mentioned in the privatisation process.

Funding of public broadcasting services poses a specific challenge. The Radio Television of Serbia and the Radio Television of Vojvodina were supposed to shift to funding under the Law

² The Law was repealed on 31 October, while the Decision was passed on 3 November 2015.

on Public Service Broadcasting as from 1 January 2016. However, they failed to prepare for this in due time (specifically the Radio Television of Serbia) and a special Law on Provisional Funding of Public Service Broadcasting was passed at the end of 2015³ at the initiative of the Ministry of Mining and Energy, under which the citizens are required to pay a licence fee for the Radio Television of Serbia and the Radio Television of Vojvodina in the amount of RSD 150 dinars per month as part of their electricity bills, which has led to protests by some members of the public. It is estimated that the public service broadcasting will be co-financed with RSD 4 billion from the national budget in 2016 (half of last year's amount), together with the funds collected from licence fees.

Before the privatisation of public media enterprises, state-owned media outlets received direct co-financing from all levels of government in the total amount of approximately EUR 25 million per year, including EUR 5 million by the national government, EUR 3.5 million by the Autonomous Province of Vojvodina and 16.5 by local self-governments. As of November 2016, direct budget funding will not be allowed and a system of project-based (competitive) funding of media content in the public interest has been introduced.

Two calls for applications for media financing made in 2015 by the Ministry of Culture and Information were generally successful, unlike similar calls for applications made by local self-governments. The review committees are mostly comprised of representatives of journalists' and media associations; however, conflicts of interest and violations of procedures have been far more common at the local level. In several instances (for example in the case of Studio B), the new owners were effectively refunded most of the money they had previously invested in the state-owned media.

The Law on Public Administration and Local Self-Government does not provide for an obligation of local self-governments to allocate funds for the public interest in their budgets, nor does it specify the percentage of such allocation, if any. According to the information available to the Association of Serbian Journalists, local authorities have on average allocated one per cent of their local budgets for project financing, which professional associations finds as insufficient. The Association of Serbian Journalists has once again requested that the local self-governments commit to allocating two percent of their budgets for these purposes, a proposal which has been backed by other professional associations. However, public authorities have noted there is no constitutional basis for such a decision.

The Regulatory Authority for Electronic Media has been used as a battleground where the opposing media-related, commercial and political interests collide and its managing body – the Council – is incomplete. The public rightly expects the Regulatory Authority for Electronic Media to step up its response and make more effective use of its powers in cases of obvious violations of the Law on Electronic Media, journalists' codes of ethics and advertising rules.

The Press Council, as the only self-regulatory body in the Serbian media sphere, received 109 complaints about the content of print and online media in 2015, which was slightly more than in 2014, when it received 80 such complaints. The number of cases in which violations of the Code of Ethics were found is significantly higher than the previous year at 60. Out of this number 36 public letters of warning were issued to those media outlets that refused to accept the full scope of powers of the Press Council.

³ Official Gazette of RS, No. 112/15, enacted 29 12 2015.

According to the Council's Report⁴, the most common violations were those covered by the section "Truthfulness of Reporting" in the Code of Ethics (35 violations), including in particular the violations pertaining to the prohibition of disseminating unjustified accusations, libels and rumours and as well as the obligation to distinguish facts from comments, guesses and assumptions. Provisions of the Code of Ethics which prohibit discrimination and hate speech were violated in 20 cases, while the authorship provisions were violated 17 times. Another common violation was the disregard for ethics and culture of public discourse (14 decisions), mostly due to failure to publish replies. Most of the cases involved violations of multiple sections of the Journalists' Code of Ethics.

Certain media outlets have even gone so far as to disregard their duty to publish the Council's decisions passed pursuant to violations of the Code of Ethics: thus, "Vecernje novosti" did not publish four out of five decisions, "Blic" did not publish two out of six decisions, "Alo" did not publish two out of five decisions, while "Telegraf.rs" did not publish either of the two pertinent decisions.

The Council has amended its Statutes to revoke the power of veto which had previously been available to members of the Appeals Committee. This move was immediately met by sharp criticism and *ad hominem* attacks on individual members of the Appeals Committee from the *Politika* daily when the Committee reviewed an appeal against the decision passed in connection with the article dealing with US donations to the civil sector published by the said daily, which presented the Press Council with the greatest challenges it faced since its establishment.

The number of assaults and other forms of pressure against journalists was again on the rise last year. A register posted on the website of the Independent Association of Journalists of Serbia shows there were 38 such attacks in 2015, as opposed to 23 in 2013 and 2014 respectively. According to the same register, last year there were 11 assaults on journalists, three attacks on journalists' property, 21 verbal threats and three cases qualified as pressure on journalists.

The ruling party issued a press release in which it accused an editor of the public service broadcaster Radio Television of Serbia of "brutal political meddling" with an ongoing investigation after a tabloid reported she had said it would be "reasonable to call the editors of *TV Pink* and *Informer* daily for police questioning as well, rather than just the management of *Kurir* daily." All too predictably, this was followed by offensive and aggressive cover page headlines in the pro-government press, malicious reports on pro-government TV stations and clearly orchestrated verbal persecution (including insults and the basest *ad hominem* smears) in online comment sections of news portals and social media posted from predictably named accounts (the so-called "bots"). Such smear attacks are clearly organised and given free reign. An immediate or delayed effect of such actions is the withdrawal of public figures from the public sphere.

There has been no closure in the investigations of murders of journalists in the past and several recent assaults on journalists.

Highly experienced journalists are increasingly losing their jobs or choosing different careers. The journalist community has noted that their unknown colleagues are more likely to get employed than their professionally renowned fellow colleagues, which defies the "free market" logic. The social status of journalists is exceptionally low.

⁴ Report available at: <http://www.savetzastampu.rs/cirilica/izvestaji/110/2016/03/11/1019/izvestaj-o-radusaveta-za-stampu-za-2015-godinu.html>.

There is more freedom in the press and internet portals than on the TV stations. Radio Belgrade in particular is noted for the quality of its programming. According to the estimates of business insiders (in the absence of accurate statistics), in 2015 the printing runs of daily newspapers fell below 500.000 a day, which was less by a third than two years ago. It appears that the degree of “freedom” of the media is inversely proportionate to their influence, with television channels clearly being the most influential.

The authorities treat any journalists or editorial boards who are critical of their actions as their political adversaries. The authorities have also been boycotting certain media outlets, including public service broadcasters. Thus, the national government has been boycotting the Radio Television of Vojvodina.

The public sphere and social media have been used as a platform for fake public debate through organised efforts of party-political activists tasked to artificially promote or degrade an institution or a person through comments, tweets, posts and blogs, often resorting to spin, lies, insults and threats.

There is unregistered online media content, posted without any accountability and purportedly protected by alleged media freedoms, while in fact abusing the unprincipled and inconsistent legislation in this field. It peddles insinuations, tendentious constructions, pen and covert threats and blackmail. Influencing public opinion through spinning has been “legitimised” as ostensibly an inevitable consequence of the “freedom of speech and expression.”

Two media outlets – a private television network with national coverage and a tabloid with a large circulation, both of them very close to the establishment – published an authentic document from a psychiatric clinic which contained the medical history of a person who was at the time making serious accusations against the highest political figures in the country. The Commissioner for Information of Public Importance and Personal Data Protection responded urgently and proactively, found all relevant facts and examined all relevant circumstances within his sphere of competence and brought charges against unknown perpetrators for abuse of the most sensitive personal data, although the odds of the judiciary and the police effectively closing the investigation and actually identifying and punishing the perpetrators appear to be pretty slim.

The power struggle through tabloids and secret services tramples in the face of all legal, ethical and moral standards, while the regulatory mechanisms in the media and democratic oversight of security sector lack resources, capacities and *de facto* power to put an end to this.

The line ministry has contributed little in the way of public debate other than referring to the laws that have been enacted. None of the major adverse developments in the media sphere have been met with a public response, not even a public condemnation by the line minister.

The tabloidization of the media, the society and the government, which had been addressed in detail in previous Annual Reports, has reached its peak with the so-called “coup d’état”, which was apparently prepared, proclaimed and thwarted only on the pages and in the programmes of the leading pro-government media outlets. Hopefully, the obvious bizarreness of this whole tabloid affair will mark the beginning of the end of this particular type of spin.

LEGAL CERTAINTY

Laws passed in a deficient, excessively short procedure, lacking mutual harmonisation and with conflicting provisions of the same law or other laws, stipulating solutions that often baffle experts, let alone all those who are affected with the specific legislation, and with uneven and

selective implementation, coupled with uncertainties surrounding the case law applied in the disputes arising from or in connection with their implementation, have resulted in excessive formal normativism and not much in the way of actual legal certainty in Serbia.

According to the information provided by the Open Parliament, 182 laws were passed in 2015, 80 of which (44%) were passed in an expedited procedure. On the other hand, in cases where enactment in an expedited procedure was clearly necessary, more often than not the procedure was not carried.

The Decision of the Constitutional Court of April 2015⁵ declared the Law on Assembly of Citizens unconstitutional; however, until the day of its publication in the Official Gazette (which had been delayed by six months), the Ministry of Interior had not timely prepared a new draft of law that would govern the procedure of exercising of citizens' constitutionally guaranteed freedom of assembly. Until the passing of a new law, Serbia did not have any legislative provisions in place that would govern the procedure of exercising of the constitutionally guaranteed freedom of assembly; likewise, there were no provisions in place for exercising the public interest to lawfully restrict this freedom where necessary due to reasons provided for by the law, namely to protect public health, morals, the rights of other persons or national security. The new Law on Public Assembly still contains some of the elements which rendered the previous law unconstitutional, including reasons for restricting the guaranteed freedom of assembly and effectiveness of remedies available to protect that freedom. The new law deters the public from assembling by stipulating disproportionately high fines.

Withdrawal of the Bill on Gender Equality, which the Government and the National Assembly had intended to pass in an expedited procedure, was an acknowledgement of the numerous objections which could not be made earlier due to a lack of public debate.

The lack of public debate on the Bill amending the Law on Public Information and the Media, the Bill amending the Law on Public Service Broadcasting and the Law on Provisional Funding of Public Service Broadcasting, coupled with a lack of opportunities for the public to voice its opinions on arrangements governing public service broadcasting, although it is by its very nature a service for the citizens (the public), has contributed to a confusion about the nature of public service broadcasting, its funding mechanisms and ways of ensuring its financial and any other independence.

Public debate and a regular legislative procedure are of particular importance when a new piece of legislation is passed which regulates a specific field in a new way.

After several decades without any legislation that would govern the inspection oversight, which had been identified as an issue in earlier Annual Reports of this institution, a Bill on Inspection Oversight was drafted and followed by a constructive public debate was held. The Bill was then submitted to the National Assembly for adoption in an expedited procedure for no obvious reason, which effectively did away with the final part of the debate and legislative fine-tuning. Even more baffling is the fact that the closing provisions stipulate the Law would take effect 12 months of the date of its coming into force (save for several

⁵ Constitutional Court Decision I Uz 2004/2013, Official Gazette of RS, No. 88/15.

organisational provisions, which will become effective three months of the date of coming into force).

In the field of employment relations, the laws affecting the status of a large number of citizens (e.g. the Bill amending the Law on Compulsory Social Insurance Contributions and the Law on the Manner of Determining the Maximum Number of Public Sector Employees) was passed in an expedited procedure. This denied not only the relevant authorities, institutions and employees, but also the users of services provided by different systems an opportunity to review the proposed solutions and point to any risks that may arise from their implementation.

Thus, the text of the Law on the Manner of Determining the Maximum Number of Public Sector Employees included a provision which replaced the existing *right* of women to retire before men their *duty*, which essentially turned an affirmative measure aimed at achieving gender equality⁶ into its polar opposite. The Protector of Citizens and the Commissioner for Protection of Equality filed a joint motion for a constitutional review of that provision and applied for an injunction that would prevent the implementation of that provision in the meantime, due to irreparable adverse effects it might cause. The Constitutional Court upheld this motion, after which the line minister, whose ministry had drafted the bill and ignored all warnings in the legislative procedure, publicly thanked the Constitutional Court (!?) for its efficient response in preventing a potential violation of women's rights, apparently completely oblivious to his own responsibility in the whole matter and the waste of institutional resources needed to avert this threat.

Administrative obstacles to the enforcement of the Law on the Manner of Determining the Maximum Number of Public Sector Employees have thwarted the development of a number of services provided by local self-governments targeted specifically at the most vulnerable populations, including children, victims of violence, persons with disabilities and others, which shifted the burden of austerity on the shoulders of the most vulnerable members of society. Only one public hearing on the Bill was formally held and no explanation was offered afterwards for the refusal to accept certain objections.

Two major changes in the field of education have been introduced in the legal system without previously offering an opportunity to those affected by the changes to provide their input. Students – whose status is affected by the amendments to the Law on Higher Education – and educators – whose status is affected by the amendments to the Law on the Foundations of the Education System, have not had an opportunity to state their views on those amendments, either in person or through their associations, and point to potential shortcomings.

After only one year into the enforcement of the Law on Public Notary, the Government has identified certain imprecisions and contradictions in its provisions, as well as certain gaps that were “for the most part such that they leave no room for finding any solution in specific situations” (quote from the official statement of reasons for the most recent amendments). For this reason, the Law was amended twice in 2015, with the second round of amendments resulting in changes to as many as 72 substantive articles. However, there is no indication that the Government acted in accordance with the provision of its Rules of Procedure

⁶ The basis for affirmative measures is provided in Article 21 paragraph 4 of the Constitution of Serbia.

which requires a public debate to be held whenever the provisions of an existing law are to be substantially amended. Indeed, the first amendments of January 2015 were made in response to a month-long lawyers' strike, as evident from the official explanation, which stated that based on the assessment of the legislative impact and the demands of the bar it was necessary to change and amend the Law. Although the public was able to hear numerous arguments concerning the new Law during the lawyers' strike, due to the fact that notaries public had become exclusive holders of significant powers, this could hardly be considered a public debate. Even with regard to the (for now) most recent amendments of 2015 there is no evidence that the proposer had consulted all stakeholders, including notaries public, courts, attorneys and companies, which could provide justification for the decision not to hold a public debate in accordance with the Government's Rules of Procedure. This was criticised by the Republic Secretariat for Public Policy, whose Opinion stated that the Assessment of Legislative Impact should have included the information on consultations held with all stakeholders (including information on whether such consultations were held, as well as where and when they were held), the consultation techniques used, any objections, proposals and suggestions made and the reasons why some of them were incorporated in the text, while others were not.

While it is conceivable that amendments to the legislation which governs the role and powers of notaries public could be seen as a matter of urgency due to multiple devastating effects of the lawyers' strike on citizens' rights, it is much more difficult to find any justification for passing the Bill amending the Individual Income Tax Law in a hasty procedure. Namely, the purpose of this legislative instrument was to provide for tax relief for new employees and as such it should have been the result of well thought-out and well known tax policy. Similarly, if the aim of the amendments to the Law on State Prosecutorial Council and of the Law on High Judicial Council was to provide for publicly held sessions, the duty to provide a statement of reasons for each decision and availability of decisions on a website, their passing in an expedited procedure certainly cannot be properly justified by claiming this was necessary in order to comply with the obligations set out in the Action Plan on Chapter 23 of EU Accession Negotiations, which was the officially stated reason.

Likewise, the Draft Law on establishing the Public Interest and Special Procedures for Expropriation and Issuing Construction Permits necessary for the implementation of the "Belgrade Waterfront" Project was also submitted by the Government for adoption in a hasty procedure, although it encroached on the right of peaceful enjoyment of property as guaranteed by the Constitution. After The Protector of Citizens issued a public urging, the Draft Law was returned to the regular procedure.

There is also no sound rationale for hasty passing of two systemic laws - the Law on General Administrative Procedure and the Law on Inspection Oversight, as the former will take effect on 1 July 2017, while the latter will take effect 12 months of the date of its coming into force, which was in April 2015!

The Bill amending the Law on Tax Procedure and Tax Administration had not been through a public debate and was submitted to the National Assembly for hasty passing. Similar to the Bill on the Manner of Determining the Maximum Number of Public Sector Employees, the Bill on the Salary System in the Public

Sector was put up for public debate strictly as a matter of formality. The public debate on a legislative act that would affect the rights and responsibilities of much of public administration and substantially change the labour law status of several thousands of public sector employees took less than a month and was not followed by a published report of the public debate, duly distributed to all stakeholders, that would summarise the main objections and issues and provide reasons for their acceptance or rejection. The professional community and trade unions have openly voiced their displeasure with such course of action, which led to tensions that could have been avoided by a genuine debate and communication with all stakeholders and the professionals.

The timeframe and manner in which the legislative branch of the government presented bills of laws to parliamentary committees and the plenum of the National Assembly, obtained and took into consideration the opinions of relevant authorities and submitted (or rather, did not submit) to the National Assembly the legislative initiatives and amendments filed by the Protector of Citizens merit a special analysis, one which does not fall within the scope of this document; however, as an illustrative example, we will focus on one session of the Committee on Justice, Public Administration and Local Self-Government, in which the Committee reviewed amendments to nine laws in the field of the judiciary.

The 55th session of the Committee on Justice, Public Administration and Local Self-Government was scheduled for 17 December at 9 AM; however, the Protector of Citizens received an e-mail invitation to attend the sitting on 16 December 2016 at 9.30 pm. The agenda included a detailed discussion of a set of nine draft laws on the judiciary submitted by the Government.⁷ The first item on the agenda was a discussion of the Bill on Enforcement and Security, to which 141 amendments had been submitted, of which the Government had accepted 14. The Committee's chairperson Mr. Petar Petrovic failed to inform the members of the Committee on the amendments to the Bill on Enforcement and Security submitted by the Protector of Citizens; instead, he just noted during the discussion of that item of the agenda that the Government had not accepted those amendments. The chairperson's proposal for the Committee to summarily propose to the National Assembly to accept all the amendments previously accepted by the Government was accepted unanimously. The chairperson then first proposed a decision in which the Committee would recommend to the National Assembly not to accept the amendments that had not been previously accepted by the Government, after which he immediately corrected himself and proposed that "the Committee should recommend to the National Assembly to accept all the amendments that had not been previously accepted by the Government, and you know how you should vote!" The members of the Committee then summarily rejected by unanimous decision all amendments that had not been accepted by the Government.

The second item on the agenda was a review of the Bill amending the Law on Public Notary, to which a total of 104 amendments had been submitted, with the Government accepting six of them. The Committee decided without a debate to recommend to the National Assembly to accept those six amendments. All other amendments received the same voting treatment as those submitted under the previous item of the agenda. The initiative submitted by the Protector of Citizens

⁷ (1) Bill on Execution and Security; (2) Bill amending the Law on Notaries Public; (3) Bill amending the Law on Organisation of Courts; (4) Bill amending the Law on Judges; (5) Bill amending the Law on Public Prosecutor's Office; (6) Bill amending the Law on High Judicial Council; (7) Bill amending the Law on State Prosecutorial Council; (8) Bill amending the Law on Judiciary Academy; and (9) Bill amending the Law on Court Fees.

for the Committee to submit an amendment to the Bill amending the Law on Public Notary was not mentioned in any way, let alone considered!

During the discussion of all the remaining draft laws, no one took the floor and the Committee supported all the amendments endorsed by the Government, while rejecting all those not previously accepted by the Government. In summary, a session convened to address crucial amendments to nine laws in the field of the judiciary and debate hundreds of amendments lasted 19 minutes in total.

Sometimes, the government addresses difficulties in attaining the guaranteed level of citizens' rights by lowering the guarantees that are in place. Thus, the Constitutional Court found there were no grounds to even initiate a constitutional review of the Law on Provisional Arrangements for the Disbursement of Pensions⁸, which effectively reduced the amount of pensions (as an acquired property right) in 2014.

POLICE, SECRET SERVICES AND DEMOCRATIC CIVILIAN OVERSIGHT

Police Reform activities have been very contradictory, the most notable example being the preparations to dismiss a large number of police officers. The line Minister has announced layoffs of over 1,000 police officers, but was unable to decide about the reasons - the layoffs were at the same time justified by the fact that the police had been "criminalised" and that the police officers were redundant. After a meeting with trade unions, several hundred persons were removed from the unofficial lay-off list, which increased the doubt that the layoff procedure was arbitrary. Creation of numerous new posts for "risk analysis" at the Ministry, where certain police officers have been transferred on the basis of unspecified criteria, while it was announced that those posts would eventually be cancelled and the staff made redundant, is a blatant case of abuse of staff regulations to dismiss people without appropriate process and explanation.

Several dozens of high-ranking police officers who had been discharged from certain positions have been receiving salary for months, without being assigned to any post. The Rulebook on internal organisation and staffing table has been labelled classified. This institution has presented the National Assembly with evidence based knowledge that the internal security service of the Ministry of Interior (the Security Unit at the Cabinet of the Minister of Interior) had physically destroyed hard drives with official data and other IT equipment. No one had showed interest in this information and at the time the Protector of Citizens did not have grounds to link the destruction of equipment with his competences, i.e. potential violation of human rights. Criminal charges brought a year later by an employee of that service, which was made public, alleged that the IT equipment had been destroyed in order to conceal evidence of unlawful secret (physical) surveillance of journalists and other public figures. It is rather unlikely that these criminal charges will result in criminal prosecution, because secret (physical) surveillance is not specifically identified as a criminal offence in the criminal legislation. However, such actions of employees of the Ministry of Interior, if indeed committed, would be thoroughly illegal and would constitute a serious invasion of persons placed under secret (physical) surveillance and a threat to the freedom of the media.

In the period preceding the submission of this Report, the Protector of Citizens found that an employee at the headquarters of the Ministry, in the Minister's Cabinet, did not know his exact job title or job description. His immediate superiors also were not aware. The employee in question has regular contacts with journalists and collects information which does not fall within the remit of the Ministry of Interior, or any other state authority, and then orally communicates them directly to the Minister of Interior. The Minister presented one such piece

⁸ Official Gazette of RS, No. 116/14.

of information as officially obtained evidence in a public appearance in the national public broadcaster program, which – quite understandably – caused fear of unlawful wiretapping among journalists.

Polygraph, as an investigation tool that is increasingly seen as irrelevant by much of the scientific and professional community and the results of which are not admissible as evidence under the law, has been abused to such an extent that many have ironically publicly questioned the *raison d'être* of the police, the public prosecution and the judiciary.

Eighty persons were deprived of liberty in a police action with a catchy codename “Shredder”, which received detailed media coverage. It is difficult to explain the overlap of the most convenient time for arresting so many persons suspected of completely different and unrelated crimes committed at different periods. Shortly afterwards, however, almost all of the arrested persons were released pending trial, but this time without any media coverage.

There has also been a strong public reaction after a press conference held by the Minister of Interior in a representative government building with a group of members of special units in full gear lined in the background, with balaclavas on their faces and assault rifles in their hands. Many have perceived this as excessive, or even as an act of intimidation.

The new Law on Police does not list the Protector of Citizens as one of the authorities in charge of external control of Police. Although a reference to this institution is not strictly necessary from the formal legal point of view, because his oversight function (which also applies to law enforcement agencies) is provided for in the Constitution and the pertinent organic law, the mere fact that the Protector of Citizens was omitted from the text of the Law on Police, while other authorities and entities vested with control functions under the Law were explicitly listed, has negative consequences on preventive and oversight function of this institution and cause unnecessary confusion. The opinion on this shortcoming of the Draft Law on Police was not taken into account by the backer of the Law and by the National Assembly in the legislative procedure, most likely due to the reasons publicly stated by a foreign expert in charge of project management, who also happens to be in charge of the same issues in his capacity as an advisor to the Minister of Interior.

In the process of adoption of the new Law on Police, the Protector of Citizens issued an opinion in accordance with his statutory powers, in which he criticised certain provisions of the Draft. The foreign expert hired by international partners and donors to manage development and assistance projects for the Ministry of Interior also works at the Ministry as the Minister’s advisor for the very same issues. In an official announcement issued as a public response to the Opinion of this institution, the said foreign expert, i.e. the advisor to the Minister, dismissed the Opinion by stating that views of the Serbian Protector of Citizens on the Draft Law on Police of the Republic of Serbia “for the most part stemmed from a failure to recognise the circumstances of the time of complex reform of the police system” in the Republic of Serbia. The expert added that, “almost all comments made by institutions such as OSCE (Organisation for Security and Cooperation in Europe) were taken into consideration in the process of drafting the Law, especially those relating to such sensitive issues as internal control.”⁹ Without denying that the

⁹ For more information, see:

<http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/2009747/Votkins%3A+Novi+zakon+smanjuje+ovla%C5%A1%C4%87enja+policije+i+ministra.html>.

comments have been “taken into consideration”, this institution has not been able to ascertain through direct talks with the top-ranking officers of the OSCE Mission to Serbia that the comments were actually accepted.

The military security service (Military Security Agency - MSA) has increasingly been evading democratic civilian oversight. It has been denying access to data to the oversight authority and withholding information it is required to provide under the law. It has refused to take responsibility for the factually identified illegalities and irregularities in its work at the expense of political neutrality and legality. It has been established beyond all doubt, that MSA had obtained information on the activities of and cooperation between certain political parties and movements, although there were no indications of circumstances that would allow the exercise of its powers nor there were other legal conditions for its actions concerning civilians. Due to the obstruction of control, the Protector of Citizens has been unable to investigate verifiably the authenticity of other allegations. The MSA has been using the special methods and means available to it for completely different purposes against this oversight authority and its own members suspected of reporting irregularities. It makes no effort to conceal the fact it has collaborators among journalists.¹⁰ In one case pursuant to a complaint, upon access to the necessary documentation about the events of 2000 it has been found that the military service surveyed the activities of the then-opposition. Certain chiefs of the MSA have enjoyed uncritical support, i.e. protection, of the chairperson of the parliamentary Committee for Oversight of Security Services, who is a former director of that Agency and member of the ruling party.

On 28 January 2015, the Parliamentary Committee for Oversight of Security Services, held a public session in which Committee members, as well as other deputies from the ruling coalition, questioned the Protector of Citizens for a good six hours in order to determine how he had found facts about illegalities in the work of the Agency, all the while criticising his work. Immediately upon presenting a document of the MSA which contains information collected on the activities of certain political parties, the chairperson of the Committee closed the session by concluding that the MSA operated in full compliance with the law. Shortly thereafter, the Committee conducted its own oversight of the work of MSA and confirmed that the MSA document previously brought to the Committee’s attention by the Protector of Citizens was authentic and contained “data and facts that are outside of the statutory scope of operations of the Military Security Agency.”¹¹ The Committee then ordered the Inspector General of Security Services at the Ministry of Defence “to verify and find relevant facts within 15 days, in accordance with his statutory powers, and determine responsibility for the collection of data and facts outside of the statutory scope of work contained in the said document and report to the Committee about the results of such verification and the measures undertaken in this regard.”¹² Under the Law on Military Security Agency and Military Intelligence Agency, the Committee is not authorised to issue orders to the Inspector General, who reports to the Minister of Defence. The current Inspector General of Security Services at the Ministry of Defence, appointed in 2015, is a recently retired military officer who had been the head of

¹⁰ Interview for the *Nedeljnik* weekly published on 12 November 2015.

¹¹ See:

http://www.parlament.gov.rs/Odbor_za_kontrolu_sluC5%BEbi_bezbednosti_u_nadzornoj_poseti_Direkcije_Vojnobezbednosne_agencije_u_Beogradu,24827,941.html.

¹² See:

http://www.parlament.gov.rs/Odbor_za_kontrolu_sluC5%BEbi_bezbednosti_u_nadzornoj_poseti_Direkcije_Vojnobezbednosne_agencije_u_Beogradu,24827,941.html.

the unit in charge of implementing operational and technical measures immediately before his retirement. As the Inspector General focuses on activities that have been closed, he is now in charge of reviewing the lawfulness of measures he himself had conducted in his previous position. After receiving a report from the Inspector General, the Committee adopted the following conclusions: "1. No one at the Ministry of Defence and the Military Security Agency had ordered members of the Military Security Agency to collect information and facts about the activities of political parties; 2. The information about the activities of followers of the Serbian Radical Party which were contained in the contested document had been obtained through exchange of information and facts with other security agencies in the territory of the Autonomous Province of Vojvodina, pursuant to Article 6 paragraph 1 item 1 of the Law on Military Security Agency and Military Intelligence Agency and Article 5 of the Decree on Security Protection of Certain Persons and Buildings; 3. The Committee found that the Military Security Agency had obtained information about threats to the protected persons and buildings, rather than about political activities, which information it had duly provided to the Ministry of Interior of the Republic of Serbia at its written request."¹³

Out of the 11 recommendations issued by this institution in 2015 for the purpose of rectifying the identified illegalities and irregularities in the work of the MSA, the MSA has not implemented a single one - not even the recommendation of this institution issued to the President of the Republic to remove the Director of the Agency from office due to the obstruction of the control process.

The Committee's attitude towards the powers and work of the Protector of Citizens has been criticised by multiple international actors, including the UN Committee against Torture, whose Concluding Observations on the Second Periodic Report of the Republic of Serbia (2015)¹⁴ include concerns about the attempt of the Committee for Oversight of Security Services of the National Assembly of the Republic of Serbia to challenge the authority of the Protector of Citizens to act pursuant to complaints in cases where criminal proceedings have been initiated.

Serious illegalities and irregularities have been identified in the work of communal police in Belgrade on two occasions when it overstepped its authority in relation to journalists, which resulted in violations of their physical and mental integrity and dignity and prevented them from performing work of public importance. This institution is of the opinion that the powers of the communal police vis-à-vis citizens should not be expanded; instead, communal police should use its existing powers more properly and effectively.

PUBLIC ADMINISTRATION REFORM

Despite the adoption of the Action Plan on Implementation of the Public Administration Reform Strategy and a number of activities implemented in this area, public administration reform has failed to produce any substantial results. Instead of a systematic improvement of public administration, as envisaged by the Strategy and the Action Plan, there have been urgent interventionist measures aimed at reducing public expenditure through lay-offs and

¹³ For more information, see:

http://www.parlament.gov.rs/16.%D1%81%D0%B5%D0%B4%D0%BD%D0%B8%D1%86%D0%B0_%D0%9E%D0%B4%D0%B1%D0%BE%D1%80%D0%B0_%D0%B7%D0%B0_%D0%BA%D0%BE%D0%BD%D1%82%D1%80%D0%BE%D0%BB%D1%83,25001.43.html.

¹⁴ For more information, see: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/112/60/PDF/G1511260.pdf?OpenElement>.

salary cuts in the civil service. The effects of these measures on the quality of work of the administration have been dubious, to say the least.

Examples of such measures are the Law on Determining the Maximum Number of Employees in the Public Sector and the Law on the Salary System in the Public Sector. Both of these legislative instruments excluded public enterprises and the National Bank of Serbia from the scope of their application!

It would be reasonable to assume that reform would begin with organisational and functional restructuring of public administration, followed by the introduction of uniform arrangements governing the labour law status of all public administration employees; and only once the optimal organisation has been determined, as well as staff surpluses and shortages, to proceed with staff optimisation (lay-offs in case of redundancies and new employment where necessary).

Many laws have been drafted in a rather formal public debate, which failed to respond to the objections, questions and comments raised by stakeholders. Such approach often made it difficult to understand the intentions of policy-makers and resulted in solutions that were unclear, with terminology and content unharmonised with other instruments, with the public administration system and with the overall legal system. This resulted in inapplicable regulations and frequent need for interpretations, which ultimately undermined legal certainty.

This institution welcomed the announced introduction of uniform salary rates in the public sector, based on the principle of equal pay for equal work. However, in practice this "equalisation" remained merely declaratory, as the Law on the Salary System in the Public Sector avoids dealing with those salaries that are extremely "unequal" compared with the rest of the public sector (salaries in public enterprises and in the National Bank of Serbia). The said Law governs only one aspect of the labour law status of public administration employees (i.e. salaries), although no provisions had been put in place to regulate the system of employment relations first, which is necessary because the right to a salary is an employment right and the system of salaries is only one element of the system of employment relations. This institution drew the attention of the line ministry to this issue on a number of occasions, contending that such omissions would thwart the anticipated effects of the Law, thus once again making a sound Government policy a mere dead letter due to insufficient operational elaboration. Additionally, huge energy, time and resources are wasted without producing adequate results.

The ultimate outcome of such approach is a "reform" that results in a less professional, less motivated and less accountable administration, and the least of all less overstaffed. Reform processes are managed by external "experts" whose lack of experience or specific knowledge are project-based rewarded far higher than the humiliated, marginalised and increasingly rare true experts who still remain in the civil service. The final outcome of these "cuts" could be a situation where the "surgery" is successful measured by formal project-related criteria, but the patient no longer has any reasonable vital signs.

KOSOVO AND METOHIA

The Protector of Citizens is still unable to exercise his powers in the territory of the Autonomous Province of Kosovo and Metohia, as provided by the Constitution and the law. According to the available information and the issues raised in complaints, the citizens in Kosovo and Metohia, especially non-Albanians who live in enclaves, are hostages to the ongoing political processes and face grave violations of human rights and freedom.

This institution addressed the EULEX Mission in Kosovo in August 2015, voicing his concern about the excessive duration of detention of Mr. Oliver Ivanovic, a political leader of Kosovo Serbs. Without prejudice to the outcome of the issues which the court deliberates independently and judges use their discretionary powers, the Protector of Citizens noted it was necessary to respect the temporary nature of detention, which involves a number of restrictions of human rights. In its response, the Head of EULEX Mission in Kosovo shared the Protector's concern for Mr. Ivanovic's health and noted that EULEX fully believed that relevant institutions would respect his rights. The Protector of Citizens has never addressed any Serbian authority in similar situations, not even with all the reservations made in the letter to the head of EULEX, as the Constitution of the Republic of Serbia includes a provision that exempts even those courts that have been established by the Republic of Serbia from the oversight powers of the Protector of Citizens.

RIGHTS OF PERSONS DEPRIVED OF LIBERTY

Progress has been made in the prevention of torture. During unannounced visits to penal and correctional facilities (Penal and Correctional Facility in Pozarevac, Penal and Correctional Facility in Nis, District Prison in Leskovac and District Prison in Belgrade), unsupervised interviews (without the presence of prison staff) were conducted with more than 200 persons deprived of liberty, none of whom complained about physical abuse by corrections officers or other convicts or detainees. Furthermore, none of them had any visible injuries. While this data cannot be interpreted as a definitive proof that there is no physical abuse in Serbia, they are nonetheless indicative and encouraging. Many of the interviewed recidivists noted a significant improvement in their treatment by corrections officers from several years ago, when abuse was almost "regular".

Although there have been no major improvements in terms of duration of detention, an encouraging development is the fact that the District Prison in Belgrade now has communal day rooms for prisoners, including dedicated rooms for conjugal visits.

The established practice of the public prosecutor's office to ask detained persons how they are treated by police officers, in order to determine whether they have been subjected to any form of torture or degrading treatment, is a positive development. Several detainees who had been remanded in custody up to 48 hours in holding cells before being detained stated they had been "slapped a couple of times" during questioning and insulted by police inspectors, but they could not prove this because they had no visible injuries. With the aim of continued prevention of torture and more effective fight against impunity for torture, police stations need to be provided with rooms for interrogation, which should be audio and video recorded.

The Penal and Correctional Facility "Zabela" in Pozarevac and the Penal and Correctional Facility in Belgrade complied with the recommendations of the Protector of Citizens and changed their security procedures which had required convicts to move with their hands crossed behind their back and with their head bowed down, which offended their dignity.

However, efforts to prevent torture and combat impunity for torture suffered a major blow during the reporting period when a prominent member of the ruling majority claimed at the 13th session of the Committee for Oversight of Security Services of the National Assembly that the Protector of Citizens was not authorised to investigate cases where criminal proceedings were ongoing. In connection with this statement made at the said session of the Committee, the UN Committee against Torture noted in its Closing Observations on the Second Periodic Report of the Republic of Serbia (item 21) that Serbia should ensure the effective and

independent operation of the Protector of Citizens and enable fulfilment of his mandate, irrespective of the fact whether or not criminal proceedings had been initiated.

Serbia does not have a developed system of extra-institutional support and care for persons with intellectual and mental disabilities. As a result, thousands of these persons have been deprived of liberty by long-term institutionalisation (whether *de iure* – in psychiatric hospitals, or *de facto* – in residential social security institutions), usually in inadequate living conditions.

NATIONAL MINORITIES

The planned legislative activities under the Action Plan for Exercise of the Rights of National Minorities are fully in compliance with the recommendations and proposals given by this institution for the improvement of the legal and institutional frameworks for protection of the rights of national minorities. The results of their implementation remain to be assessed.

It is commendable that the issue of implementation of affirmative measures in the field of education, which should assist the Roma in achieving equality with other Serbian citizens, has been addressed. The fact that a systemic approach has finally been adopted in addressing the enrolment of Roma pupils and students, which ensures their vertical and horizontal representation, with the legal framework which should facilitate their implementation and make them more available, shows progress has been made and reduces the risks of irregularities and corruption.

The implementation of reform media laws threatened to undermine the achieved level of information in languages of national minorities in the field of rights of national minorities. As a result of insufficient capacities, coupled with “targeted” interpretations aimed at justifying one’s own views regardless of the reasons and purpose for which regulations were enacted, a significant number of the media have not been sold or no public calls were made for their sale and their continued operation had to be ensured through transfer of capital free of charge (“distribution of shares”), where all legal requirements were met. The problems which arose in the implementation prompted the National Assembly to intervene shortly after completion of the privatisation procedure and adopt an authentic interpretation, without which the media that have been broadcasting programmes in the languages of national minorities for decades and which have been privatised through transfer of shares to employees free of charge to employees, would have to be closed.

Although public authorities (e.g. the Tax Administration) are obliged by the Constitution and applicable laws to ensure, where possible, the use of the Serbian language and the Cyrillic script and language, i.e. the language and script of a specific national minority, the operating systems used by these authorities equally violate the rights of and offend members of the majority national group and national minorities by using the Latin script, the use of which is not provided for or referred to in any way other than through the insertion of the traditional reference “in accordance with the law”. Until the legal framework which regulates this field is amended and until the mismanagement of “operating system” procurement is rectified, the only recourse citizens have at their disposal is to lodge complaints with the Protector of Citizens and request protection for and enjoyment of this part of their identity.

RIGHTS OF PERSONS WITH DISABILITIES

The legal framework governing the living and employment of persons with disabilities has been improved, but they have nevertheless not been sufficiently included in the community. The economic crisis and the insufficiently nuanced austerity measures resulted in the cancellation or downsizing of certain support services available to persons with disabilities and the elderly. Many public buildings remain inaccessible for persons with disabilities and the exercise of the guaranteed rights is either difficult or impossible for them.

Access to education is difficult for persons with disabilities, both due to the fact that a system for additional support to children with developmental disorders and disabilities is insufficiently developed and due to the inaccessibility of education institutions. Inaccessibility of education, in addition to many other obstacles, also hinders the exercise of the right to employment. This largely prevents persons with disabilities from being independent and autonomous, which in turn precludes their equal and meaningful involvement in community life.

Assisted housing has in practice proved to be a successful, if underutilised, model. Extra-institutional protection is insufficiently developed, it is used selectively and there is a lack of coordination between competent authorities. Persons with developmental and mental disorders are in a particularly difficult situation.

GENDER EQUALITY AND RIGHTS OF LGBTI PERSONS

The adoption of the Law amending the Law on Budget System facilitated gender mainstreaming of all budget processes and restructuring of revenue and expenses with the aim of promoting gender equality. Gender-related objectives have been included in the 2016 budgets of 28 budget spending units.

There is still a lack of timely and efficient response of competent authorities to reports of violence against women and a lack of interdepartmental cooperation, including in particular exchange of information and training of employees in the system of protection of women from violence.

Exercise of women's rights and access to services for women are still fraught with unjustified difficulties. Women face significant delays in the exercise of their entitlement to salary compensation during pregnancy leave and leave for child care and special child care or even have no access to these benefits at all due to delays in the work of competent authorities or lack of interdepartmental cooperation. Women farmers who are the registered holders of farms and women who engage in temporary and occasional work do not have access to salary compensation during pregnancy leave, maternity leave, child care leave and special child care leave.

A Pride Parade has been held peacefully in Belgrade for the second year running, which symbolically paves the way towards enjoyment of the right to assembly by persons of different sexual orientation and gender identity. However, it is crucial to ensure respect for the rights of LGBTI persons in the fields of education, employment, health care, social security, legal regulation of same-sex unions and legal consequences of sex and gender reassignment surgery, as well as protection of their physical and mental integrity.

CHILD RIGHTS

The legal framework for the protection of children against sexual abuse has been further improved by the adoption of the Rulebook on Keeping of Special Records of Persons Accused for Criminal Offences against Sexual Freedom of Minors¹⁵ and the Law amending the Law on Police ("Tijana's Law")¹⁶. The Criminal Code must be further harmonized with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse¹⁷ in terms of redefining certain criminal offences, introducing more stringent (minimum) sentences for certain offences and amending the provisions governing security measures and methods of criminal prosecution in specific cases.

¹⁵ Official Gazette of RS, No. 76/15.

¹⁶ Official Gazette of RS, No. 64/15.

¹⁷ The Law on Ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Official Gazette of RS – International Agreements, No. 19/09.

Activities taken by the state and local self-government units for improving the position of children who live and work in the streets and the Roma children are not nearly sufficient. Austerity measures have further reduced the already limited allocations of budget funds and a small number of available services intended for them. For example, the city of Belgrade has not re-established a shelter for children, which it excluded from its Decision on Social Security Rights and Services¹⁸, although it provided results in integration of children who live and work in streets. Consequently, the access to health care and social security services and services which would ensure their inclusion in education and the community are now even more difficult for these most marginalised and vulnerable groups of children. Their full protection against neglect, violence, abuse and exploitation is now even more difficult to be achieved. The competent authorities have not implemented recommendations the Protector of Citizens has been issuing since 2011 due to the lack of a systemic response of the state to this issue. No records are kept of children who live and work in streets, the extent and causes of this issue have not been recognized as well as violations of the rights of these children (whose lives, health and safety are jeopardized every day and due to neglect and lack of care they are at the highest risk of becoming victims of trafficking and other forms of abuse and exploitation). Sporadic and *ad hoc* activities are inefficient and fail to produce any significant results.

Protection of children against violence has not been sufficiently institutionalized although ten years have passed since the adoption of the General Protocol and the Special Protocols on the Protection of Children from Abuse and Neglect. The Government's National Strategy for Prevention and Protection of Children from Violence for the period 2009-2015 and the Action Plan for implementation of the Strategy (2010-2012) have expired. The problems in protection of children from violence and abuse are evident in all environments, in particular peer violence and domestic violence against children. In addition, there are no work standards in place, employees are insufficiently trained, there is a shortage of experts, a responsibility system for employees has not been developed and prevention is poor.

In spite of the significant progress, including the enactment of the "Marija's Law"¹⁹, the criminal law status of child victims has not been sufficiently improved. It is necessary to redefine certain criminal offences, introduce more stringent (minimum) sentences for certain offences and amend the provisions governing security measures and methods of criminal prosecution in specific cases. Four years ago, the Protector of Citizens submitted an initiative to the Ministry of Justice to amend the Criminal Code in order to harmonise it with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)²⁰, but the Ministry has not considered the initiative. Recommendations and opinions issued to improve the status and to improve questioning techniques and protection of child victims from secondary traumatization and victimization in proceedings before administrative and judiciary authorities also provided no results.

The legal framework for the protection of child rights in family disputes and prevention of instrumentalization and abuse of children has been improved by the adoption of the Law on Execution and Security, which will take effect on 1 July 2016. The procedure for the enforcement of decisions in connection with family relations has been regulated more precisely, particularly enforcement of decisions for protection of child rights and protection from domestic violence. However, in practice there are still cases of final and enforceable decisions being reviewed in execution proceedings and often the outcome of such proceedings, after several years of failure of public authorities to enforce their own decisions, is that decisions are changed in favour of parents who violated and abused child rights and *de facto* situation is recognized.

¹⁸ Official Gazette of the City of Belgrade No. 55/11, 8/12, 8/12, 42/12, 65/12, 31/13, 57/13 and 37/14.

¹⁹ Law on Special Measures to Prevent Criminal Offences against Sexual Freedom of Minors, Official Gazette of RS, No. 32/13.

²⁰ Law on ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Official Gazette of RS- International Treaties, No. 1/10.

Enforcement of court decisions in order to protect child rights (protecting the right of a child to support, to maintain personal relations with the other parent, protection from domestic violence, from parental abduction and abuse, surrendering of the child etc.) is often not efficient enough. Instead in expedited proceedings, court decisions regarding children are enforced in time-consuming proceedings, which are exhausting and traumatic for children and have negative effects on their proper development. In such cases there is no functional cooperation between judicial and other authorities (primarily the police and of centres for social work).

This year too was marked by the initiatives to establish a special institution with powers of the Protector of Citizens for child rights – Children’s Ombudsman. In relation to this initiative, the Protector of Citizens emphasised on several occasions the harmful effects for child rights, public interest and legal order which may result from multiplying institutions with the same or related competences and powers in protection of child rights, particularly at the moment when the Republic of Serbia faces the lack of funds allocated for child services and when competent international institutions have explicitly advised in favour of the existence of a single national human rights institution.

YOUTH AND THE ELDERLY

A low number of young persons with higher education and a high percentage of unemployed young persons are the main characteristics of the youth status in the reporting period. Young persons aged between 20-29 account for one quarter of the Serbian population, among which only 14% have higher education and more than 50% completed only secondary education. The youth unemployment rate exceeds 40%²¹, with young persons accounting for more than one third of the total number of unemployed persons.²² Young people who are neither in education nor employed and live with their primary families do not have an option to have health insurance like insured family members, and they can be covered by compulsory health insurance only if they are included in compulsory social insurance, in which case they have the duty to pay contributions themselves. Services for prevention of addiction and risk behaviours of young people, assistance and support services for young people in particularly vulnerable situations and services for prevention and protection of mental and reproductive health are insufficiently developed. Many young people are exposed to numerous risk factors for their physical and mental health in various environments (school, community, family) and stress situations.²³ Appropriate educational support services and measures are not available for young persons with disabilities and developmental disorders. Support services in pre-university and university education, based on the principle of inclusive education and social inclusion, which contribute to the improvement of education of young people with disabilities and developmental disorders, increase the extent of inclusion of young people in secondary and higher education and provide equal opportunities for them to study and become involved in social activities, are not sufficiently developed.

The elderly are subjected to multiple violations of their rights, from the enjoyment of pension insurance rights, pension cuts and unpaid contributions to the pensions fund by employers to social security rights. According to the information obtained by the Commissioner for Equality in cooperation with the Red Cross, about 20% of the elderly population have been subjected to some form of violence or discrimination. The elderly living in villages in underdeveloped

²¹ According to the report of the Statistical Office of the Republic of Serbia for IV quarter of 2015, 43% of young persons are unemployed.

²² According to statistics of the National Employment Service, Monthly Statistical Newsletter No. 160 for December 2015, p. 19, available at: http://www.nsz.gov.rs/live/digitalAssets/4/4881_bilten_nsz_12_2015_-_broj_160.pdf.

²³ More than a half of high school pupils have been exposed to at least one stress event in the past two years. Source: the National Youth Strategy for the period 2015-2025.

municipalities are in a particularly difficult situation. Their families, primarily due to their poor financial situation, are often not in a position to dedicate enough time and attention to them, while on the other hand the state has not provided appropriate assistance and support to them. The elderly are often victims of poverty and neglect within families, which also include management of their property without their consent. They are in particular need of increased availability of health care services and support at the local level.

Researchers at non-governmental organizations (the Centre for Democracy) have found that different forms of discrimination against the elderly are on the rise (institutional, social and family discrimination). Middle-aged persons are already “too old” for employers once they turn 45 and are subjected to frequent dismissals from their jobs, difficulties in finding a job and other forms of discrimination in the field of employment. Representatives of the civil society advocate for the introduction of social pensions as mechanisms to reduce poverty among single elderly persons who are outside the pension system (introduced by the Law on Social Security of 2011). Other problems faced by the elderly include insufficient information, lack of local services, inadequate housing arrangements (over 5,500 of elderly households are subtenants and most of the 18,000 homeless persons are older than 65), poor health and in particular risk for mental health due to widespread depression, poor media image and, above all, poverty.²⁴

EDUCATION AND SOCIAL PROTECTION

The situation of educators remained difficult in 2015, particularly taking into account that it had already drastically deteriorated in 2014 with the austerity measures, while their work remains undervalued. Cost-cutting measures in the field of education had impact not only on the situation of educators but also on the education of children. The number of pupils in classes has not been reduced – although this should have been done during the previous year – and it often exceeds the maximum specified number; investments in facilities and equipment are insufficient; there have even been problems with toilet facilities in schools. Strict limitations have been imposed on the maximum number of teaching assistants, which is determined according to a mathematical formula based on the number of classes in a school, rather than on the pupils’ needs. New bylaws which regulate this issue have done nothing to improve the education of pupils, including in particular inclusive education, or the system for protection of pupils against violence. Financial resources of schools are insufficient and schools that had their accounts blocked because local self-governments did not pay them funds, face a particular problem. Although the Ministry of Education, Science and Technological Development introduced provisions in the Draft Law amending the Law on Basic Elements of Education System which specify in detail the duties of the Ministry and local self-government units, the problem of schools with blocked accounts remains and it is a chronic threat to adequate quality of education for many pupils.

Austerity measures and staff cuts in the public sector have affected not only education institutions, but also health care and social security institutions. They prevent new employment for the provision of education and social security services, which is why some services have been cancelled and many more face the threat of closing. Measures that have been put in place to prevent any new employment have made it impossible or, at best, much more difficult to hire pedagogical assistants and personal aides for pupils who need additional support and to provide social security services such as domestic assistance, personal assistance and day care centres.

²⁴ Data presented at a public hearing titled “Ageing-Years of Life: from Privilege to Discrimination” held by the Committee on Human and Minority Rights and Gender Equality of the National Assembly on 26 October 2015.

HEALTH

In the reporting period, no new systemic problems emerged in the field of the right to health care. Some of the preconditions for more complete exercise of citizens' rights under compulsory health insurance have been strengthened.

The Serbian health care system has progressed six places from being at the last place at the Euro Health Consumer Index.²⁵ The improvement has been observed in three fields: patients' rights, availability of health care and treatment outcomes. Serbia achieved the greatest progress measured by these indicators by reducing the new-borns mortality rate.²⁶

However, many citizens have complained to the Protector of Citizens that they did not have enough money to buy the medicinal products they need, including many severely ill persons whose family members are employed and they are thus not eligible for social security, but in practice their employers pay their salaries irregularly or do not pay them at all. A time in which health care was available to everyone and was of high-quality still lives on in collective memory. There is widespread disappointment, fear and even anger because of the collapse of that system during the past decades.

Waiting lists, one of the indicators of (un)timeliness, i.e. unavailability of health care services and one of the generators of corruption in the health care system, have been reduced compared with the previous period. Waiting lists are more transparent: individual and single waiting lists are available in electronic form at the official website of the Republic Health Insurance Fund.²⁷

The Budget Fund for the Treatment of Diseases, Conditions or Injuries that cannot be successfully treated in the Republic of Serbia began operating. More than 40 persons were referred for treatment or diagnosis to foreign countries. Secondary legislation was passed to set out detailed requirements, manner and procedure of allocation of funds from the Fund. Several dozens of children have been referred for treatment or diagnosis to foreign countries.

In compliance with the recommendation issued by this institution, the Republic Health Insurance Fund posts on its official website data on payment of salary compensation to pregnant women and all other insured persons during temporary incapacity because of diseases, starting from the 31st day of temporary incapacity.

Replacement of identification documents of insured persons with the Republic Health Insurance Fund has been initiated and, in spite of the opinion of this institution, is charged 400 dinars per person. There are about seven million persons insured with the Fund in Serbia.

A number of employed persons and their family members are still not able to exercise the guaranteed right to health insurance and health care because certain employers violate their legal duty to pay contributions, competent authorities fail to take efficient against them, while the law shifts the burden of negligence of employers and public authorities to the weakest point – employees.

After the adoption of the Law on Cell and Tissue Transplantation, citizens rightly expected that a public cell and tissue bank would be opened, which was supported by this institution. Six years after the adoption of this Law, a public cell and tissue bank has not been opened or started operating in Serbia.

Physical security of employees in the health sector is insufficient. In addition to measures for their protection, it is necessary to strengthen the effectiveness and availability of internal and

²⁵ See the Annual Report of the Protector of Citizens for 2013.

²⁶ See more at: http://www.healthpowerhouse.com/files/EHCI_2015/EHCI_2015_report.pdf.

²⁷ See more at: <http://www.rfzo.rs/index.php/osiguranalica/listecekanja/pregled-lista-cekanja>.

external mechanisms to control observance of patients' rights and to strengthen cooperation with them.

The patient rights protection system is not fully functional in practice because competent authorities of local self-government units and the Ministry of Health have not taken all measures within their competence in the manner and within the time limit set by the Law on Patient Rights. This resulted in omissions which may cause legal uncertainty and worsening of the legal position of patients, as well as violation of their rights. This institution prepared a special report about this issue.²⁸

Positive changes were made with regard to authorisation of specialisations, as advised by this institution in the past.

PENSION AND DISABILITY INSURANCE

Unpaid pension and disability insurance contributions remain the key causes of citizens' inability to exercise their right to pension. At meetings organised by this institution in order to address this issue, compulsory social insurance organisations (the National Pension and Disability Insurance Fund, the Republic Health Insurance Fund and the Tax Administration) recognised the need to improve their work in order to ensure more efficient control of payment of contribution for beneficiaries' health, pension and disability insurance specified by the law.

By passing the Resolution on Adjustment of Pensions of Military Pension Beneficiaries, the Government began to address this long term issue. Only after it has been determined how many military pension beneficiaries have entered into out-of-court settlement and accepted the government's offer of to receive a one-off payment of the difference between the adjusted amount of pension and the amount of pension actually paid, we will be able to know whether a permanent solution has been found for this issue.

After the enactment of the Law on Provisional Arrangements for the Disbursement of Pensions, this institution issued an opinion to the National Pension and Disability Insurance Fund with a recommendation to pass without a delay individual decisions for each pension beneficiary, if the manner of payment of pension is temporary changed for him/her. Since the National Pension and Disability Insurance Fund has not complied with this opinion, pensioners face difficulties in the exercise of the right to legal remedy – to lodge a complaint – guaranteed by the Constitution.

A huge problem arose from retroactive establishing of the duty to pay agricultural insurance contributions for citizens who have never been informed they are insured on this basis nor received an appropriate administrative instrument to acquire the status of an agricultural insurance beneficiary. Thus, there have been cases of citizens who learned they have debt for unpaid agricultural insurance contribution in the amount of several hundred thousand dinars or even more than one million dinars, including the accrued interest, only after they filed requests to exercise their entitlement to pension.

LABOUR

Although the legal framework has been improved with the enactment of the Law on Requirements for Secondment of Employees to Temporary Work Abroad and Their Protection and the Law amending the Law on Employment and Unemployment Insurance, a high percentage of unemployed population in working age, coupled with low salaries, violations of citizens employment rights and insufficient protection of those rights, have been the key features of the enjoyment of the right to work and employment rights in the reporting period. According to the Statistical Office of the Republic of Serbia, the unemployment rate has been

²⁸ Report available at: <http://www.zastitnik.rs/index.php/lang-sr/2011-12-25-10-17-15/4607-2016-02-22-12-22-20>.

reduced and is about 18%. The exercise of employees' rights has been additionally burdened by the insufficient cooperation between the Tax Administration, the Republic Pension and Disability Insurance Fund, the Republic Health Insurance Fund and labour inspectorates. Citizens also often point to abuse at work and inadequate protection by employers. Although employees have a possibility to file lawsuits for violations of their rights, they refrain from exercising and protecting their rights in court because they fear losing their jobs.

As regards progress made in eliminating the practice which places the burden on the shoulders of employees and their family members when employers fail to comply their legal duty to pay contributions to health and pension insurance funds, steps towards improved legal protection of employees were made in 2013 and 2104. What remains to be done is to introduce in the legal system an arrangement which has been advocated by this institution for quite some time, which would ensure that if employers violate their legal duty to pay contributions specified by the law to compulsory social funds for their employees and competent public authorities tolerate this, employees do not suffer harmful consequences, as has been the case so far.

Implementation of the Law on the Protection of Whistle-blowers has begun in case law and first injunctions have been imposed in court proceedings pursuant to lawsuits against employers, which is an encouraging sign. It is too soon to evaluate the effects of the Law.

JUDICIARY

Following the adoption of the Law on Protection of the Right to Trial within a Reasonable Time, the enjoyment of this citizens' right has improved considerably, even with the identified shortcomings of that Law.

The excessive amounts of fees charged to citizens for the work of bailiffs, which the Protector of Citizens stated as a concern in the previous reporting period, have been cut following the adoption of the Bylaw amending the Bylaw on Fee Rates and Cost Reimbursement for the Work of Bailiffs.

Furthermore, arrangements have been put in place to facilitate the enjoyment of the right of access to justice following the amendments to the Law on Court Fees.

Citizens have continued filing complaints against the work of judicial authorities (courts and public prosecutor's offices), although those authorities are exempted from the powers of the Protector of Citizens under the Constitution and citizens are well aware of that, but either do not have trust or do not have proper access to the authorities responsible for overseeing the lawfulness of work of judges and prosecutors, according to the Constitution.

The number of complaints pertaining to the work of the so-called "young" judicial professions – bailiffs and public notaries – has been on the rise, as these professions increasingly become the cause of grievances for citizens and the public. However, this institution does not have the power to oversee their work – that would require an amendment to the Constitution. However, the Protector of Citizens has established sound and constructive cooperative relations with chambers of bailiffs and public notaries, which are at the same time also organisations with delegated public powers and are thus subject to oversight by this institution in that regard, if the Ministry of Justice fails to perform its statutory oversight duties, as the first complaint mechanism to which the Protector of Citizens refers all citizens who have grievances against the work of bailiffs and public notaries.

There is a strong – yet difficult to substantiate – perception that judicial and prosecutorial functions are heavily influenced by the political authorities.

A judge has resigned, clearly with much bitterness, after experiencing backlash for his judicial decision to return the passport to (against a multi-million bond in euros) a prominent businessman whose arrest had been hailed by the media and

certain politicians as a symbol of fight against corruption. The Disciplinary Committee of the High Judicial Council found him guilty of a disciplinary infraction because he gave a statement about the circumstances surrounding that decision to a newspaper in response to an article previously published in the same newspaper, which insinuated he had not followed due procedure. He had previously been labelled a corrupt judge by a pro-government tabloid, while the Minister of Justice publicly criticised the decision to return the passport. The judge's term in office at the Special Chamber of the Higher Court, where he heard and ruled on some of the most sensitive criminal cases, had not been renewed. As his court refused to disprove the allegations levelled against him in the press, he took his protection in his own hands and suffered disciplinary action as a result. As a demonstration of his essential disagreement with the meted punishment, he resigned as a judge.

A volunteer at a court had his volunteering contract terminated because he disapproved of the actions of a judge at the court where he volunteered, on his social network account. The judge had been at a celebrity's birthday party and posed together with the host for a photograph next to the decision to rehabilitate that person, which was hanged in a frame in that person's home. The rehabilitation proceedings had been heard by and the decision signed by the very judge who posed for the photograph. The photograph had originally been disclosed by the Public Service Broadcaster of Vojvodina, while the court volunteer criticised the judge's actions on his social network account several days later.

The High Judicial Council includes members who had earlier taken part in the passing of decisions which caused immensurable damage to the Serbian judiciary.

Experts believe that the Criminal Procedure Code has not produced satisfactory results after more than two years of application. It fails to provide sufficient guarantees for the protection of human rights due to both inherent systemic shortcomings and significant technical legal shortcomings which leave much room for different interpretations, thus leading to potential legal uncertainty and inequality of citizens before the law. Its implementation had begun without appropriate preparations and with a distinct shortage of prosecutors, taking into account their expanded powers. Legal practitioners claim that the inability of prosecutors to actually conduct preliminary investigations and direct the work of the police (although they have the power to do so under the Code) makes it difficult to obtain evidence for those criminal offences that are not in the focus of interest of the executive arm of the government.

The normative framework and the actual quality of election of public prosecutors have been improved. On the other hand, while the discretionary powers in the appointment of public prosecutors have been reduced, practitioners claim they still remain rather broad and the criteria which guided the Government in the nomination of candidates are not sufficiently clear.

The elections for elected members of the State Prosecutorial Council have been marked by a much better atmosphere than the previous ones. The five winning candidates had proposed programmes that fully endorsed the proclaimed objectives and ideas of the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, which has an impeccable reputation both among prosecutorial office holders and with the general public.

The judicial profession has identified the following three key problems:

- Insufficient (institutional²⁹ and actual) independence of the judiciary;
- Uneven case load placed on judges and courts³⁰; and
- Lack of trainings for judges, especially continual training.

However, executive and judicial-administrative authorities see the following as the main problems faced by the judiciary:

- Inefficiency (large volume and excessively long handling of outstanding cases, especially old ones); and
- Uneven jurisprudence.

However, recent trends have resulted in a more even distribution of caseload between judges and courts, especially in criminal proceedings before basic courts. These are positive effects of the judicial laws which came into force on 1 January 2014 and increased the number of basic courts, transferred the powers for the so-called lower appellate proceedings in criminal matters (second-instance powers for deciding on appeals against first-instance decisions, including detention) to higher courts and the “transfer” of investigations to the prosecutor’s offices pursuant to the Criminal Procedure Code, which has been in general effect since October 2013.

On the other hand, the transfer of powers for lower appellate proceedings in criminal matters resulted in an uneven distribution of caseload between judges within the same courts of appeal in second-instance and third-instance departments. For this reason, at the end of 2015 there were on average 119.44 civil cases per judge in Belgrade, 164.91 in Kragujevac, 46.11 in Nis and 45.04 in Novi Sad, while the caseload per judge in criminal matters in the same courts was 7.28 in Belgrade, 6.61 in Kragujevac, 12.88 in Nis and 10.05 in Novi Sad.³¹

Many judges perceive the insistence of judicial authorities on faster proceedings (coupled with justifiable expectations of citizens to the same effect) and the measures undertaken in that regard³² as a compromise that sacrifices the quality of trial for the sake of ostensible efficiency. If this is true, it means that citizens’ right to a fair and just trial is being violated in this way.

The Judges’ Association has warned that some judges have understood the demand for expediency as an imperative and have tended to hasten up all other cases as well. If a higher

²⁹ The well-known problems at the constitutional level associated with the first election of judges, presidents of courts and all members of the High Judicial Council by the National Assembly, the presence of legislative and executive arms of the government in the High Judicial Council, the lack of constitutional reasons for termination and removal of judges from office and the problematic aspects of the trial term of office; at the level of laws, the issues include excessive powers of presidents of courts; participation of the executive government in the Managing Board of the Judicial Academy, which is seen as a key institution and a channel through which other branches of the government can influence the judiciary, as was identified in the summary of the negotiation position for Chapter 23, the Action Plan for Chapter 23 and the National Strategy for the Judiciary and the Action Plan on its implementation: those who enrol in the Academy in an insufficiently transparent procedure are effectively appointed a judge or a prosecutor, far from the public’s eye, outside of all procedures and even before they are formally appointed, by virtue of the mere fact that they enrolled in the Academy.

³⁰ As a result of an unsuitable court network, inadequate powers of courts and lack of judges in larger cities; while the first two issues are the responsibility of legislative and executive branches of the government, responsibility for the third issue rests squarely on the shoulders of judicial authorities (the High Judicial Council).

³¹ Data obtained from the Judges’ Association of Serbia.

³² In early May 2014, the president of the Supreme Court of Cassation first demanded of other presidents of courts to undertake measures to reduce the backlog of old cases (through urgent handling, ruling and expediting of cases outside of normal queue if they have lasted for more than 5 years in case of criminal proceedings or more than 10 years in case of civil proceedings, so that they are closed by 15 November 2014); several days later, all presidents of courts proceeded to implement this in respect of each individual case and formally ordered judges to close and expedite old cases by 15 November 2014. This was not only unlawful, but also impossible and ultimately was not achieved, due among other things to the attorneys’ strike.

instance quashes their judgement, some of them simply (quite literally) repeat their earlier decision, thus shifting the burden of deciding on the anticipated remedy to the court of second instance. Courts of second instance can quash decisions only once and if they do not uphold the repeated decision of the court of first instance, courts of second instance are required to hold hearings, which slows down their work, both in such cases and in all other appellate cases. For this reason it has been suggested that courts of second instance have tended to uphold repeated first-instance decisions, although they had previously quashed an identical decision in the same legal matter. There has been an increasing number of decisions of the Constitutional Court quashing the judgements of appellate courts because of violations of the right to a fair trial due to a lack of explanation of key facts.

This has the following consequences:

- Longer trials;
- Increasing backlog of old cases handled by courts of first and/or second instance;
- Declining quality of judgements;
- Dissatisfaction of citizens with the judiciary.

The following has to be ensured:

- Approximately equal conditions of work (offices, paralegals, IT equipment and access to the database of regulations and case law)³³;
- Approximately equal distribution of the burden in terms of the number (and preferably also structure) of cases³⁴; and
- Continual training – sound, multi-faceted, systemic, predictable and actually available to all judges, building on the broader context and focusing on explaining the essence and purpose of the judicial duty and its ultimate aim (citizens’ trust in the judiciary) – this applies in particular to the courts of the highest order (the Supreme Court of Cassation, the Commercial Court of Appeals and appellate courts), because consistent application of legislative provisions depends on the quality of their argumentation.

In the course of 2015, courts handled a total of 4,973,951 cases, of which 2,087,332 have been closed. Out of the total number of pending cases, 1.7 million are executory cases, 800,000 of which were lawsuits for utility debt.³⁵

³³ The appellate court in Novi Sad is not provided with adequate working conditions (all courts are in the same building); the appellate court in Kragujevac does not even have its own building and instead shares a single, inadequate building with the basic court and the higher court; at the First Basic Court, judges use their courtrooms as their offices, with minute-keepers, paralegals, volunteers and a single computer.

³⁴ In criminal matters, at the end of 2015 there were 23.86 cases per judge in higher courts (p. 135 of the Statistical Report); however, in Belgrade there were 67.36 cases per judge, followed by Novi sad with 51.15 cases per judge, Kragujevac with 37 cases per judge, Nis with 32.50 cases per judge, Pozarevac with 28 cases per judge, Zrenjanin with 27.67 cases per judge and Jagodina with 25.67 cases per judge; on the other hand, in 10 courts the figure was in the single digits.

At the end of 2015, the 66 basic courts had an average caseload of 291.57 pending civil law cases (p. 430 and 431 of the Statistical Report); however, the basic courts of Belgrade had 572.46 cases per judge in the First Basic Court, 548 cases per judge in the Third Basic Court and 328.86 cases per judge in the Second Basic Court; Leskovac had 586.17 cases per judge, Lebane had 517.75, Nis had 653.50, Pirot had 888.25, Prijepolje had 447.50, Ivanjica had 494.33, Knjazevac had 428.50, while Backa Palanka had 408.50; five courts had more than 300 pending cases per judge, 15 courts had more than 200 cases per judge, while 34 courts had fewer than 200 cases per judge.

As regards criminal cases, at the end of 2015 basic courts had on average 106.95 pending cases per judge. The caseload was 324 cases per judge in Lazarevac and Lebane, 281 cases per judge in Brus, 253.75 cases per judge in Pirot, 230.50 cases per judge in Obrenovac, 189 cases per judge in Prijepolje, 188.67 cases per judge in Novi Pazar and 182 cases per judge in Smederevo, while 10 courts had up to 50 cases per judge.

³⁵ Figures presented in public by the president of the Supreme Court of Cassation.

As regards the 26 higher courts, at the end of 2015 there were 764.60 pending civil law cases in Belgrade and 723 in Novi Sad, followed by 531 in Cacak, 378.40 in Nis, 256 in Prokuplje, 213 in Kragujevac... On average, all higher courts had 214 pending cases per judge at the end of 2015. However, there were 14 courts where the number of cases per judge was in the double digits, while one court (in Negotin) did not have a single pending case at the end of 2015 (source: Statistical Report on the Work of Courts in 2015).

The distribution of caseload has been uneven among commercial courts as well. Thus, at the end of 2015 there were on average 99.64 pending civil law cases per judge; however, the actual distribution by courts was as follows: 192.60 in Novi Sad, 150.65 in Belgrade, 123.33 in Pancevo and 113.67 in Zrenjanin, while the remaining courts had fewer than 100 pending cases; seven courts had 50 or fewer pending cases per judge (37.71 in Leskovac, 22.80 in Zajecar and 16.40 in Uzice).

Criminal cases tried in basic courts have seen the greatest improvement in terms of a more even distribution of caseload between judges.

Statutory provisions have to be adopted to govern the maintenance and use of a database of court and prosecutorial cases, which would contain citizens' personal data. It would be appropriate for judicial data to be kept by the Supreme Court of Cassation or the High Judicial Council, rather than by executive authorities.

FINANCE

The Tax Administration is the least compliant with the principles of good governance of all central administrative authorities. Its regulations are becoming increasingly complex and even citizens with a legal background increasingly need the services of tax advisors; tax procedures are non-transparent and in compliance with the general principles of administrative proceedings; decisions passed by tax authorities essentially contain no statement of reasons; practice often tends to be uneven; decisions are not passed within the required timeframe; remedies are ineffective; communication with citizens is overly bureaucratic; while penalties are draconian.

Citizens are required under the law to pay an (assumed) amount of property tax that has not been previously determined by a decision of the competent authority. The statutory arrangements governing the service of tax assessments make it all too easy for citizens to be effectively denied the possibility to learn about their rights and responsibilities, while the "service" of writs by pinning them to a notice board has tremendous negative effects. The Tax Administration has designed its model of communicating with citizens to suit its own needs and schedules, rather than adjusting its work to the objective circumstances of citizens' lives (for the sake of clarity, this does not apply to percentages and amounts of tax liabilities, but rather to the Administration's work arrangements, including work arrangements, procedures ...).

After two years of application of an arrangement that harmed both private and public interests, against which this institution had protested in strongest possible terms, the provision according to which compulsory social insurance contributions are not statute-barred has finally been restored in the legislation, which has improved the situation of many citizens and increased public revenue from this source.

After two years of the adoption and one year of repeal of the Law on the so-called solidarity tax, this institution managed to obtain from the Government a Conclusion that attempts to alleviate some of the harmful consequences of unlawful and irregular collection of the

solidarity tax on multiple monthly back-wages paid salaries (wage compensations) paid cumulatively in arrears. The Ministry of Finance and the Tax Administration as its body had previously refused to implement a recommendation intended to prevent this violation of citizens' rights; if that recommendation had been implemented, there would have been no need for the Government to order the refund of improperly collected money by a subsequent Conclusion.

A new irregularity identified in the operations of the Tax Administration in the course of 2015 is the control of income reduction and passing of decisions which order citizens to pay tax liabilities after the expiry of statutes of limitation. Acting pursuant to citizens' complaints and following an investigation, the Protector of Citizens demanded of the Tax Administration to refrain from initiating and conducting enforced collection procedures and to void *ex officio* all decisions passed after the expiry of relevant statutes of limitation, with notice to the Administrative Court in order to expedite the resolution of administrative disputes and relieve the burden of the Court, which had already concurred with the opinion expressed in the recommendation of the Protector of Citizens in its judgements passed in individual lawsuits. If this recommendation is implemented, the principle of legality of operations will be maintained and the costs of lost lawsuits for the government would be lower. However, the fact remains that some citizens will not pay their due tax liabilities due to the excessively slow actions of the Tax Administration, which harms public interest. There is also an element of unequal treatment and injustice in relation to those citizens who duly paid their taxes.

The initiative to amend the Law on Tax Procedure and Tax Administration filed by this institution has been accepted and the provisions governing the protection of classified data in tax proceedings have been harmonised with the Data Secrecy Law as the primary law in this field.

ECONOMIC AND PROPERTY RIGHTS

Similarly as in earlier years, citizens have not been able to fully and timely enjoy their property rights vis-à-vis administrative authorities due to organisational weaknesses in the work of the administration.

The amendments to the Law on State Cadastre and Land Survey made in late 2015 should contribute to faster and more efficient acting of Cadastral Departments, as well as of the Republic Geodetic Authority, which was reinstated as the authority of second instance under the amendments because the Ministry of Construction, Transport and Infrastructure had been extremely inefficient in handling second-instance cases during the time when it was in charge. A timely and efficient decision-making procedure is paramount because any failure to pass in due time a decision under which a citizen is granted a property right (or any failure to implement such decisions) constitutes a violation of the right to peaceful enjoyment of property and there is a vast number of cases where citizens have had to wait for years to register their title to real estate.

The Restitution Agency has closed many proceedings pursuant to property restitution claims by returning more than 90% of all claimed property to its rightful owners and their heirs in kind, which is indeed praiseworthy. However, due to the complexity of the real estate appraisal procedure and the shortcomings of the existing legal framework, those cases in which restitution in kind is impossible, but the owners or heirs are eligible for compensation, as well as cases

involving restoration of consolidated land, have not yet been closed. The Protector of Citizens had submitted to the National Assembly a Bill on Restitution of Property and Compensation designed to remedy the identified shortcomings, but the Bill was never debated by the Parliament.

Although all privatisation procedures were supposed to be closed by the end of 2015, this goal has not been achieved. The Privatisation Agency has been wound up; however, even though the Ministry of Economy has assumed the responsibilities associated with conducting and overseeing the remaining privatisation procedures, an Agency for Managing Disputes in the Privatisation Process was set up to represent the government in privatisation procedures initiated before 1 February 2016. The actual purpose of this new agency remains unclear, as the State Public Attorney's Office is responsible for protecting the government's interests.

Citizens still face numerous issues in the enjoyment of their property rights due to shortcomings of the bankruptcy legislation and due to actions of bankruptcy administrators. Bankruptcy proceedings instituted against companies before Commercial Courts are still excessively long, estates are difficult to cash in, while the actions of bankruptcy administrators cause distrust among bankruptcy creditors.

The enactment of the Law on Legalisation of Buildings, the sixth of its kind in the past 20 years, should finally bring closure to the legalisation process after many years. Significantly, the new Law identifies legalisation of illegally constructed buildings as a public interest, although those citizens who constructed their properties in full compliance with the law have perceived this solution as an injustice. The Protector of Citizens has found in a number of investigations that building inspectors, even if they do identify irregularities, tend to hesitate to pass a relevant administrative instrument or do not follow-up on its execution, which is incompatible with the perception of legalisation of illegally constructed buildings as a matter of public interest.

ENERGY AND CONSUMER PROTECTION

The adoption of certain pieces of secondary legislation (the Decree on Vulnerable Energy Consumers, the Decree on Application of Fee Rates for the Calculation of the Cost of Access to the Electricity Distribution System and passing of the Bylaw on Energy Permit, the Bylaw on Licences for Energy Businesses and Certification and the Rules on Change of Supplier) improved the regulatory framework for implementation of the Law on Energy. The adoption of the Decree on Vulnerable Energy Consumers on proposal of the Protector of Citizens ensured protection of citizens whose lives and health would be at risk as a result of disconnection of supply of electricity. It is necessary to pass the remaining pieces of secondary legislation in order to ensure full implementation of the Law and higher improvement of the rights of buyers and consumers.

The number of citizens' complaints against violation of consumer rights has increased (246 compared with 217) compared with the previous year. Citizens have complained about the work of mobile operators and Internet providers, as well as about the manner of energy supply and calculation of costs by electricity and heat energy supply companies. Citizens face problems in relation to electricity supply, collection of bills, disconnection from the electricity grid and requirements for reconnecting to the electricity grid, as explained by the Protector of Citizens in his Special Report "Issues in Exercise of Electricity Consumer Rights with Recommendations".³⁶

³⁶ Report available at: <http://www.xn--80aneakq7ab5c.xn--90a3ac/index.php/lang-sr/izvestaji/posebnii-izvestaji/4289-2015-08-19-13-46-17>.

ENVIRONMENT PROTECTION AND CLIMATE CHANGE

Notwithstanding the fact that several laws had been enacted in the previous year, the field of environment protection is still characterized by insufficient regulation. As regards the right to a healthy environment, no significant progress has been made compared with previous years. Although this is one of the main rights guaranteed by the Constitution, the efforts made by competent institutions are mainly declarative, externally imposed and urged by the negotiation process with the EU, without sufficient own initiative. Inefficient supervision of implementation of the existing legal arrangements and lack of cross-departmental cooperation are also reflected in the lack of citizens' awareness of the importance of the environment. In some towns in Serbia water is polluted and cannot be used for drinking anymore. In other countries treat this resource as a strategic one.

In late 2015, the Law on Recovery after Natural and Other Disasters was adopted, which finally addressed the decades-long issue of lack of clear, specific conditions, criteria and benchmarks for the provision of assistance that resulted in uncoordinated activities of authorities, inefficient recovery efforts and a high level of non-transparency of fund spending. For the first time, citizens' right to state aid is guaranteed and clear criteria and procedures for the exercise of the right to state aid and the manner of control are regulated. The Law is largely based on the Model Law on State Aid after Natural Disasters, prepared and submitted to the Government by the Protector of Citizens in mid-2015.

After the floods of 2014, lead, arsenic, manganese, antimony, iron and other metals poured into four rivers from the former Stolica main tailings near Krupanj, which have then been carried all across Serbia through water streams. This institution conducted the oversight, issued recommendations and visited tailings in person with representatives of the international community, national and local authorities, but the rivers are still being polluted, which also affects the citizens.

The Ministry of Agriculture and Environment Protection and the Ministry of Health have not fully complied with the recommendation of the Protector of Citizens to eliminate sources of pollution and ensure continual monitoring of air, water and soil pollution in Zajaca.

REFUGEES AND INTERNALLY DISPLACED PERSONS

Twenty years after the refugee crisis broke out, there are still 17 collective centres in Serbia for refugees from territories of former Yugoslav republics. Under the Framework Agreement on Implementation of a Regional Programme for Provision of Permanent Housing to Refugees signed between the Republic of Serbia and the Council of Europe Development Bank (CEB)³⁷, it was planned to close the remaining centres by 2017. The Call for Proposals for the provision of housing for refugees was not successfully implemented, although funds were provided.

Associations of refugees from Croatia addressed the Protector of Citizens because they have difficulties in the exercise of property and other acquired rights in that country, guaranteed under the Vienna Agreement on Succession Issues of Former Socialist Federal Republic of Yugoslavia³⁸ ("Vienna Agreement"), in particular the provisions of Annex G. This institution will try to contribute to addressing of their issues in cooperation with the Croatian Ombudsman.

Many citizens, mainly the Roma, displaced from the territory of the Autonomous Province of Kosovo and Metohia since 1999 are still living in informal settlements without any infrastructure.

³⁷ Official Gazette of RS - International Agreements, No. 08/14.

³⁸ Official Gazette of FRY - International Agreements, No. 6/02.

Acting in compliance with recommendations issued by this institution, the Government passed the new Decision regulating the back-pay of temporary work remuneration for workers in the territory of the Autonomous Province of Kosovo and Metohia, who are internally displaced persons and who were employed in state-owned and socially-owned organisations and enterprises at the territory of the Autonomous Province of Kosovo and Metohia.

AWARDS AND RECOGNITIONS PRESENTED TO THE PROTECTOR OF CITIZENS

In the reporting period, the Protector of Citizens received several Serbian and foreign recognitions and awards. The Republic of France presented to the Protector of Citizens the "National Order of Merit in the Rank of Knight". The Protector of Citizens was named "The Knight of Profession" by the League of Experts LEX. "Vreme" magazine named him "Person of the Year", as well as the student portal "Zurnalist" ("Journalist"). The House of Justice Strasbourg and the Federation of Trade Unions presented to the Protector of Citizens the Charter Award for Civil Bravery "Dragoljub Stosic", while the Serbian Public Relations Society named him the "Communicator of the Year". The European movement in Serbia presented him the "Contribution to the Europe - 2015" award. The Protector of Citizens also received the "Walker" award for civic activism from the Proaktiv organization. Finally, the "Liceulice" association named him its ambassador.

KEY STATISTICS ABOUT THE WORK OF THE PROTECTOR OF CITIZENS

The Protector of Citizens had in the previous reporting period reached maximum efficiency under the current circumstances, as stated in the previous annual reports. Since citizens' expectations have increased and the Protector of Citizens acquired new competences and higher institutional role, it is necessary to increase the capacity of the Secretariat, to change the organisation and to improve legislative framework governing the work of the Protector of Citizens.

Table 1 - Information on implementation of recommendations in 2015

	Issued	Received	Accepted	% of accepted among those received
Recommendations issued in the oversight procedure	624	377	238	63.13
Recommendations issued in the expedited oversight procedure	558	558	558	100
Recommendations issued in the preventive capacity (National Preventive Mechanism)	265	167	155	92.81
Total accepted recommendations	1.447	1.102	951	86.30

Table 2 - Comparison of implementation of recommendations in 2014 and 2015

	Issued		Received		Accepted		% of accepted among those received	
	2014	2015	2014	2015	2014	2015	2014	2015
Recommendations issued in the oversight procedure	212	624	203	377	137	238	67.49	63.13
Recommendations issued in the expedited oversight procedure	587	558	587	558	587	558	100	100
Recommendations issued in the preventive capacity (National Preventive Mechanism)	345	265	242	167	183	155	75.62	92.81
Total accepted recommendations	1.144	1.447	1032	1102	907	951	87.89	86.30

Table 3 - Information on contacts with citizens in 2014 and 2015

Type of contact	2014	2015	%
No. of citizens received in person	4.913	4.585	-6.68
No. of phone conversations with citizens	11.252	9.327	-17.11
Various citizens' submissions other than complaints	1.262	985	-21.95
No. of complaints	4.866	6.231	28.05
Total number of contacts with citizens	22.293	21.128	-5.23

Table 4 - Investigations completed by the Protector of Citizens in 2015 and comparison with 2014

Type of activities	2014	2015	%
Pursuant to complaints and on own initiative	4.798	6.457	34.58
Pursuant to legislative initiatives submitted by citizens	51	65	27.45
Pursuant to other contacts with citizens	16.165	13.912	-13.94
Total activities completed	21.014	20.434	-2.76

Table 5 - Number of investigations completed in 2014 and 2015

Work on complaints submitted in the current and previous	2014	2015	%
Total number of complaints with completed investigations	4.798	6.457	34.58

Table 6 - Information on other activities in 2015 and comparison with 2014

Type of activities	2014	2015
No. of legislative initiatives submitted	15	15
No. of legislative initiatives adopted	0	4
No. of investigations initiated against authorities	1.132	1.669
No. of oversight and preventive visits to authorities	114	107

Table 7 - Distribution of complaints by fields and sectors, their numbers and percentage as a share of total complaints

	Sector	No. of Complaints	%
1	Labour and employment relations	708	11.36%
2	Justice and judiciary	649	10.42%
3	Local self-government	481	7.72%
4	Child rights	446	7.16%
5	Finance	421	6.76%
6	Persons deprived of liberty	370	5.94%

7	Rights of persons with disabilities and the elderly	293	4.70%
8	Pension insurance	271	4.35%
9	Persons deprived of liberty	251	4.03%
10	Consumer protection	246	3.95%
11	Gender equality	232	3.72%
12	Construction and infrastructure	225	3.61%
13	Economy	192	3.08%
14	Ministry of Internal Affairs-police affairs	188	3.02%
15	Health	171	2.74%
16	Energy and mining	151	2.42%
17	Education and science	131	2.10%
18	Rights of national minorities	119	1.91%
19	Ministry of Internal Affairs-administrative affairs	113	1.81%
20	Defence	79	1.27%
21	Social security	77	1.24%
22	Refugees and displaced persons	61	0.98%
23	Agriculture	54	0.87%
24	Natural disasters	48	0.77%
25	Restitution	47	0.75%
26	Environmental protection	45	0.72%
27	Culture	34	0.55%
28	Serbian language and Cyrillic script	21	0.34%
29	Security affairs	18	0.29%
30	Transport and transport infrastructure	17	0.27%
31	Independent governmental authorities and bodies	17	0.27%
32	Expropriation	13	0.21%
33	Protection of whistleblowers	13	0.21%
34	Public administration	12	0.19%
35	Foreign affairs and diaspora	9	0.14%
36	Youth and sport	8	0.13%
	Total	6.231	

Table 8 - Leaders in terms of non-compliance with recommendations issue after oversight procedures: Ratio of issued and unimplemented recommendations to authorities

Authority	Number of issued recommendations	Number of unimplemented recommendations	%
Security services	11	11	100
Autonomous governmental	6	4	66.67
Healthcare institutions	22	14	63.64
Special organizations	16	9	56.25
National agencies	8	4	50
Ministries	97	39	40.21
Compulsory social security	48	16	33.33
Local self-government	200	37	18.5
Public enterprises	25	3	12
Administration within ministries	29	2	6.90

The largest ratio of non-compliance relative to the number of recommendations issued to various authorities has been identified in the case of security services (Military Security Agency): it was issued a total of 11 recommendations, none of which have been implemented.

In case of recommendations given in the expedited oversight procedure, authorities rectify omissions that caused initiation of the procedure without delay and the Protector of Citizens does not have to initiate oversight procedure.

Table 9 – Authorities that rectified omissions in the expedited oversight procedure

Ministries	193	34.59%
Compulsory insurance organizations	94	16.85%
Local self-administrative authorities	76	13.62%
Social security institutions	49	8.78%
Special organizations	35	6.27%
Administration within ministries	33	5.91%
Bar associations	27	4.84%
Public enterprises	14	2.51%
Education institutions	12	2.15%
Penal and correctional facilities	12	2.15%
Other authorities	13	2.33%
Total omissions rectified	558	

The following authorities most frequently rectified omissions in the expedited oversight procedure:

- Republic Pension and Disability Insurance Fund (83);
- Ministry of Construction, Transport and Infrastructure (61);
- Tax Administration (31).

PART I LEGAL FRAMEWORK AND SCOPE OF WORK OF THE PROTECTOR OF CITIZENS

1.1. LEGAL FRAMEWORK

Regulations

The Protector of Citizens of the Republic of Serbia is an independent and autonomous public authority, introduced in the legal system of the Republic of Serbia in 2005 under the Law on the Protector of Citizens.³⁹ The position of this institution was substantially reinforced by the by the Constitution of the Republic of Serbia⁴⁰ of 2006, which made the Protector of Citizens a constitutional category, in line with best international experiences. Under the Law amending the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁴¹, the Protector of Citizens has been designated as the National Preventive Mechanism.

The Constitution of the Republic of Serbia defines the nature and powers of the Protector of Citizens and the circle of public authorities excluded from oversight by this authority; it stipulates that the Protector of Citizens is appointed and removed from office by the National Assembly, to which he/she is accountable for his/her work, guarantees immunity to the Protector of Citizens equal to that enjoyed by Members of Parliament; and provides for the enactment of a special (organic) law o the Protector of Citizens. The Constitution also bars the Protector of Citizens from being a member of any political party and authorises him/her to draft bills within his/her sphere of competence.

The Constitutional Law on Implementation of the Constitution of the Republic of Serbia⁴² *inter alia* provides for a duty of a newly-elected convocation of the National Assembly to harmonise the law governing the work of the Protector of Citizens with the Constitution in its first session after the election of a Government and to appoint the (first (note by PoC)) Protector of Citizens.

The Law o the Protector of Citizens provides in detail for the powers of the Protector of Citizens, his/her appointment and removal from office, investigations handled by the Protector of Citizens, the duty to report to the National Assembly and cooperate with other authorities, his/her entitlement to a salary, his/her equipment for work and the operations of the Secretariat of the Protector of Citizens.

Under the **Law on the National Assembly**⁴³ the National Assembly elects and removes the Protector of Citizens in its voting capacity and oversees the work of the Protector of Citizens in its oversight capacity.

The Law on the Army of Serbia⁴⁴ stipulates that the Protector of Citizens conducts democratic civilian oversight of the Army.

³⁹ Law on the Protector of Citizens – hereinafter referred to as “LoPoC” (Official Gazette of RS No. 79/05 and 54/07).

⁴⁰ Decision on Promulgation of the Constitution of the Republic of Serbia was published in the Official Gazette of RS Nos. 83/06 and 98/06 (Part Five – Organisation of the Government, section 5: the Protector of Citizens, Article 138).

⁴¹ Official Gazette of RS – International Treaties No. 07/11.

⁴² Article 5 paragraph 1 the Constitutional Law on Implementation of the Constitution of the Republic of Serbia (Official Gazette of RS No. 98/06)

⁴³ Article 15, Official Gazette of RS, No. 09/10.

⁴⁴ Article 29 paragraph 3 of the Law on o the Army of Serbia (Official Gazette of RS No. 116/07, 88/09 and 101/10 - new law).

Under the **Law amending the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**⁴⁵, enacted on 28 July 2011, the Protector of Citizens is entrusted with the duties of the National Preventive Mechanism, in cooperation with the Ombudsmen of the Autonomous Provinces and associations pursuing the goals of promoting and protecting human rights and freedoms.

The Criminal Procedure Code⁴⁶ provides that the Protector of Citizens is entitled to freely visit detainees and talk to them without the presence of any other person; it furthermore provides that a detainee cannot be prohibited from having a correspondence in writing with the Protector of Citizens. The Code also provides for an obligation of a penal judge or another judge appointed by the president of a court to notify Protector of Citizens without delay of any irregularities identified during visits to correctional facilities.

The Law on Enforcement of Prison Sentences for Organised Crime⁴⁷ *inter alia* provides for the following: the operations of the Special Unit are overseen by authorised officers of the Administration and a committee appointed by the National Assembly in accordance with the Law on Enforcement of Penal Sanctions, as well as by the Protector of Citizens in accordance with the Law on the Protector of Citizens; inmates have the right to be visited by the Protector of Citizens once a month and such visits are exempted from mandatory video surveillance and recording; and inmates have the right to hold a correspondence in writing with the Protector of Citizens and such correspondence is not subject to surveillance.

Under the **Law on Civil Servants**⁴⁸, the employment of a civil servant shall be terminated *inter alia* if an authority or body responsible for appointing that civil servant accepts a public recommendation of the Protector of Citizens.⁴⁹

The Law on Data Confidentiality⁵⁰ specifies the cases in which the Protector of Citizens, as a public authority appointed by the National Assembly, is authorised to access data subject to all levels of classification which he/she needs to perform the duties within his/her sphere of competence, without any security checks, as well as the cases when such security checks are necessary.

The Law on the Use of National Coat of Arms, Flag and National Anthem of the Republic of Serbia⁵¹ provides that the Large Coat of Arms is to be used on the building, inside the offices, on the stamp and on the invitations, congratulatory cards etc. of the Protector of Citizens.

The Law on the Seal of State and Other Authorities⁵² governs the purpose, content, layout and use of the stamps used by the Protector of Citizens as part of exercise of his/her powers.

According to the **Law on Political Parties**⁵³, the Protector of Citizens cannot be a member of any political party.

⁴⁵ Official Gazette of RS - International Treaties, No. 07/11.

⁴⁶ Article 219 paragraph 3, 220 paragraph 2 and 22 paragraph 2 the Criminal Procedure Code (Official Gazette of RS No. 72/11, 101/11, 121/12, 32/13 and 45/13).

⁴⁷ Article 35 paragraph 2, 37 paragraph 4 and 54 paragraph 1 of the Law on Enforcement of Prison Sentences for Organised Crime (Official Gazette of RS No. 72/09 and 101/10).

⁴⁸ Article 78 paragraph 2 of the Law on Civil Servants (Official Gazette of RS Nos. 79/05, 81/05 - corrigendum, 83/05 - corrigendum, 64/07, 67/07 - corrigendum, 116/08 and 104/09).

⁴⁹ Article 16 paragraph 2 of the Law amending the Law on Civil Servants (Official Gazette of RS No. 99/2014).

⁵⁰ Law on Data Confidentiality (Official Gazette of RS, No. 104/09).

⁵¹ Articles 13 and 15 of the Law on the Use of National Coat of Arms, Flag and National Anthem of the Republic of Serbia (Official Gazette of RS, No.36/09).

⁵² Article 1 of the Law on the Seal of State and Other Authorities (Official Gazette of RS, No. 101/07).

⁵³ Article 21 of the Law on Political Parties (Official Gazette of RS, No.36/09).

The Law on Anti-Corruption Agency⁵⁴ stipulates that members of the Agency's Board are appointed by the National Assembly, including on the proposal of the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection.

Under the **Law on Patient Rights**⁵⁵, Health Councils formed by local self-governments submit the annual reports on their work and measures taken to protect patient rights to the Protector of Citizens, for information purposes and to establish the necessary cooperation.

Under the **Law on Public Property**⁵⁶, administrative authorities and organisations within the meaning of that Law are deemed to include the Protector of Citizens.

Under the **Law amending the Law on Budget System**⁵⁷, the Protector of Citizens must seek the approval of the committee of the National Assembly in charge of administrative and budget-related issues for every new person hired or employed, even if the post in question is provided for in the staffing plan and the national budget and funds have been secured.

Under the **Law on Determining the Maximum Number of Employees in the Public Sector**⁵⁸, the maximum number of employees at the Secretariat of the Protector of Citizens is determined by a decision of the committee of the National Assembly in charge of administrative and budget-related matters, at the proposal of the Protector of Citizens.

The Action Plan for Chapter 23⁵⁹ identifies the Annual and Special Reports of the Protector of Citizens and the reports of the National Preventive Mechanism as indicators of impact used to assess the implementation of planned activities in the process of Serbia's EU accession.

In its Screening Report for Chapter 23, the European Commission recommended that the Republic of Serbia "Strengthen the capacity of the Ombudsman (in particular in view of his role as national prevention mechanism), the provincial and local Ombudsmen services" (Recommendation 3.2.1 in the Action Plan on Chapter 23). For the purpose of implementing recommendation 3.2.1, the Action Plan envisages measures to strengthen the capacity of the Protector of Citizens through amendments to the Law on the Protector of Citizens which would reinforce his powers and specify in more detail his powers in accordance with the attained level of development of this institution; through human resources capacity building of the institution by adopting new internal organization and job classification regulations for the Secretariat of the Protector of Citizens; through providing appropriate permanent premises for the institution of the Protector of Citizens; and through measures focused on strengthening the influence of the Protector of Citizens by imposing a duty to report to the European Commission about compliance of public authorities with the recommendations issued by this independent government authority, both in the capacity of the Protector of Citizens and in the capacity of the National Preventive Mechanism.

The Protector of Citizens is also mentioned in more than 20 strategies and action plans, including e.g. The National Security Strategy of the Republic of Serbia⁶⁰, the National Anti-Corruption Strategy of the Republic of Serbia for the Period 2013-2018⁶¹, the Public Administration Reform Strategy of the Republic of Serbia⁶², the Strategy for Improvement of the Status of Roma in the Republic of Serbia⁶³, the Strategy for Prevention and Protection

⁵⁴ Law on Anti-Corruption Agency (Official Gazette of RS Nos. 97/08, 53/10, 66/11 - decision of the Constitutional Court, 67/13 - decision of the Constitutional Court and 112/13 - authentic interpretation).

⁵⁵ Article 42, Official Gazette of RS, No. 45/13.

⁵⁶ Article 47 paragraph 1 of the Law on Public Property (Official Gazette of RS Nos. 72/11 and 88/13).

⁵⁷ Official Gazette of RS, No. 54/09, 73/10, 101/10, 101/11, 93/12, 62/13, 63/13-corrigendum and 108/13.

⁵⁸ Article 5, Official Gazette of RS, No. 68/15.

⁵⁹ Conclusion of the Government 05 number: 337-11484/2015, of 23 November 2015.

⁶⁰ Official Gazette of RS, No. 88/09.

⁶¹ Chapter 4, objective 4.8 (Official Gazette of RS, No. 57/13).

⁶² Official Gazette of RS, No. 09/14.

⁶³ Official Gazette of RS, No. 27/09.

against Discrimination⁶⁴, the Strategy on Implementation of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters – the Aarhus Convention⁶⁵, the Penal Sanctions Enforcement System Development Strategy of the Republic of Serbia by 2020⁶⁶, the National Youth Strategy⁶⁷, the National Strategy for the Prevention and Protection of Children from Violence⁶⁸, the Action Plan on Implementation of Recommendations contained in the 2013 Serbia Progress Report of the European Commission, the Action Plan for Implementing the Strategy on Implementation of the Aarhus Convention⁶⁹, the Action Plan for Implementing the National Sustainable Development Strategy for the Period 2011-2017⁷⁰, the Action for Exercise of the Rights of National Minorities etc.

The legal framework governing the work of the Protector of Citizens includes also a body of secondary legislation which governs in detail the actions and operation of this institution, including: the Rules of Procedure of the National Assembly⁷¹, the Government's Rules of Procedure⁷², Decision on Formation and Operation of the Secretariat of the Protector of Citizens⁷³, the Decision on Formation of Local Offices in Presevo, Bujanovac and Medvedja⁷⁴, the Decree on Organisation of an Internal Open Competition to staff Public Authorities⁷⁵, the Special Collective Agreement for Public Authorities⁷⁶, the Bylaw on Administration in Public Prosecution Offices⁷⁷, the Bylaw on the Code of Conduct of Correctional Facilities and District Prisons⁷⁸, the Bylaw on the Code of Conduct of Juvenile Correctional Facilities⁷⁹ etc.

In his work, the Protector of Citizens adheres to the principles and standards adopted between ombudsmen and national human rights institutions, including the Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments and the Ljubljana Conclusions on the Relationship between Ombudsmen and Judicial Bodies.

The Constitution and the Law on the Protector of Citizens reflect the majority of the standards contained in the key international documents which regulate and/or promote and propose standards for ombudsmen and national human rights institutions.⁸⁰ Independence of the

⁶⁴ Official Gazette of RS, No. 60/13.

⁶⁵ Official Gazette of RS, No. 103/11.

⁶⁶ Official Gazette of RS, No. 114/13.

⁶⁷ Official Gazette of RS, No. 55/08.

⁶⁸ Official Gazette of RS, No. 122/08.

⁶⁹ Official Gazette of RS, No. 103/11.

⁷⁰ Official Gazette of RS, No. 62/11.

⁷¹ Article 150 of the Rules of Procedure of the National Assembly (Official Gazette of RS, No. 52/10 and 13/11 and 20/12- officially consolidated text).

⁷² Articles 39a and 46 of the Government's Rules of Procedure (Official Gazette of RS, No. 61/2006- consolidated text, 69/08, 88/09, 33/10, 69/10, 20/11, 37/11, 30/13 and 76/14).

⁷³ Article 150, (Official Gazette of RS, No. 52/10 and 13/11 and 20/12- officially consolidated text).

⁷⁴ Official Gazette of RS, No. 91/09.

⁷⁵ Official Gazette of RS, No. 41/07- consolidated text and 109/09.

⁷⁶ Article 1 (Official Gazette of RS, No. 23/98, 11/09 and 15/12- agreement).

⁷⁷ Article 60, paragraph 1 (Official Gazette of RS, No. 110/09, 87/10 and 5/12).

⁷⁸ Official Gazette of RS, No. 72/10 and 06/12.

⁷⁹ Official Gazette of RS, No. 71/06.

⁸⁰ UN General Assembly Resolution 48/134, the so-called "Paris Principles", available at: <http://www.un.org/documents/ga/res/48/a48r134.htm>; UN General Assembly Resolution 66/169 on national institutions for the protection and promotion of human rights, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/468/96/PDF/N1146896.pdf?OpenElement>; UN General Assembly Resolution 67/163 on the role of the ombudsman, mediator and other national institutions for the protection and promotion of human rights, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/488/38/PDF/N1248838.pdf?OpenElement>; Resolution 1959/13 of the Parliamentary Assembly on strengthening the institution of ombudsman in Europe, available at: <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20232&lang=en>; Recommendation 1615/03 of the Parliamentary Assembly on the institution of ombudsman, available at: <http://assembly.coe.int/main.asp?link=/documents/adoptedtext/ta03/erec1615.htm>; Venice Commission of the

Protector of Citizens, which is in line also with relevant international standards applicable to the ombudsman institution and/or national human rights institutions⁸¹, is the key defining feature of this public authority, one without which it would have no substance. Relevant international documents highlight in particular the importance of financial independence and the need to provide adequate resources for smooth and efficient work of the ombudsman. The Paris Principles, adopted as an annex to UN General Assembly Resolution 48/134 in December 1993, are the most complete document dealing with NHRIs. They unambiguously proclaim the importance of financial independence. „“The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it (the institution – comment by PoC) to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.”⁸²

In its Recommendation 1615 of 2003, adopted by the Parliamentary Assembly, the Council of Europe “concludes that certain characteristics are essential for any institution of ombudsman to operate effectively”, one of them being “guaranteed sufficient resources for discharge of all responsibilities allocated to the institution... and complete autonomy over issues relating to budget and staff.”⁸³ The most recent Resolution of the Parliamentary Assembly on the institution of ombudsman, adopted in October 2013, reaffirms this stand by calling on Member States to “provide ombudsman institutions with sufficient financial and human resources, enabling them to effectively carry out their tasks.”⁸⁴ In the light of the economic crisis, “The Assembly calls on member States to make all efforts to avoid budget cuts resulting in the loss of independence of ombudsman institutions or even their disappearance altogether.”⁸⁵ The Venice Commission of the Council of Europe also firmly insists on its opinion that financial independence of ombudsmen must be ensured by legislative texts as specifically and as completely as possible.⁸⁶

Although the National Assembly never fails to offer its declarative support to building the capacity of the Protector of Citizens, in practice the approval on the basis of the Law on Budget System and the Law on Determining the Maximum Number of Employees in the Public Sector becomes a serious point of contention, to the extent that it undermines the independence and effectiveness of the Protector of Citizens, as guaranteed by the Serbian and international regulations listed above.

THE NEED TO AMEND THE LAW ON THE PROTECTOR OF CITIZENS

After more than eight years of implementation, taking into account the experiences gathered during this period, it has become apparent that improvements need to be made in the legislative framework governing the work of the Protector of Citizens. Since its enactment (in 2005), the Law has been amended once (in 2007), but that was before the appointment of the

Council of Europe, Compilation on the Ombudsman Institution, available at: [http://www.venice.coe.int/webforms/documents/CDL\(2011\)079-e.aspx](http://www.venice.coe.int/webforms/documents/CDL(2011)079-e.aspx).

⁸¹ UN General Assembly Resolution UN48/134, the so-called “Paris Principles”, available at: <http://www.un.org/documents/ga/res/48/a48r134.htm>; Venice Commission of the Council of Europe, Compilation on the Ombudsman Institution, available at: [http://www.venice.coe.int/webforms/documents/CDL\(2011\)079-e.aspx](http://www.venice.coe.int/webforms/documents/CDL(2011)079-e.aspx).

⁸² Resolution 48/134 containing the Paris Principles available at: <http://www.un.org/documents/ga/res/48/a48r134.htm>.

⁸³ Recommendation 1615/03 of the Parliamentary Assembly on the institution of ombudsman, available at: <http://assembly.coe.int/main.asp?link=/documents/adoptedtext/ta03/erec1615.htm>.

⁸⁴ Text of the Resolution in Serbian and English is available on the website of the Protector of Citizens: <http://www.zastitnik.rs/index.php/lang-sr/2011-12-25-10-17-15/3057-2013-10-25-10-34-49..>

⁸⁵ Ibid.

⁸⁶ See Venice Commission, Compilation on the Ombudsman Institution, available at: [http://www.venice.coe.int/webforms/documents/CDL\(2011\)079-e.aspx](http://www.venice.coe.int/webforms/documents/CDL(2011)079-e.aspx).

first Protector of Citizens, so the amendments made at that time could not take into account the experience acquired through implementation of the Law.

The reasons for amendment of the legislative framework governing the work of the Protector of Citizens are twofold: there is a need to regulate certain issues differently and some issues that have hitherto not been covered by the provisions of the Law need to be regulated.

The bill amending the Law on the Protector of Citizens submitted by the Government under Prime Minister Mirko Cvetković to the National Assembly in 2012 was withdrawn the same year after parliamentary elections and the formation of the new government, as is customary under the Constitution. The bill has not been returned to the National Assembly for enactment during the term of Prime Minister Ivica Dačić in office, although the Protector of Citizens formally submitted an Initiative to amend the Law to the Ministry of Justice and Public Administration. During the term of Prime Minister Aleksandar Vučić, the Protector of Citizens submitted a new Initiative for Amendments to the Law to the ministry competent for public administration and local self-government in late 2014. Notwithstanding all this and the fact that enactment of a Law amending the Law on the Protector of Citizens is identified in the Action Plan on Chapter 23 as one of the activities which the Republic of Serbia must complete in the EU accession process (with Q2 2016 set as the deadline for implementing this activity), the Protector of Citizens has not observed any progress in the drafting of this Law.

The purpose of the prepared amendments is to secure full independence for the Protector of Citizens (primarily financial independence), in accordance with the Constitution, reflecting the standard achieved with the Constitutional Court; the bill provides for an accountability mechanism applicable to public authorities, i.e. officials and employees, in cases when they fail to comply with their legal duty to cooperate with the Protector of Citizens in investigations or prevention procedures; it grants the employees of the Secretariat of the Protector of Citizens who are responsible for oversight activities a status equal to that of civil servants deployed to identical duties in specific public authorities with oversight powers and other independent authorities entrusted with oversight and protection of rights.

The years and years of delays in the enactment of amendments to the Law threaten the work of the Protector of Citizens due to the new powers, the manifold increase in the workload, the identified shortcomings and the reasonable expectations of the citizens.

The illogical provision of the Law according to which Deputy Protectors of Citizens are required to have not more than half the experience of the Protector of Citizens, although the Protector of Citizens delegates his/her powers to the Deputies, needs to be amended. In practice, a need has emerged for the Protector of Citizens to give initiatives for legislative amendments and opinions in the legislation drafting process not only to the Government and the National Assembly, as provided by the Law, but to other authorities as well. It is necessary to specify time limits for competent authorities to consider initiatives made by the Protector of Citizens in accordance with the Law and to explicitly order them to timely provide to the Protector of Citizens any legislative drafts that are relevant for the exercise and protection of citizens' rights. For reasons of effectiveness, efficiency and economy, the existing provisions which stipulate when and under which conditions an investigation can be closed should be amended.

There is a need to regulate better the relations and distribution of powers between the Ombudsmen of the Autonomous Province and of local self-governments and the Protector of Citizens and to protect the name and marks of the Protector of Citizens, the unauthorised use (or sometimes even abuse) of which by various institutions, organisations and individuals at

different levels creates confusion among the citizens and other authorities and organisations, as well as among the media.

It is necessary to provide for an efficient mechanism for considering citizens' complaints within every public authority and organisation and to impose a duty on those mechanisms to report on their work to the heads of their respective authorities and organisations, as well as to the Protector of Citizens. In Serbia there is no systemic method of considering those complaints that cut horizontally and vertically through the entire administration; instead, the Protector of Citizens is in most cases the first, rather than the last, point of contact for the citizens.

Because certain authorities tend to evade their statutory duty to cooperate and generally obstruct the oversight procedures by various means, and taking into account the need to ensure full functionality and efficiency of the Protector of Citizens, provisions should be in place for penalizing non-compliance with all the duties provided for in this Law (obstruction of oversight procedures), with the legal nature and effects comparable to those that already exist in the country's legal system.

Other proposed amendments are supposed to introduce a more efficient procedure for adopting a Rulebook on job organization and classification in the Secretariat of the Protector of Citizens, in order to allow for increased organizational flexibility of this authority, which should contribute to its efficiency in the future. Granting approval for the Rulebook should be modified in that the parliamentary committee in charge of administrative matters should approve the staffing levels of the Secretariat of the Protector of Citizens acting at the proposal of the Protector of Citizens, while the Rulebook would be adopted by the Protector of Citizens and posted on his website.

Independence

According to the international standards pertaining to the institution of ombudsman and national human rights institutions⁸⁷, is a key distinctive feature of this public authority, one without which it would have no substance. The Constitution guarantees the independence of the Protector of Citizens in principle. In practice, too, the Protector of Citizens has managed to ensure his independence, as evidenced by his accreditation as an "A status" NHRI by the International Coordinating Committee of National Human Rights Institutions and the opinions of other relevant institutions and organisations.

Under the Constitution, the Protector of Citizens is subject to oversight by the National Assembly. Oversight and control are two different concepts. The National Assembly, acting in its oversight role - or indeed any other authority, organisation or individual - does not have the power to influence the work and actions of the Protector of Citizens.⁸⁸ The principle of independence is closely related to the principle of autonomy. The independence and autonomy of the Protector of Citizens imply his/her organisational and functional separation both from the authorities and organisations whose work he/she supervises and from the authority responsible for overseeing his/her work in accordance with the Constitution.

⁸⁷ UN General Assembly Resolution UN48/134, the so-called "Paris Principles", available at: <http://www.un.org/documents/ga/res/48/a48r134.htm>; Venice Commission of the Council of Europe, Compilation on the Ombudsman Institution, available at: [http://www.venice.coe.int/webforms/documents/CDL\(2011\)079-e.aspx](http://www.venice.coe.int/webforms/documents/CDL(2011)079-e.aspx).

⁸⁸ Article 2, paragraph 2 of LoPoC.

There is a need to reinforce by legislation the constitutionally proclaimed independence of the Protector of Citizens.

Application of the Law amending the Law on Budget System (Article 6, paragraph 3) continued in 2015. Under these provisions, the Protector of Citizens, just as all other independent oversight authorities, is required to seek the approval of the Administrative Committee of the National Assembly for every “new hiring”, including work under a service contract, work under a temporary or occasional work contract, work through youth or students’ cooperatives and other types of engagement, regardless of the fact that a post may have already been envisaged by the relevant human resources plan and job classification document, no matter how necessary the post may be and regardless of the fact that funding for the post has already been secured in the budget of the Republic of Serbia.

Independence of the Protector of Citizens has been further undermined by the Law on Determining the Maximum Number of Employees in the Public Sector, under which the maximum number of employees at the Secretariat of the Protector of Citizens is determined by a decision of the committee of the National Assembly in charge of administrative and budget-related matters, at the proposal of the Protector of Citizens. Efforts of the Protector of Citizens to prevent this undermining of his independence by submitting an initiative to the Parliamentary Committee on Justice, Public Administration and Local Self-Government to Article 5 item 2 of the Bill on Determining the Maximum Number of Employees in the Public Sector failed to produce any results, as the parliamentary committee rejected the initiative filed by the Protector of Citizens.

Another fruitless effort was the communication sent by four independent administrative authorities – the Protector of Citizens, the Equality Commissioner, the Commissioner for Information of Public Importance and Personal Data Protection and the Anti-Corruption Agency – to the President of Serbia, in which they asked the President to return the Law on Determining the Maximum Number of Employees in the Public Sector to the National Assembly for repeated deliberation due to violations of the independence of those authorities guaranteed by the Constitution, laws and international treaties. The President of Serbia signed a decree promulgating the Law.

In order to ensure financial independence in practice, the law should specifically state that the Protector of Citizens independently manages the funds allocated in the Budget for the work of this authority and that the Government cannot suspend, delay or restrict the execution of this authority’s budget without the consent of the Protector of Citizens.

1.2. COMPETENCE, SCOPE AND MANNER OF WORK

The duty and mandate of the Protector of Citizens under the Constitution and the Law is twofold: to **protect** citizens’ rights and to **control** the legality and regularity of work of government agencies and organisations to which public powers has been delegated (hereinafter referred to as “public authorities and organisations”⁸⁹). These two duties are clearly interrelated: the Protector protects rights by conducting control procedures and conducts the control procedures to protect rights and freedoms. In accordance with the Law on the Protector of Citizens, the Protector of Citizens “ensure[s] that human and minority

⁸⁹ The definition in the Law on the Protector of Citizens of the circle of entities whose work the Protector of Citizens is authorised to control (Article 1), uses the abbreviated term “administrative authorities” for government agencies, the body authorized for legal protection of property rights and interests of the Republic of Serbia and other bodies and organisations, enterprises and institutions which have been delegated public authority. However, this term is likely to cause confusion among those who are not familiar with its meaning in accordance with Article 1 of LoPoC (which differs from the commonly accepted legal theory and practice). To avoid any such confusion among those who read only parts of this Report, the wording used for the entities subject to control by the Protector of Citizens, as defined by the Constitution and the Law, shall be “public authorities and organisations”.

freedoms are protected and **promoted**". These determinants (*protection, control, promotion of respect for rights and freedoms*) essentially and formally set the framework for the powers of the Protector of Citizens.

There are no citizens' rights or freedoms exempted from the protection, control and promotion roles of the Protector of Citizens.

The Protector of Citizens acts in accordance with the Constitution, the law and other regulations and general acts, as well as the ratified international treaties and generally accepted rules of international law⁹⁰. The Protector of Citizens controls the legality, as well as the regularity⁹¹, of the work of public authorities and organisations. In practical matters, the Protector of Citizens is guided by the principle of fairness, within the framework of positive law.

The Protector of Citizens controls the work of government agencies, the body authorized for legal protection of property rights and interests of the Republic of Serbia and other bodies and organisations, enterprises and institutions which have been delegated public authority (public authorities and organisations). The only public authorities and organisations the Protector of Citizens is not authorised to control, in accordance with the Constitution and the Law, are the National Assembly, the President of the Republic, the Government, the Constitutional Court, courts and public prosecution offices.⁹²

Upon presentation of an appropriate personal security clearance certificate, the Protector of Citizens is granted access to all levels of classified data, to the extent that such data are necessary for the performance of his/her duties.⁹³

In addition to the right to launch and conduct investigations of the work of public authorities and organisations, the Protector of Citizens can also act pre-emptively by providing good services, mediating between the citizens and the public authorities and providing advice and opinions on matters within his/her sphere of competence, with a view to improving the work of public authorities and protecting human rights and freedoms. The powers of the Protector of Citizens to act pre-emptively are evident in particular in his role as the National Preventive Mechanism, in accordance with the Law amending the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Protector of Citizens also has the right to submit legislative initiatives. He/she is authorised to propose laws within his/her sphere of competence and to submit initiatives for amendments to the existing regulations or enactment of new ones if he/she believes that citizens' rights are violated due to shortcomings in the regulations or if this is relevant for the exercise and promotion of citizens' rights. The Protector of Citizens is authorised to give the Government and the National Assembly his/her opinions on draft regulations.

Furthermore, the Protector of Citizens is authorised to file motions for a constitutional review of legal review of laws, other regulations and general instruments before the Constitutional Court.

⁹⁰ Article 2, paragraph 2 of LoPoC.

⁹¹ Article 17, paragraph 2 of LoPoC.

⁹² Article 138, paragraph 2 of the Constitution of the Republic of Serbia, Article 17, paragraph 3 of the Law on Protector of Citizens.

⁹³ Article 38, paragraphs 1 and 2 of the Law on Data Confidentiality (Official Gazette of RS, No. 104/09).

The Action Plan for Chapter 23 identifies the Annual and Special Reports of the Protector of Citizens and the reports of the National Preventive Mechanism as impact indicators of recommendations relating to improvements in the following fields: prevention of torture and inhuman or degrading treatment and punishment; improvement of living conditions in prisons and cracking down on mistreatment in police detainment; effective enforcement of alternative sanctions; enjoyment of the freedom of thought, conscience and religion; protection of journalists from threats of violence and protection of media freedom; non-discrimination and rights of children and persons with disabilities; access to justice free legal aid; protection of the rights of national minorities; implementation of the Strategy for Improvement of the Status of the Roma and the status of refugees and internally displaced persons through access to rights, including identity documents and housing arrangement for the most vulnerable.

This year again there were initiatives to establish a special institution with powers of the Protector of Citizens for child rights – the Ombudsman for children. In connection with this initiative, the Protector of Citizens emphasized on several occasions the harmful effects for child rights, public interest and legal order which may result from multiplying institutions with the same or related competences and powers in protection of child rights, particularly at the moment when the Republic of Serbia faces the lack of funds allocated for services for children and when competent international institutions explicitly advise in favour of existence of a single national human rights institution.

Procedure

In a *sui generis* (of its own kind, unique) process, free from excessive formalities, the Protector of Citizens controls the respect for citizens' rights and identifies violations committed by enactments, actions or failure to act on behalf of administrative authorities, insofar as they involve violations of national-level laws, other regulations and general instruments. The Protector of Citizens controls whether public authorities act lawfully and properly in matters concerning the rights, freedoms or lawful rights of the citizens. Where this is not the case, the Protector of Citizens identifies the omission and recommends ways to rectify it in the case in question and in other cases.

Of far greater interest to the Protector of Citizens than mere formal adherence to the law are ethical conduct, diligence, impartiality, qualifications, soundness, effectiveness, respect for a person's dignity and other characteristics that should be inherent in the public administration which the citizens rightly expect from those they pay as taxpayers.

Legal nature of instruments passed by the Protector of Citizens

The Protector of Citizens does not decide on the rights, responsibilities and lawful interests of the citizens; instead, he investigates (controls) the work of public authorities and organisations and, where any omission is identified, influences on them in order to rectify the omission. Hence, instruments passed by the Protector of Citizens are not subject to appeal or other remedies.

The recommendations, stands and opinions of the Protector of Citizens are not legally binding. The job of the Protector of Citizens is not to force anyone into compliance, but to use the power of arguments, as well as his/her institutional and personal authority, in order to make a case for rectifying the omissions and improving the work.

Public authorities and organisations, however, are required under the law to cooperate with the Protector of Citizens, give him/her access to their offices and make available any and all relevant information they may possess, regardless of the classification level (where this is in the interest of the investigation). Non-compliance with this statutory duty results in the initiation of appropriate disciplinary and other procedures. However, even in those procedures the Protector of Citizens has no decision-making powers, being vested instead only with the power to initiate them.

The Protector of Citizens may recommend the removal of an official he/she considers responsible for a violation of citizens' rights, initiate disciplinary procedures against employees of public authorities and file reports or petitions for initiation of criminal, infringement or other relevant proceedings.

Relationship with other independent authorities

In the protection of specific rights and freedoms, overseen by special, specialised independent authorities formed under the law (the Commissioner for Information of Public Importance and Personal Data Protection, the Equality Commissioner and others), the Protector of Citizens cooperates with those authorities to improve the exercise and protection of those rights. In cases of complaints against violations of those rights, the Protector of Citizens acts only after the citizens have exhausted all remedies before the relevant specialised independent authority. In exceptional cases, the Protector of Citizens is authorised to launch an investigation at his/her discretion even before the citizens have addressed another specialised independent authority if he/she believes any of the special circumstances provided for in the Law on the Protector of Citizens pertain (if a complainant would suffer irreparable damage or if a complaint relates to a violation of the principle of good governance, including in particular unfair treatment of the complainant by the public authority concerned, undue delays or other violations of the code of ethical conduct for civil servants). Citizens have the right to complain to the Protector of Citizens against other independent specialised authorities in charge of protection of citizens' rights if they believe their rights have been violated by unlawful or irregular actions of such authorities.

Under the Law on the Protector of Citizens, Ombudsmen of the Autonomous Province and local self-governments are required to receive complaints from citizens even if they fall within the sphere of competence of the Protector of Citizens and to forward such complaints to the Protector of Citizens for handling without delay, and *vice versa*.

The Law on the Protector of Citizens should regulate in a better and more reasonable way the relations and distribution of powers between the Ombudsmen of the Autonomous Province and local self-governments and the Protector of Citizens.

Work outside the head office

Under the Law on the Protector of Citizens, the Protector may form offices outside the institution's head office by passing a decision. The possibilities for doing so are objectively limited by the size of the Protector's Secretariat, which is determined by the job classification rules and the budget.

The Protector of Citizens regularly performs his duties in the head office and in three offices outside the head office (in Bujanovac, Presevo and Medvedja). Two of those offices are open on two working days every week, while the third one is open one working day every week (all are staffed by the same employees).

With the financial support of the Norwegian Government, in libraries in 15 cities and towns in Serbia⁹⁴ citizens can talk to employees in the Secretariat through video links established with the head office of the Protector of Citizens and file complaints (which are then forwarded in writing to the Protector of Citizens by libraries).

For the purposes of conducting investigations and preventive and educational activities, the Protector of Citizens and the staff of the Secretariat travel every day to cities and towns across Serbia.

⁹⁴ Bačka Palanka, Bor, Čačak, Dimitrovgrad, Jagodina, Kragujevac, Leskovac, Novi Pazar, Požarevac, Prijepolje, Sombor, Užice, Valjevo, Vršac, Zaječar.

PART II A CLOSER LOOK AT THE REFUGEE CRISIS

BEGINNING OF THE REFUGEE CRISIS

From the beginning of 2015, the Republic of Serbia was experiencing an increase in the number of persons who expressed intent to seek asylum, which was exacerbated in mid-2015, when refugees and migrants crossed the country's borders first in their hundreds and soon after in their thousands. The competent authorities, as well as international and non-governmental organisations, made efforts to help the migrants and refugees through humanitarian assistance at entry and exit border crossing points, as well as through the process of registration and issuing of documents they needed to move freely in the territory of the Republic of Serbia. Due to the lack of a more appropriate mechanism based on relevant legislation, the process of registering these persons was done in accordance with the Law on Asylum.⁹⁵

In the initial months there were calls to increase the capacities for registration of persons, especially at the Reception Centre opened in Preševo, as well as in Belgrade, as the "hotspot" on the migration route through Serbia. On average, some 1,000 migrants and refugees stayed every day in the parks near the railway and bus stations in the Serbian capital. Of particular concern was the fact that persons stayed outdoors exposed to the elements, which made the need for providing them with appropriate accommodation all the more pressing as inclement weather was approaching. Although competent authorities had provided accommodation at the Asylum Centre in Krnjača near Belgrade during rainy days, the persons who stayed at the park were unwilling to move there.

CLOSING OF THE HUNGARIAN BORDER AND CHANGE OF THE MIGRATION ROUTE

The main route of migration towards Western European countries passed through Hungary until 15 September 2015, when Hungary closed its border crossings with the Republic of Serbia. After that, the route taken by refugees on their way through Serbia shifted towards the town of Šid near the Croatian border. In just ten days after the closing of the Hungarian border, 49,509 refugees crossed the border and entered the Republic of Croatia⁹⁶, which prompted the country's authorities to close all border crossing points with the Republic of Serbia. Refugees entered the no-man's land between Serbia and Croatia through the nearby fields and stayed there until Croatian police officers allowed them to enter the Republic of Croatia.

Following the signing of a cross-border cooperation agreement between the Serbian and Croatian Ministers of Internal Affairs, a direct train line from Serbia (Šid) to Croatia (Slavonski Brod) was introduced to carry refugees and migrants.

In the meantime, the European Union and Western Balkan countries agreed on a 17-point plan of action to deal with the refugee crisis.⁹⁷ As a direct consequence of implementation of this plan, the countries of the region, including Serbia, changed their migration policy in the second half of November, when they implemented the policy of differentiating between "migrants" and persons coming from the war-torn region. To be eligible to enter any of these countries, migrants must meet two conditions: they must come from Syria, Iraq or Afghanistan and they

⁹⁵ Law on Asylum, *Official Gazette of RS* No. 109/07.

⁹⁶ Report of the National Preventive Mechanism of the Visit to the Regional Border Police Centre on the Border with the Republic of Croatia of 7 October 2015.

⁹⁷ For more information, see: http://europa.eu/rapid/press-release_IP-15-5904_en.htm.

must have an identity document as proof of their identity; such documents are additionally verified through translators, which further devalues the concept of international protection.

Conversely, the participants of the international conference “*Ombudsman/National Human Rights Institutions: Human Rights. Challenges in Refugee/Migrant Crisis*” held on 23-24 November 2015 in Belgrade under the auspices of the Protector of Citizens noted that all states are subject to compliance with international and European human rights obligations, in particular in providing appropriate procedures for determining the right to seek and enjoy asylum, for determining the conditions under which migrants and refugees may remain, and the obligation to ensure that the principle of “*non-refoulement*” is respected.⁹⁸

The terrorist attacks in Paris and incidents elsewhere in Europe further aggravated the position of these persons when the transit and destination countries faced additional security challenges and isolated incidents perpetrated by individuals threatened to undermine the enjoyment of rights of the vast majority of the refugees.

EXISTING SYSTEM OF CARING FOR REFUGEES AND MIGRANTS

Recording

Registration and recording of migrants and refugees by issuing certificates of stated intent to seek asylum was one of the measures undertaken by the Republic of Serbia since the very beginning of the refugee crisis, which created a false impression that there were many asylum-seekers in Serbia.⁹⁹ Although nearly 600,000 certificates of intent to seek asylum were issued in 2015, only 11,360¹⁰⁰ persons appeared at asylum centres and even they were gone in a matter of days. On the other hand, waiting times for the certificates were excessively long, as pointed out by the Protector of Citizens, among others.¹⁰¹

As applicable regulations could not be fully enforced in the new circumstances, in late September 2015, as a provisional solution, the Government passed the Decision on Issuing of Certificates of Entry in the Territory of the Republic of Serbia for Migrants arriving from Countries where their Lives are in Danger.¹⁰² However, this Decision was not applied in practice in 2015.

Organising Transit through Serbia

During joint visits conducted within the framework of regional cooperation with the ombudsmen of Macedonia and Croatia, the Protector of Citizens concluded that arrangements for the transit of refugees through Serbia were not efficient enough, while risks of corruption and involvement of informal groups were high.¹⁰³ Namely, refugees cross the border between Serbia and Macedonia on foot, taking a dirt road all the way to the camp in Miratovac. As most of them also walk from the camp in Miratovac to the village of Miratovac, from where buses transfer them free of charge to the Reception Centre in Preševo, the Protector of Citizens recommended that the vehicles that transport refugees from the camp to the Reception Centre

⁹⁸ The outcome of the conference was the Declaration on the Protection and Promotion of the Rights of Refugees and Migrants. For more information, see: http://www.ombudsman.rs/index.php/lang-sr_YU/component/content/article/4467.

⁹⁹ Some of the centres also register persons. Examples for this are the Reception Centre in Preševo and the makeshift reception centre in Dimitrovgrad, which is actually situated in the police station in that town.

¹⁰⁰ Figure obtained from the Commissariat for Refugees and Migration.

¹⁰¹ Before the opening of the Reception Centre in Preševo, the Police Station in Preševo was stretched beyond capacity. As an illustration, 853 certificates of intent to seek asylum were issued in May, 7,141 in June and 3,207 in the first seven days of July alone.

¹⁰² Official Gazette of the Republic of Serbia No. 81/15.

¹⁰³ Analysis of the Protector of Citizens: “Differences in Treatment of Refugees along the Balkans Route”, 9 February 2016.

in Preševo be allowed to access the camp in Miratovac. From Preševo refugees take buses operated by private carriers at their own expense or even taxis to reach the Reception Centre in Adaševci and then on to Šid, where they board a train that takes them to Croatia. The bus fare for this route was 35 euros per person and was charged in that currency, without a receipt. The buses were mostly filled above capacity, but travelled unchecked by inspectorates.



Picture 1 *Joint visit to refugees camp on Serbo-Croatian border: Protector of Citizens Saša Janković and Croatia Ombudswoman Lora Vidović at the Reception Centre in Šid, December 2015.*

Conditions of Accommodation and Care

The activities of admission and caring for refugees and migrants involve governmental and non-governmental entities, the Commissariat for Refugees and Migration, the Ministry of Internal Affairs, the Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Health, the Ministry of Defence and international and non-governmental organisations. Coordinating the activities of all actors was a major challenge.¹⁰⁴ Due to a large influx of persons and a shortage of staff at reception centres, the material conditions of accommodation, especially with regard to hygiene and sanitation, have on occasion been very poor.¹⁰⁵ Furthermore, in order to protect persons with disabilities, the Protector of Citizens issued a recommendation to adapt a room at the Reception Centre in Preševo for accommodation of these persons.¹⁰⁶

¹⁰⁴ Analysis of the Protector of Citizens: “Differences in Treatment of Refugees along the Balkans Route”, 9 February 2016.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*



Picture 2 *Improved conditions for the reception of refugees/ migrants in the Reception Centre in Preševo – a hood set on the entrance of the Reception Centre*

Treatment of (Unaccompanied) Minors

In the course of 2015, 172,965 certificates were issued for minors and 10,645 for unaccompanied minors. The asylum centres housed 1,278 unaccompanied minors in total, all of whom left those centres of their own volition soon afterwards. Also, according to the information available to the Protector of Citizens, the reception units for unaccompanied foreign minors in Belgrade and Niš housed some 100 unaccompanied children.¹⁰⁷

Institutionalised care for unaccompanied minors is provided at open-type institutions and the minors often leave the institutions where they are placed of their own volition.

In view of the new circumstances, the Ministry of Labour, Employment, Veteran and Social Affairs supplemented the existing regulations with special Instructions on the Actions of Guardianship Authorities.¹⁰⁸

ASYLUM SYSTEM, READMISSION AND MISDEMEANOUR PUNISHMENT OF REFUGEES

Asylum System

Of the total number of persons who stated intent to seek asylum, only 669 were registered and only 586 persons actually applied for asylum. A total of 561 decisions were passed pursuant to asylum applications. Of that number, 16 persons were granted asylum, 14 persons were granted subsidiary protection, the asylum applications of 29 persons were dismissed, in 11 cases the asylum applications were rejected, while in 547 cases the procedure was terminated.¹⁰⁹

¹⁰⁷ NPM Report of Visit to Residential Facility "Vasa Stajić" of 15 July 2015 and NPM Report of Visit to the Children and Youth Education Facility in Niš of 15 July 2015.

¹⁰⁸ Instructions on Actions of Centres for Social Work and Residential Social Security Institutions in the Provision of Care and Accommodation to Unaccompanied Underage Migrants No. 110-00-00469/2015-14 of 10 July 2015.

¹⁰⁹ Data obtained from the Ministry of Internal Affairs.

Readmission

In 2015, the Republic of Serbia received approximately 5,500¹¹⁰ foreign nationals under readmission agreements, most of them from Hungary (approximately 5,240).¹¹¹ Return of third-country nationals to neighbouring countries in the readmission process was arranged only with Bulgaria, while the Readmission Agreement with Macedonia¹¹² was again not applied in 2015. During this period, 119 third-country nationals were returned to Bulgaria.

The persons who were received in readmission procedures as a rule received misdemeanour punishments for illegally crossing the national border.

Misdemeanour Punishment of Refugees

During the reporting period, 14,343¹¹³ petitions for misdemeanour proceedings for illegal crossing of the national border were filed. The largest number of such petitions was filed by the Police Administration of Kikinda (6,018) and the Police Administration of Subotica (5,784). To put an end to the practice of imposing misdemeanour punishments on refugees from war-torn countries, the Protector of Citizens issued a recommendation¹¹⁴ calling on the Ministry of Internal Affairs to abolish the practice of filing petitions for misdemeanour proceedings for illegal crossing of the national border and illegal stay in the country. The number of petitions for misdemeanour proceedings was significantly lower after the recommendation was issued; thus, in November 2015 there were 36 such petitions, while in December there were 41.

Challenges of the Refugee Crisis

The influx of a large number of refugees and migrants has created political, security-related, social and humanitarian challenges for the countries of their transit and admission. The terrorist attacks in Paris in particular highlighted the need to strike a balance between humanitarian considerations and the need to preserve national security.

Inevitably, the refugee crisis has caused new, additional problems and in this regard Serbia is no different from other countries along the route taken by the refugees and migrants. While Serbia may be capable of addressing some of those shortcomings on its own through changes in the existing practices, technical and human resources capacity building and legislative amendments, others will have to wait until a comprehensive regional, Pan-European or even global solution is found.

Through his work, the Protector of Citizens has drawn attention to both of these dimensions through his continual presence at the key points where migrants and refugees stayed, his recommendations issued to competent authorities and permanent contacts with the institutions of transit and destination countries. While the competent authorities have complied with many of the recommendation issued in 2015, there is still room for improving the quality of admission and protection of rights of migrants and refugees. Also, the effects of some of the recommendations will only be visible in the coming months and years.

¹¹⁰ Data obtained from the Ministry of Internal Affairs.

¹¹¹ Mostly Syrians (3,955), Iraqis (511) and Afghanis (220).

¹¹² Law on Ratification of the Agreement between the Government of the Republic of Serbia and the Government of the Republic of Macedonia on Readmission and Acceptance of Persons whose Entry or Stay is Illegal, with the Protocol signed between the Government of the Republic of Serbia and the Government of the Republic of Macedonia on Implementation of the Agreement between the Government of the Republic of Serbia and the Government of the Republic of Macedonia on Readmission and Acceptance of Persons whose Entry or Stay is Illegal (Official Gazette of RS - International Treaties No. 1/11).

¹¹³ Data obtained from the Ministry of Internal Affairs.

¹¹⁴ NPM Report of Visit to the Border Police Regional Centre on the Border with Hungary, the Police Administration of Subotica, the Police Station in Kanjiža and the Centres for Social Work in Kanjiža and Subotica of 7 October 2015.

In addition to a proactive approach of competent authorities, it is crucial to consistently respect the duty not to punish refugees for illegal entry and stay and insist on conducting the deportation procedures in a way which ensures full respect for migrants' human rights and fundamental freedoms. Consideration should also be given to the basic postulates of the system of refugee protection: the right to asylum as an individual right; *non-refoulement*; access to asylum procedures; and ensuring fair and efficient asylum procedures. Improving the situation and treatment of those who are the most vulnerable, including in particular (unaccompanied) minors, should be set as a priority.

PART III OVERVIEW BY AREAS / SECTORS

3.1. CHILD RIGHTS

I BACKGROUND

1. Key Government's achievements

- 1.1. The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children has been ratified.¹¹⁵
- 1.2. Diagnosing and treating ill children abroad has been made possible with the enactment of the Law on Prevention and Diagnosing of Genetic Disorders, Genetically Caused Anomalies and Rare Diseases.¹¹⁶
- 1.3. The Law amending the Law on Protection of Citizens against Contagious Diseases has been enacted.¹¹⁷
- 1.4. The Bylaw on Immunisation and Manner of Protection by Medicines has been enacted.¹¹⁸
- 1.5. The Law on Execution and Security has been enacted.¹¹⁹
- 1.6. The Law amending the Law on Police has been enacted.¹²⁰
- 1.7. The Bylaw on the Manner of Keeping Special Records of Persons Accused for Criminal Offences against Sexual Freedom of Minors has been enacted.¹²¹
- 1.8. The Law on Textbooks has been enacted.¹²²
- 1.9. The Bylaw on Detailed Requirements for Bilingual Education¹²³, the Bylaw on Grading of Pupils in Secondary Education¹²⁴, the Bylaw on Basic Elements of the Programme of Upbringing¹²⁵ and the Bylaw on Continual Professional Advancement of Teachers, Trainers and Teaching Assistants¹²⁶ have been enacted.
- 1.10. The Bylaw on the Protection of Minors in the Provision of Media Services¹²⁷ and the Bylaw on the Protection of Human Rights in the Provision of Media Services¹²⁸ have been enacted.
- 1.11. The Law on Sports has been enacted.¹²⁹

¹¹⁵ Official Gazette of RS - International Treaties, No. 20/15.

¹¹⁶ Official Gazette of RS, No. 08/15.

¹¹⁷ Official Gazette of RS, No. 125/04 and 36/15.

¹¹⁸ Official Gazette of RS, No.11/06, 25/13, 63/13, 99/13, 118/13, 65/14 and 32/15.

¹¹⁹ Official Gazette of RS, No. 106/15 (will come into force on 1 July 2016).

¹²⁰ Official Gazette of RS, No. 64/15.

¹²¹ Official Gazette of RS, No. 76/15.

¹²² Official Gazette of RS, No. 68/15.

¹²³ Official Gazette of RS, No. 105/15.

¹²⁴ Official Gazette of RS, No. 67/15.

¹²⁵ Official Gazette of RS - Education Journal, No. 03/15.

¹²⁶ Official Gazette of RS, No. 86/15.

¹²⁷ Official Gazette of RS, No. 25/15.

¹²⁸ Official Gazette of RS, No. 55/15.

¹²⁹ Official Gazette of RS, No. 10/16.

2. Results achieved by the Protector of Citizens

- 2.1. In compliance with the recommendations issued by the Protector of Citizens¹³⁰, the Ministry of Health amended the Bylaw on Immunisation and Manner of Protection by Medicines and thus eliminated the obstacles which prevented the administering of pentavalent vaccines to all children who began their immunisation with this vaccine, regardless of the date of their birth.
- 2.2. By providing sound services and advice to the Ministry of Health and Public Health Institute "Dr. Milan Jovanovic Batut", the Protector of Citizens contributed to amendment and supplementation of the Law on the Protection of Population from Infectious Diseases.
- 2.3. Through his publication *Prevention and Protection of Children from Sexual Abuse and Sexual Exploitation*¹³¹ and a working meeting with the relevant administrative authorities¹³², the Protector of Citizens made more visible the situation of children who are victims of criminal offences and their repeat traumatising and secondary victimisation in criminal law proceedings and drew attention to those aspects of work and cooperation of administrative and judicial authorities where improvements are needed.
- 2.4. In his publication *Protection of Children from Violence, Abuse and Neglect*¹³³, the Protector of Citizens made more visible the situation of children who are victims of violence and drew attention to key deficiencies where competent authorities, institutions and services need to improve their work.
- 2.5. In the capacity of the NPM, the Protector of Citizens visited reception and asylum centres in Banja Koviljača, Loznica, Pirot, Dimitrovgrad, Preševo, Subotica and Kanjiža, police administrations, border police centres and centres for social work and whether, in what way and to what extent the rights of refugee/migrant children were ensured and protected.¹³⁴
- 2.6. The Law on Textbooks builds heavily on the recommendations¹³⁵ issued by the Protector of Citizens to the Ministry of Education, Science and Technological Development, the Institute for Advancement of Education and the National Education Council in the past years.
- 2.7. In compliance with the proposals made by the Protector of Citizens in the 2013 and 2014 Annual Reports and the recommendations issued in the special report of the Protector of Citizens titled "Protection of Children from Violence in Schools"¹³⁶, the Ministry of Education, Science and Technological Development passed the Bylaw on Continual Professional Advancement of Teachers, Trainers and Teaching Assistants.

¹³⁰ Available at:

http://www.ombudsman.pravadeteta.com/attachments/689_3755_preporuke%20vaccine%20FINAL.doc.

¹³¹ Available at:

http://www.ombudsman.pravadeteta.com/attachments/394_publikacija%20Lanzarot%20pdf.pdf.

¹³² Available at:

http://www.pravadeteta.com/index.php?option=com_content&view=article&id=726%3A2015-11-16-21-22-40&catid=38%3A2012-04-09-12-59-17&Itemid=89&lang=sr.

¹³³ Available at: http://www.pravadeteta.com/attachments/394_Za%C5%A1tita%20dece%20-%20za%20WEB.pdf.

¹³⁴ For more information, see the sections of this Report dealing with the refugee crisis and the National Preventive Mechanism.

¹³⁵ For more information, see:

<http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/2110-2012-01-19-08-58-38;>

<http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/2595-2012-11-23-12-54-23>.

¹³⁶ Available at:

<http://www.zastitnik.rs/attachments/izvestaj%20zastita%20deca%20od%20nasilja%20u%20skolama.pdf>.

- 2.8. In compliance with the recommendations issued by the Protector of Citizens¹³⁷, the authorities of the City of Belgrade and the City of Kragujevac passed general enactments by which they adjusted the co-financing share paid by parents towards the costs of their children's placement at preschool institutions to the Law on Preschool Education.¹³⁸
- 2.9. Complying with the recommendations of the Protector of Citizens¹³⁹, education authorities remedied the omissions concerning the unlawful requirement for pupils to pay the so-called "pupils' contribution" in order to be able to enrol in schools.
- 2.10. In accordance with the initiative of the Protector of Citizens¹⁴⁰, the provisions regulating contracts between sport clubs/organisations and underage athletes have been introduced in the Law on Sports.
- 2.11. The Protector of Citizens contributed to awareness raising and dissemination of knowledge on the rights of the child in health care, focusing on health care for Roma and other vulnerable groups of children, through trainings of paediatricians and visiting nurses.
- 2.12. the Ministry of Labour, Employment, Veteran and Social Affairs provided the Protector of Citizens with information on the activities it has undertaken to ensure regular and proper treatment of refugee children found in the territory of the Republic of Serbia, in accordance with all international standards and ratified international documents, in connection with the recommendation issued by the Protector of Citizens¹⁴¹ with a view to improving the process of affording guardianship care to these children, which the Protector of Citizens issued after an oversight of the activities of administrative authorities in his capacity of the National Preventive Mechanism.¹⁴²
- 2.13. In 2015, the Protector of Citizens received 446 complaints in this field about 714 violations of rights. In the same period, he completed the investigations in a total of 438 cases received in 2015 and in earlier years. Of the total of 133 investigations, 40 (30.08%) were closed by issuing of recommendations in expedited oversight procedures. In the remaining cases, the Protector of Citizens conducted oversight and issued 201 recommendations, of which 49 (24.38%) have been accepted, 8 (3.98%) have not been implemented and 144 are still pending compliance. Based on the numbers of identified (97) and remedied (89) omissions¹⁴³, the efficiency rate in this field is 91.75%.

3. Shortcomings at the national level

- 3.1. The Optional Protocol to the UN Convention on the Rights of the Child on a communications procedure for filing complaints with the Committee on the Rights of the Child, which Serbia signed in February 2012, has not yet been ratified.
- 3.2. The Criminal Code has not been harmonised with Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.¹⁴⁴

¹³⁷ Available at:

http://www.ombudsman.pravadeteta.com/attachments/687_%D0%A3%D1%82%D0%B2%D1%80%D1%92%D0%B5%D1%9A%D0%B5%20%D0%B8%20%D0%BF%D1%80%D0%B5%D0%BF%D0%BE%D1%80%D1%83%D0%BA%D0%B5.pdf.

¹³⁸ Official Gazette of RS, No. 18/10.

¹³⁹ Available at:

http://www.ombudsman.pravadeteta.com/attachments/692_3838_preporuka%20djacki%20dinar.doc

¹⁴⁰ Enactment of the Protector of Citizens No.218-219/12 of 30 September 2013

¹⁴¹ Available at: http://ombudsman.npm.rs/attachments/591_IzvestajposetaPirotuiDimitrovgradu.pdf

¹⁴² For more information, see the section of this Report dealing with NPM.

¹⁴³ The number of omissions identified is the sum of suspended investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of suspended investigations and implemented recommendations.

¹⁴⁴ Law on Ratification of Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Official Gazette of RS - International Treaties, No. 19/09.

- 3.3. Children who are crime victims are not sufficiently protected from secondary traumatisation and victimisation in proceedings before law enforcement agencies and judicial authorities.
- 3.4. No appropriate and effective support and assistance mechanism is in place for parents who care for children with developmental disorders, children with disabilities or severely ill children whose condition requires constant care, attendance and support.
- 3.5. The system of additional support in education to children with developmental disorders and disabilities is not sufficiently developed and the existing support services are not provided to a sufficient extent.
- 3.6. The bylaws setting out the criteria and standards for financing education institutions passed in 2015¹⁴⁵ have linked the number of professional assistants at education institutions solely to the number of classes, without taking into account the needs of pupils and the existing issues identified in the implementation of inclusive education and protection of children from violence, abuse and neglect.
- 3.7. The Ministry of Education, Science and Technological Development has not passed secondary legislation that would set out in detail the conditions for and manner of schooling of pupils in extended home or hospital treatment, home schooling and distance learning, which obstructs the development of new forms of educational support to pupils with health issues, developmental disorders and disabilities.
- 3.8. Ten years after passing of the General Protocol and the Special Protocols on the Protection of Children from Abuse and Neglect, a functional system for protection of children against violence has not been established.
- 3.9. Response of schools to violence is often not in line with the rules and standards applicable to cases of suspected/identified violence and education inspectorates do not properly enforce compliance of schools with those rules and standards.
- 3.10. Children living and working on the streets do not have access to services and measures that would ensure their development in the family, inclusion in education and the community, access to health care and social security services and full protection from violence, mistreatment, neglect and exploitation.
- 3.11. Children with developmental disorders and children living and working on the streets do not have sufficient services available.
- 3.12. Enforcement of final and enforceable court judgements relating to children is still not efficient enough and there is a lack of cooperation between courts, prosecution offices, guardianship authorities and the police with the aim of swift, lawful and proper enforcement, bearing in mind the child's best interests.
- 3.13. Corporeal punishment of children is still not outlawed as a form of education and information on the harmfulness of corporeal punishment of children and the alternatives to this method of disciplining children is not widely available to the citizens.
- 3.14. The Government has not considered the initiative submitted by the Protector of Citizens for amendments to the Law on financial Support to Families with Children.¹⁴⁶

¹⁴⁵ Bylaw on the Criteria and Standards for Financing of Primary Education Institutions (Official Gazette of RS, No. 75/15), Bylaw on the Criteria and Standards for Financing of Primary Education Institutions (Official Gazette of RS, No. 36/15), Bylaw on the Criteria and Standards for Financing of Secondary Education Institutions (Official Gazette of RS, No. 72/15 and 84/15), Bylaw on the Criteria and Standards for Financing of Secondary Education Institutions (Official Gazette of RS, No. 36/15).

¹⁴⁶ Available at:

http://www.ombudsman.pravdeteta.com/attachments/674_9-2-25-14-Inicijativa%20Vladi.doc

- 3.15. Amendments to the Law on Health Insurance¹⁴⁷ have put children with health issues at a disadvantage compared with healthy children in terms of enjoying the right to health care abroad at the expense of health insurance, even when they are abroad undergoing an educational process within the framework of the regular education system of the Republic of Serbia.
- 3.16. Local self-government units have not fully remedied omissions and have not undertaken measures to compensate or mitigate damage caused by unlawful charging of co-payment costs to parents for the placement of their children at pre-school facilities.
- 3.17. Media reporting on children and images of children in the media are fraught with sensationalism and violations of the right to privacy and protection of the child's identity; the media do not pay sufficient attention to ensuring that the content and texts intended for children are age-appropriate, while the authorities in charge of overseeing compliance with the media laws do not conduct investigations or undertake measures within their remit.
- 3.18. An investigation mechanism for the "missing babies" cases in accordance with the judgement of the European Court of Human Rights has not been put in place, while the Draft Law on Finding Facts about the Status of New-born Children thought to have disappeared from Birth Clinics in Serbia contains shortcomings which will hamper efficient investigation of these cases.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

- 4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:
- **The National Assembly** should consider the Bills of Amendments to the Law on Financial Support to Families with Children submitted by the Protector of Citizens;
 - **The National Assembly** should draft and submit to the National Assembly for enactment a Bill of Amendments to the Law on Financial Support to Families with Children, in accordance with the Initiative launched by the Protector of Citizens;
 - **The Ministry of Justice** should step up its efforts to harmonise Serbian regulations with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, with a view to ensuring full protection of child victims from secondary traumatisation and victimisation;
 - **The Government** should enable the reintroduction of services for children that have been discontinued due to austerity measures and should plan and implement economic policy measures in such a way as to avoid any further deterioration of the existing level of standards in the exercise of child rights;
 - **The Ministry of Education, Science and Technological Development and education inspectorates of local self-governments** should increase the inspection coverage of education institutions in cases of violence against pupils, including in particular timely, proper and diligent implementation of the Law on Basic Elements of the Education System, the Regulations on the Protocol of Actions taken by Institutions in Response to Violence, Abuse and Neglect, the General Protocol on the Protection of Children from Abuse and Neglect and the Special Protocol on the Protection of Children and Pupils from Violence, Abuse and Neglect in Education Institutions;

¹⁴⁷ Official Gazette of RS, No. 106/15.

- **The Ministry of Education, Science and Technological Development and education inspectorates of local self-governments** should ensure efficient and timely initiation and conduct of proceedings to determine personal responsibility of school staff for violations of the prohibition of violence, abuse and neglect, negligence at work and omissions in the implementation of measures to protect children from violence, abuse and neglect;

- **The Ministry of Education, Science and Technological Development** should intensify the activities aimed at regulating the services of additional support and assistance to pupils with developmental disorders in education, the types of those services, the methods of their provision and financing, the procedure of assessment of the child's/pupil's needs and formation, operation and control of cross-departmental committees;

- **The Government** should draft and submit to the National Assembly for enactment a law that would outlaw corporeal punishment of children in all environments;

- **The Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Health and the Ministry of Education, Science and Technological Development** should organise public awareness raising campaigns on the harmfulness of corporeal punishment of children and the alternatives to this method of disciplining children and provide expert assistance and support to parents in the education of their children through the mechanisms of social and health care services (parent counselling, phone lines, "parenting classes" etc.);

- **The Ministry of Youth and Sports** should adopt a Protocol for the Protection of Children and Youth from Violence in Sports and Recreational Activities; **the Ministry of Education, Science and Technological Development** should ensure that primary school "Sreten Mladenovic Mika" complies with the recommendations of the Protector of Citizens and takes steps to determine individual responsibility for past failures to comply with the recommendations;

- **The Ministry of Internal Affairs** should ensure that the Police Administration of Novi Sad complies with the recommendations of the Protector of Citizens and takes steps to determine individual responsibility for past failures to comply with the recommendations.

4.2. **The Government** has not considered the initiative¹⁴⁸ submitted by the Protector of Citizens draft and submit to the National Assembly for enactment a Bill on Ratification of the Optional Protocol to the UN Convention on the Rights of the Child on a communications procedure for filing complaints with the Committee on the Rights of the Child.

4.3. **The Ministry of Justice** has not considered the initiative submitted by the Protector of Citizens for amendments to the Criminal Code¹⁴⁹ with the aim of ensuring its harmonisation with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

¹⁴⁸ Available at:

http://www.ombudsman.pravdeteta.com/index.php?option=com_content&view=category&layout=blog&id=42&Itemid=87&lang=sr

¹⁴⁹ The initiative was submitted to the Ministry of Justice and Public Administration on 13 October 2011 and 19 November 2011, available at: <http://www.xn--80aneakq7ab5c.xn--90a3ac/index.php/lang-sr/YU/zakonske-izdruge-inicijative/1529-2011-10-14-09-40-39>.

- 4.4. An investigation mechanism for the “missing babies” cases in accordance with the judgement of the European Court of Human Rights and the Special Report and Recommendation of the Protector of Citizens has not been put in place.¹⁵⁰
- 4.5. Even after four years, public authorities have not complied with the recommendations given by the Protector of Citizens in the Special Report titled “Child Begging in the Republic of Serbia”.¹⁵¹
- 4.6. **The competent authorities of the city of Belgrade and the city of Kragujevac** have not fully remedied the omissions made in earlier years and have not complied with recommendations given by the Protector of Citizens to mitigate the consequences of unlawful charging of co-financing paid by parents for the placement of children in pre-school institutions.
- 4.7. Contrary to the opinion of the Protector of Citizens, **the Ministry of Youth and Sport** included in the new Law on Sports a provision under which medical examinations covered by compulsory health insurance would be provided to child athletes only until they turn 14.

5. Explanation

The Republic of Serbia signed the Optional Protocol to the UN Convention on the Rights of the Child on a communications procedure for filing complaints with the Committee on the Rights of the Child in 2012 and the Protector of Citizens has filed an initiative for enactment of a law on its ratification. However, the Protocol is still not transposed in the Serbian legal system because the Government has not drafted a relevant Bill and submitted it to the National Assembly for debate.

Ratification of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children ensured better protection of the child’s rights and interests in cases where the laws of two or more countries apply. Ratification of this Convention will enable more expedient recognition of child protection decisions, swift determination of jurisdiction and governing law and efficient implementation of urgent protection measures. It also facilitates and simplifies the procedure of cooperation between Serbian authorities and the competent authorities of foreign countries.

The Law on Prevention and Diagnosing of Genetic Disorders, Genetically Caused Anomalies and Rare Diseases sets out the conditions for and possibilities of diagnosing and treating ill children abroad in cases where the Serbian health care system is unable to provide the required services.

In compliance with the recommendations issued by the Protector of Citizens, the Ministry of Health cooperated with the Public Health Institute “Dr. Milan Jovanovic Batut” to amend the Bylaw on Immunisation and Manner of Protection by Medicines and eliminated the obstacles which prevented the administering of pentavalent vaccines to all children who began their immunisation with this vaccine, regardless of the date of their birth. Under the amendments to the Law on the Protection of Population from Infectious Diseases, vaccination of children and persons declared incompetent against the infectious diseases which are subject to compulsory vaccination under the law does not require written consent of the child’s or

¹⁵⁰ Recommendation available at:

www.ombudsman.pravdeteta.com/index.php?option=com_content&view=article&id=203%3A2012-05-21-21-20-11&catid=43%3A2012-04-09-13-00-20&Itemid=88&lang=sr.

¹⁵¹ Report prepared and published in 2011, available at: http://www.zastitnik.rs/attachments/1597_brosura_Final%20ddd.pdf

incompetent person’s legal representative.¹⁵² This remedied the incongruence between this Law and the Law on the Rights of the Child and eliminated the legal possibility of refusing the compulsory vaccination of children. By providing sound services and advice in a meeting convened with the Ministry of Health, the Public Health Institute “Dr. Milan Jovanovic Batut” and the Republic Health Insurance Fund, the Protector of Citizens highlighted the need to undertake measures to provide clearer and more complete information and educate parents and the public on all facts concerning the vaccination of children against infectious diseases and the positive effects of past immunisation of the population against infectious diseases. In addition, the Protector of Citizens underscored the importance of promotional and educational efforts through wide dissemination of information.

The Law on Health Insurance has not afforded health insurance to all pupils. Thus, health insurance will not be provided to pupils with chronic diseases who stay abroad under student exchange programmes. This possibility is available only to persons who do not suffer from acute diseases or chronic diseases in an acute stage which require extended or permanent treatment. The Protector of Citizens issued an opinion¹⁵³ to the Ministry of Health and the Republic Health Insurance Fund relating to the inequality between children with health issues and healthy children solely due to their health status.

Under the amendments to the Law on Police introduced after the tragic death of Tijana Jurić, the police are required to start the search for a missing person without delay in cases where there is probable cause for suspecting the person is a victim of a criminal offence (“Tijana’s Law”).¹⁵⁴ This created legal grounds for an urgent and efficient police response in situations where the life and health of a missing person are at stake, especially when children are concerned.



Picture 3 Deputy Protector of Citizens for Children’s Rights and Gender Equality Gordana Stevanović speaking at the meeting “Protection of Children Victims of Sexual Abuse and Sexual Exploitation” in the organization of the Protector of Citizens and UNICEF Office in Serbia, Belgrade, November 2015.

¹⁵² Children are subject to compulsory vaccination against tuberculosis, diphtheria, tetanus, whooping cough, polio, measles, rubella, mumps, viral hepatitis B and diseases caused by haemophilus influenzae type B (Article 25 of the Law on the Protection of Population from Infectious Diseases).

¹⁵³ Enactment the Protector of Citizens No. 52-501/14 of 20 November 2015, available at: http://www.ombudsman.pravadeteta.com/attachments/731_4439_misljenje%20RZ.doc.

¹⁵⁴ Article 72 of the Law on Police.

The Bylaw on Keeping of Special Records of Persons Accused for Criminal Offences against Sexual Freedom of Minors provides for the keeping of records of persons who perpetrated a criminal offence against the sexual freedom of a child, which ensures a greater degree of prevention of sexual abuse and sexual exploitation of children.

Although the Law on Special Measures to Prevent the Perpetration of Criminal Offences against Sexual Freedom of Minors ("Marija's Law")¹⁵⁵ and the Bylaw on Keeping of Special Records of Persons Accused for Criminal Offences against Sexual Freedom of Minors, improvement the criminal law status of child victims is insufficient and requires redefining certain criminal offences, introducing more stringent (minimum) sentences for certain offences and amending the provisions governing security measures and methods of criminal prosecution in specific cases. Four years ago, the Protector of Citizens submitted an initiative to the Ministry of Justice to amend the Criminal Code in order to harmonise it with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), but this authority has not considered the initiative.

By his awareness-raising publication *Protection of Children from Sexual Abuse and Sexual Exploitation: Selected Recommendations, Opinions and Initiatives of the Protector of Citizens with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*¹⁵⁶ and by organising a working meeting with relevant administrative authorities, the Protector of Citizens highlighted the deficiencies in the system of criminal law protection of children who are victims of sexual exploitation and sexual abuse and the fields where the work of judicial, health care, social, education and other authorities, institutions and services must be improved. The existing regulations do not provide adequate protection of children from additional traumatising and secondary victimisation in court and other proceedings. The Protector of Citizens had already drawn attention to this issue in 2013, when he issued an opinion¹⁵⁷ to the basic and higher courts in Belgrade, Niš, Novi Sad and Kruševac and the Ministries of Justice and Public Administration, Labour, Employment and Social Policy and Health. The Protector of Citizens noted that courts had not established the practice of questioning children in criminal law matters outside of court and did not use available screen rooms and audio and video recording devices appropriate for the status and needs of child victims/witnesses which provide protection from repeat traumatising when the child makes a statement and exercises his/her right to be questioned.

Parents and families of children with developmental disorders and disabilities and severely ill children in need of constant care and assistance still lack adequate support from the society. It has been three years since the Protector of Citizens bills of amendments to the Labour Law and the Law on Financial Support to Families with Children with the aim of improving the forms of support and assistance for these parents, but they have still not been examined. Since community support services for parents and children are not developed, parents continue to assume the role of support-givers. Austerity measures and restrictions on new employment have hampered the development of new services and threatened the survival of the existing ones, in particular those funded by local self-governments (rest, day care, clubs etc.).

Competent authorities have not complied with recommendations submitted by the Protector of Citizens as early as in 2011 with the aim of improving the status of children who live and work in streets. No systemic changes have been made and no systemic and appropriate response has been undertaken to address the issue of children living and working on the

¹⁵⁵ Law on Special Measures for Prevention of Criminal Offences against Sexual Freedom of Minors, Official Gazette of RS, No. 32/13.

¹⁵⁶ Available at: http://www.pravadeteta.com/attachments/394_publikacija%20Lanzarot%20pdf.pdf.

¹⁵⁷ Available at:

http://www.ombudsman.pravadeteta.com/attachments/506_14-2681-11-%20misljenje%20final.doc.

streets and the status of Roma children as the most marginalised group and even the sporadic and *ad hoc* activities are inefficient and fail to produce any significant results. Austerity measures have also jeopardised some services established for these children in a particularly vulnerable position. The city of Belgrade has not re-established a shelter for children, which it excluded from its Decision on Social Security Rights and Services¹⁵⁸, although it has provided positive results in integration of children who live and work in streets.

In August, September and October 2015, the National Preventive Mechanism supervised the situation and enjoyment or rights of child refugees and asylum seekers found in the territory of the Republic of Serbia. The NPM supervised the activities taken by administrative authorities to provide appropriate shelter, food and clothing, as well as emergency health care, social security and protection from violence, abuse, neglect and all forms of exploitation of these children at police administrations, centres for social work, regional border police centres, asylum centres and reception centres in Banja Koviljača, Dimitrovgrad, Preševo and Kanjiža. The Ministry of Labour, Employment, Veteran and Social Affairs provided the Protector of Citizens with notifications¹⁵⁹ of the activities it undertook to ensure fully regular and appropriate treatment of refugee children found in the territory of the Republic of Serbia, in accordance with all international standards and ratified international documents, in connection with the recommendation issued by the Protector of Citizens with a view to improving the process of affording guardianship care to these children.

Inclusive education remains burdened by numerous problems and weaknesses due to the lack of relevant rules and standards. Full exercise of the right of children with developmental disorders to proper and accessible education will not be possible unless legislative provisions are in place to regulate in detail the operations, funding and oversight of cross-departmental committees, additional support measures and modes of their implementation, the duties and responsibilities of competent authorities and introduction of monitoring and evaluation mechanisms, as recommended by the Protector of Citizens as early as in 2012.¹⁶⁰

The Protector of Citizens has issued an opinion¹⁶¹ to the Ministry of Education, Science and Technological Development concerning the fact that the lack of secondary legislation that would set out in detail the conditions for and manner of schooling of pupils in extended home or hospital treatment, home schooling and distance learning obstructs the development of new forms of educational support to pupils with health issues, developmental disorders and disabilities. This remains an insurmountable obstacle for these pupils in the enjoyment of their right to education, as the existing services, forms of support and education resources are insufficient and inadequate.

The bylaws setting out the criteria and standards for financing education institutions which the Ministry of Education, Science and Technological Development passed in 2015 have created an additional obstacle for inclusive education. The main issue is the fact that the number of professional assistants at education institutions is determined solely on the basis of the number of classes, without taking into account the needs of pupils and the considerations of individualised teaching, which prevents education institutions from properly assessing, planning and implementing additional and individualised assistance and support to pupils. This will create new issues and impede the addressing of the existing ones faced by schools in the implementation of inclusive education and protection of children from violence, abuse and neglect. The Protector of Citizens finds this course of action to be contrary to that

¹⁵⁸ Official Gazette of the City of Belgrade, No. 55/11, 8/12, 8/12, 42/12, 65/12, 31/13, 57/13 and 37/14.

¹⁵⁹ Instructions on the Actions of Centres for Social Work and Residential Social Security Institutions in the Provision of Care and Accommodation to Unaccompanied Underage Minors No. 110-00-00469/2015-14 of 10 July 2015.

¹⁶⁰ Available at: <http://www.zastitnik.rs/index.php/lang-sr/2011-12-11-11-34-45/2623-m-> and <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/2629-2012-12-10-09-13-58>.

¹⁶¹ Available at: http://www.ombudsman.pravdeteta.com/attachments/730_4438_misljenje%20MP.doc.

recommended in the opinion he had issued as early as in 2010, which concerned the need for more professional assistants in the system of regular education in Serbia, including psychologists in particular¹⁶², in order to improve the technical capacities of schools and their staff so they could appropriately and effectively implement inclusive education.

The system for protection of children from violence, abuse and neglect is inefficient, while prevention of violence and protection of children from violence lacks primarily adequate recognition of violence, timely response, planning, efficient taking of measures and cooperation between the authorities competent and responsible for prevention of violence and protection of children from violence. The General Protocol and the Special Protocols on the Protection of Children from Violence are implemented irregularly (or not at all in the case of judiciary authorities and the health care system) and their implementation is very often burdened by numerous shortcomings. All this makes provision of purposeful and efficient protection of children and prevention of violence against children significantly difficult or impossible.

Schooling of children remains fraught with school violence, while full implementation of the Regulations on the Protocol of Actions taken by Institutions in Response to Violence, Abuse and Neglect¹⁶³ has not been ensured. It is still either not applied at all or is applied incorrectly, which cancels any positive effects and further exacerbates the problem of violence. The system of protection of children from violence in education institutions faces an additional threat of deterioration due to the restrictions on hiring professional assistants at education institutions imposed under the bylaws setting out standards for the financing of education institutions. The legislative amendments that have been made do not take into account the current needs of pupils and schools as they face a great threat of violence. In a significant number of oversights conducted and recommendations¹⁶⁴ issued, the Protector of Citizens found that education inspectorates are not diligent enough in checking whether schools and other educational institutions comply with the regulations that govern the course of action in the event of suspected/reported violence against a pupil.

The Bylaw on Professional Advancement of Teachers, Trainers and Teaching Assistants has makes it possible to make additional education and professional advancement of employees and education institutions compulsory. Acting in compliance with the suggestions made by the Protector of Citizens in his earlier Annual Reports and the recommendations issued in the special report titled "Protection of Children from Violence at Schools", the Ministry of Education, Science and Technological Development identified the priority areas of professional advancement for the staff of education institutions in the text of the Bylaw. These include: individualised approach in the work with children and pupils; monitoring and encouraging development of children and pupils; fostering a tolerant and non-discriminatory environment for learning and development of every individual; protection from violence, abuse, neglect and discrimination; and recognising and responding to security risks.

The adopted Law on Textbooks implements many of the recommendations issued by the Protector of Citizens (concerning quality evaluation of textbooks before they are approved for use and the process of public procurement of textbooks) to the Ministry of Education, Science and Technological Development, the Institute for Advancement of Education and the National Education Council in previous years¹⁶⁵, with a view to regulating and improving the process

¹⁶² Available at:

http://www.ombudsman.pravadeteta.com/attachments/194_1633_Misljenje%20i%20preporuka%20ver%20SJ%202.doc.

¹⁶³ Official Gazette of RS, No. 30/10.

¹⁶⁴ Recommendations available at:

http://www.ombudsman.pravadeteta.com/attachments/738_4520_preporuka%20skole.doc

¹⁶⁵ Available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/2110-2012-01-19-08-58-38>;
<http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/2595-2012-11-23-12-54-23>;
<http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/3300-2014-05-13-13-18-20>.

of professional content evaluation, approval and release of textbooks for circulation, which contributes to the enjoyment of pupils' right to quality education. Furthermore, a provision of the said Law introduces free textbooks as a statutory category, rather than a project activity as had previously been the case.

The Bylaw on Basic Elements of the Programme of Upbringing passed by the National Education Council is the first document to address assistance and support services, counselling and development work with pupils placed at boarding facilities.

Passing of the Bylaw on Detailed Requirements for Bilingual Education¹⁶⁶ created the legal basis for implementing this form of education.

In compliance with the recommendations¹⁶⁷ of the Protector of Citizens, the Provincial Secretariat of Education, Administration and Ethnic Communities remedied the omissions made by education authorities concerning the unlawful requirement for pupils to pay the so-called "pupils' contribution" in order to be able to enrol in schools and acted preventively to preclude any such omissions from occurring in the future.

In many municipalities and towns/cities, the parents of pre-school children had been charged the costs of pre-school education services that exceeded the statutory maximum amount. Following the recommendations issued by the Protector of Citizens and the warning by the Ministry of Education, Science and Technological Development, the cost of this service paid by parents has been made compliance with the statutory provisions, but the competent authorities of local self-governments have not remedied or mitigated the effects of the omissions. The competent authorities of the City of Belgrade and the City of Kragujevac have not done so even after the Protector of Citizens issued recommendations for the authorities of these two cities to consider possibilities and propose ways to mitigate the effects of unlawful charging of the co-financing share paid by parents towards the costs of their children's placement at preschool institutions.

The legal prohibition of corporeal punishment has not yet taken the form of legislative provisions; likewise, there are no support services for parents that would provide them with information and educate them on alternative and far more effective methods of disciplining children, nor do they have access to appropriate and accurate information. Parenting schools have been founded sporadically and with support from international and non-governmental organisations but without strategic and systemic planning of preventative and educational activities of competent public authorities. Even though the expert community is increasingly unanimous in its condemnation of this method of disciplining children, prohibition of corporeal punishment has been the subject of a heated public debate, flamed by opinions that are not supported by experts, but are nevertheless given much space in the media and online.

The Bylaw on the Protection of Minors in the Provision of Media Services and the Bylaw on the Protection of Human Rights in the Provision of Media Services contain provisions which protect human rights and the rights of the child in electronic media. Protection of the rights of the child is improved in particular by the Bylaw on the Protection of Minors in the Provision of Media Services, which provides for the following: media content providers must bear in mind the best interest of the child¹⁶⁸; parents' consent for the child's participation in a programme does not release media content providers from responsibility for the content they broadcast¹⁶⁹; children cannot be asked on air about "sensitive family matters or topics not appropriate for their age or exposed to situations which might cause them to experience the

¹⁶⁶ Official Gazette of RS, No.105/15.

¹⁶⁷Instrument of the Protector of Citizens No. 14-2811/12 of 29 April 2015, available at: http://www.ombudsman.pravadeteta.com/attachments/692_3838_preporuka%20djacki%20dinar.doc

¹⁶⁸ Article 3 of the Bylaw on the Protection of Minors in the Provision of Media Services.

¹⁶⁹ Article 22 of the Bylaw on the Protection of Minors in the Provision of Media Services.

feelings of fear, shame, anxiety or anger¹⁷⁰; a child cannot participate in programmes covering a family conflict in which the child is directly or indirectly involved¹⁷¹; it is prohibited to broadcast programmes aiming to determine the identity of a minor's parents¹⁷²; and "a family conflict in which a minor is directly or indirectly involved cannot be used in programmes for the purpose of entertaining audiences."¹⁷³

Although the regulatory framework protecting the rights of children in the media has been improved by passing of these two important regulations, the media continue to invade children's privacy and expose them to repeat traumatisation and harmful and inappropriate content, while the response of the Regulatory Authority for Electronic Media and the Ministry of Culture and Information, which are responsible for overseeing the media, remains insufficiently efficient.

The Law on Execution and Security, which will take effect on 1 July 2016, regulates in detail the procedure for enforcement of decisions in connection with family relations and expands their application to enforcing the right to maintain personal relations with the child and enforcing the rights of the child and protection from domestic violence, as well as other decisions in connection with family relations. This improves the legal framework for protection of child rights in family disputes and prevents the exploitation and abuse of children and their emotional abuse and neglect.

In practice, however, court decisions to grant sole custody of a child to one parent, decisions allowing the child to maintain personal relations with the parent with whom he/she does not live, decisions on delivery of the child, decisions protecting the child from violence and decisions on child support are still often not enforced even after time-consuming executory and criminal proceedings. In such cases there is no effective cooperation between judicial and administrative authorities (including primarily the police and centres for social work); final and enforceable decisions are sometimes subject to revision in executory proceedings, while children become the victims of a system designed to protect them. Due to abuse of rights by parents/parties in lawsuits, expiry of statutes of limitations, exploitation of children for the parents' needs and ineffectiveness with which administrative authorities enforce their own decisions, it is not uncommon for judicial proceedings to end in the quashing of a decision in favour of the parent who violated and abused the child's rights.

Although the period in which Serbia was supposed to establish a mechanism to investigate the cases of "missing babies" under the judgment passed by the European Court of Human Rights in the case of *Zorica Jovanovic vs. Serbia* expired on 9 September 2014, such investigative mechanism is still not in place. The Ministry of Justice has prepared the Draft Law on Finding Facts about the Status of New-born Children thought to have disappeared from Birth Clinics in Serbia. The Protector of Citizens believes that, taking into account the specific circumstances surrounding the cases of "missing babies", the investigation of these cases should be the responsibility of a *sui generis* authority with broad powers which would enable it to investigate the facts of each individual case to the maximum possible extent. In parallel with this, all involved parties and third parties who provide information and evidence in the investigation and who can contribute to the fact-finding should be subject to a strict obligation to do so, with severe penalties in case of non-compliance. In November 2015 and February 2016, these facts were presented to the permanent representatives of the Committee of Ministers of the Council of Europe.¹⁷⁴ The Committee of Ministers of the Council of Europe, as the body in charge of overseeing compliance with ECHR judgements, took into account the opinion of the Protector of Citizens and at its 1250th session held from 8 to 10 March 2016 encouraged the Serbian

¹⁷⁰ Article 24 of the Bylaw on the Protection of Minors in the Provision of Media Services.

¹⁷¹ Article 26 of the Bylaw on the Protection of Minors in the Provision of Media Services.

¹⁷² Article 28 of the Bylaw on the Protection of Minors in the Provision of Media Services.

¹⁷³ Article 28 of the Bylaw on the Protection of Minors in the Provision of Media Services.

¹⁷⁴ Before the debate held on 09 12 2015 to discuss the implementation of the judgement *Zorica Jovanović v. Serbia*..

authorities to address the outstanding issues and concerns of parents of “missing babies”, as pointed to its attention by the Protector of Citizens.¹⁷⁵

In its Conclusion passed after reviewing the Annual Report of the Protector of Citizens for 2013, the National Assembly already noted that “it is incumbent upon public authorities and public office holders to comply with the recommendations given by the Protector of Citizens, each within their respective spheres of competence, and contribute towards the exercise and improvement of the rights of the child”.¹⁷⁶ In spite of this, the Ministry of Education, Science and Technological Development and the Ministry of Internal Affairs have not taken any steps to ensure that the Primary School “Sreten Mladenovic Mika” of Nis and the Police Administration of the City of Novi Sad comply with the recommendations of the Protector of Citizens, nor have they taken any activities and measures to apportion individual liability within the School and the Police Administration for past refusals to comply with the recommendations.¹⁷⁷

This year again was marked by initiatives to establish a special institution with powers of the Protector of Citizens for child rights – the Ombudsman for children. Notwithstanding the ban on new employment and the announced lay-offs aimed at downsizing the national administration, as well as the numerous facts already presented by the Protector of Citizens to support the claim that the formation of such an institution would create additional expenses for the government without improving the effectiveness of protection of the rights of the child through the ombudsman institution and would in fact make such protection less effective, once again there have been proposals to establish a children’s ombudsman.¹⁷⁸

II COMPLAINTS

In the field of child rights, in 2015, the Protector of Citizens received 435 complaints and investigated 11 cases on own initiative. Together, these accounted for 7.16% the total number of complaints received by the Protector of Citizens in 2015. The number of complaints in this year was 7.47% higher than last year.

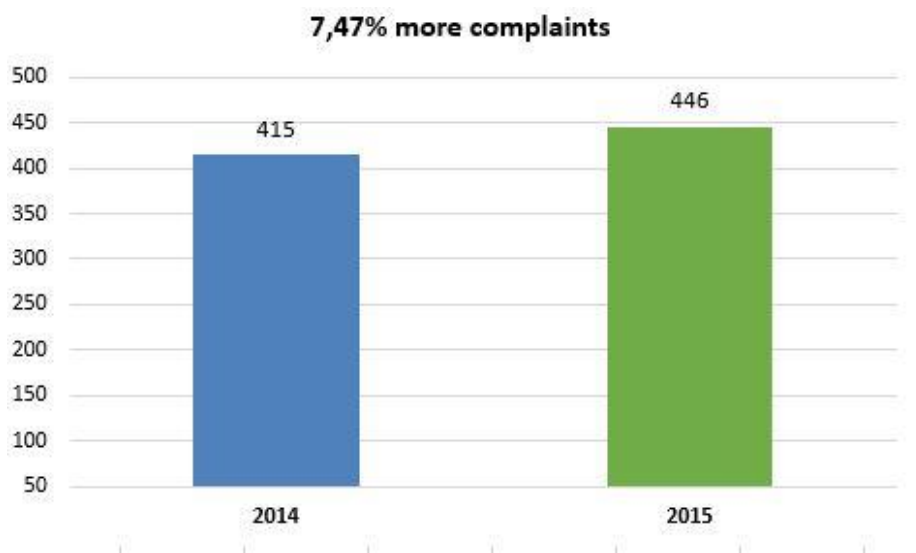
¹⁷⁵ For more information, see: *Zorica Jovanović v. Serbia* (Application No. 21794/08), *Supervision of the execution of the Court’s judgments*, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2016\)1250/H46-23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=ED](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2016)1250/H46-23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=ED).

¹⁷⁶ Conclusion of the National Assembly after reviewing the 2013 Annual Report of the Protector of Citizens, Official Gazette of RS No. 57/13.

¹⁷⁷ See the Regular Annual Report of the Protector of Citizens for 2013.

¹⁷⁸ For more information, see the section of this Report dealing with legal framework and the competences of the Protector of Citizens.

Chart 1 - Child rights - Number of complaints received in 2015 compared to 2014



In 2015, the Protector of Citizens investigated a total of 446 cases in the field of child rights. 326 cases received in 2015 have been closed, while 120 are pending.

In 2015, the Protector of Citizens closed a total of 438 cases, including 326 cases received 2015, with the remaining cases carried forward from earlier years, as shown in the following table.

Table 10 - Child rights - outcome of cases handled in 2015 and in earlier years

	Number	Percentage
Dismissed complaints	191	43.61%
Unfounded complaints	116	26.48%
Cases covered by recommendations issued in oversight procedure	81	18.49%
Cases covered by recommendations issued in expedited oversight procedure	40	9.13%
Complaint dropped by complainant	6	1.37%
Opinion	3	0.68%
Death of complainant	1	0.23%
Total	438	100 %

The Protector of Citizens dismisses the majority of the complaints receive because the conditions for acting upon them provided for by the Law are not met. Complaints are dismissed on the grounds of lack of jurisdiction, belatedness, prematurity, anonymity of complainant or formal deficiencies.

Table 11 - Child rights - reasons for dismissal of complaints in 2015

	Number	Percentage
Premature complaint - complainant advised on available remedies	95	49.74%
Declined jurisdiction - referred to competent authority	60	31.41%

Formally deficient complaint	19	9.95%
Complaint filed by unauthorised person	10	5.24%
Anonymous complaint	4	2.09%
Belated complaint	3	1.57%
Total	191	100%

Assistance in the form of legal advice accounts for a significant share of the actions taken by the Protector of Citizens pursuant to complaints; he provides this type of assistance even in the cases where he declines jurisdiction or dismisses a complaint as premature. In such cases, the Protector of Citizens refers the complainant to the competent authority or provides advice on available remedies.

As can be seen in the table below, in 65.58% of dismissed complaints the Protector of Citizens gave the citizens legal assistance in the exercise of their rights before the competent authorities.

Table 12 - Child rights - assistance provided in the form of legal advice

	Number	Percentage
Dismissed complaints	183	100%
Premature complaint - complainant advised on available remedies	71	38.80%
Declined jurisdiction by PoC - referred to competent authority	49	26.78%
Total: assistance provided in the form of legal advice	120	65.58%

In the field of child rights, 689 different violations of special rights have been identified pursuant to 417 complaints. The largest number of complaints pointed to violations of special rights in the field of child rights. The right to education, as one of the economic, social and cultural rights, appears more than 100 times in the complaints received.

Table 13 - Child rights - violations reported by complainants

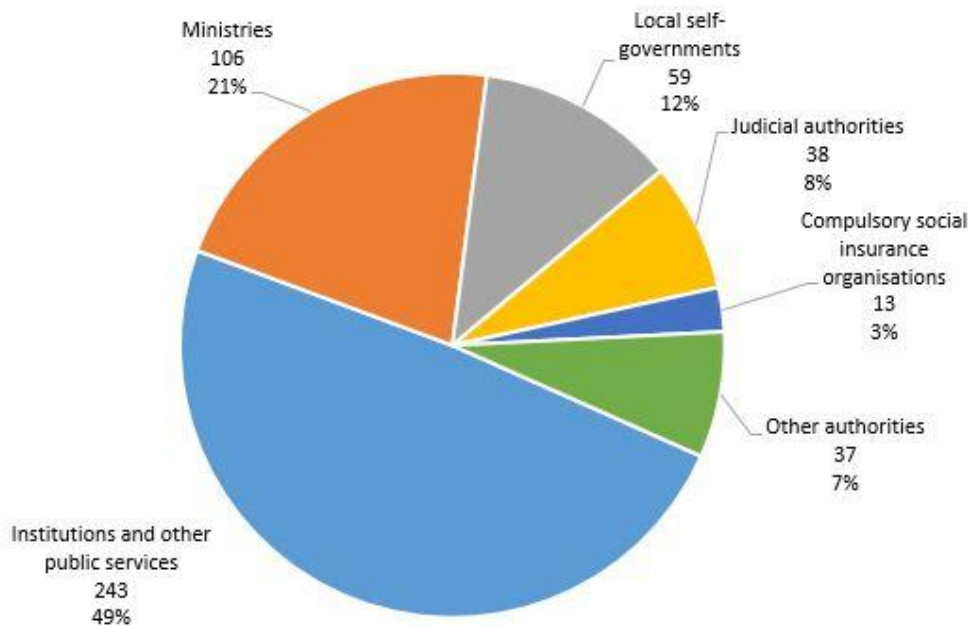
	Number	Percentage
Special rights in the field of child rights	480	67.23%
Economic, social and cultural rights	162	22.69%
Civil and political rights	47	6.58%
Right to good governance	25	3.50%
Total	714	

The following table shows the structure of special rights in the field of child rights based on 480 reported violations of these rights.

Table 14 - Special rights in the field of child rights, their number and percentage

Type of right violated	Number	%	Type of right violated	Number	%
Right to respect for the best interest of the child	124	25.83	Right to protection against sexual exploitation	5	1.04
Right to protection against violence, abuse and neglect	88	18.33	Child's right to psychological recovery	5	1.04
Right to maintain personal relations with the parent with whom he/she does not live	59	12.29	Child's right to know who his/her parents are	4	0.83
Right to proper development of a child	47	9.79	Rights of the child in case of adoption	3	0.63
Rights of children with developmental disorders to quality of life and special protection by the state	25	5.21	Rights of the child in conflict with the law	2	0.42
Right of a child to express his/her own opinion	21	4.38	Right to protection against exploitation	2	0.42
Right of a child to live with parents	19	3.96	Right to leisure and recreation	2	0.42
Right to an adequate standard of living	16	3.33	Protection of the child from illegal detention abroad	1	0.21
Assistance to families in the exercise of children's right to an adequate standard of living	16	3.33	Right to protection against parental abduction	1	0.21
Right to a healthy environment	10	2.08	Right to personal identity	1	0.21
Parenting assistance to parents	10	2.08	Right to the preservation of personal identity	1	0.21
Right to check the arrangements for the care of the child under government's supervision	9	1.88	Right to family reunification	1	0.21
Right to maintain personal relations with the biological family and close persons	7	1.46	Prohibition of discrimination of the child because of his/her parents	1	0.21

Chart 2 - Authorities and organisations most frequently complained against by the citizens in the field of child rights



OTHER ACTIVITIES

At the seminar on the protection of children from violence organised in the spring by the European Network of Ombudspersons for Children (ENOC)¹⁷⁹, the Deputy Protector of Citizens for Child Rights and Gender Equality, together with the ENOC Bureau and a group of members, worked on the text of ENOC's document on the protection of children from violence¹⁸⁰ and planned and designed activities at the Annual ENOC Conference. Participants in the Conference were introduced to the key activities implemented by the Protector of Citizens during the last year, especially with regard to protection of children from violence, abuse and neglect and children living and working on the streets.

The Deputy Protector of Citizens for Child Rights and Gender Equality took part in the regular annual regional conference of the Children's Rights Ombudspersons Network in South and Eastern Europe (CRONSEE) titled "*The Rights of the Child – between the Interests of the Parents and the Obligations of the State.*" The conference was organised in Zagreb by the Ombudsperson for Children of the Republic of Croatia, with the support of the international organisation Save the Children. The conference addressed the issues faced by the institution of children's right ombudspersons in the region and the possibilities of their involvement in cases where the actions and opinions of parents conflict with the duties of the state regarding protection of the child's best interests, in particular with regard to precedence of parents' desires when deciding on compulsory vaccination of their children at an early age.

The Protector of Citizens also took part in the CRONSEE's thematic meeting titled "The Third Optional Protocol – the Role of the Ombudsman for Children", which was held in October

¹⁷⁹ For more information, see: <http://enoc.eu/?event=enoc-seminar-on-violence-against-children>.

¹⁸⁰ Available at:

http://www.pravadeteta.com/attachments/394_ENOC%20position%20statement%20on%20Violence%20against%20children%202015%20FV.pdf; <http://enoc.eu/wp-content/uploads/2014/12/ENOC-position-statement-on-Violence-against-children-2015-FV.pdf>.

2015 in Osijek. Representatives of regional ombudspersons examined the advantages and weaknesses of this international mechanism, which allows the child to file a complaint with the United Nations Committee on the Rights of the Child, which reaffirms and improves the position of the child as a subject of law.

With the support of UNICEF and Incest Trauma Centre, on 16 November 2015 the Protector of Citizens organised a working meeting titled "Protection of Children who are Victims of Sexual Abuse and Sexual Exploitation." The meeting was attended by representatives of all systems whose work involves contact with children who are victims of sexual abuse and exploitation (judicial authorities, line ministries, health care and social security institutions, units providing support to child victims in criminal proceedings and non-governmental organisations). The participants highlighted the issues they face in their work with child victims, the shortcomings in the functioning of each of the systems and their mutual cooperation and gave joint recommendations for remedying those shortcomings.

The Protector of Citizens supported and contributed to the development of the National Study on the Social Problem of Sexual Abuse of Children in the Republic of Serbia and the Draft Strategy in the Field of Education for Preventing Sexual Abuse of Children in the Republic of Serbia, which are being developed by Incest Trauma Centre. The Deputy Protector of Citizens for Child Rights and Gender Equality also delivered the keynote address at the presentation of the National Study and the Draft Strategy at a public hearing by the National Assembly.¹⁸¹

The Protector of Citizens supported the campaign "Road to Change – Walk to stop the Silence: Stop Child Sexual Abuse" by Scottish activist Matthew McVarish, who arrived in Belgrade on 28 September 2015 as an official promoter of the Council of Europe "One in Five" campaign for the Republic of Serbia and the Deputy Protector of Citizens for Child Rights and Gender Equality joined the walk as part of the campaign.

To mark 10 years of adoption of the General Protocol on the Protection of Children from Abuse and Neglect, the Protector of Citizens prepared a compilation of selected recommendations and opinions titled "*Protection of Children from Violence, Abuse and Neglect*"¹⁸², which is intended for all professionals who work with child victims of violence or child perpetrators of violence. The publication draws attention to the most common omissions identified in the work of professionals when dealing with children and explained what should be done in their future work to avoid repeating the same omissions; it also highlighted the prevention measures that should be introduced in the protection system to eliminate and prevent the reoccurrence of violence, abuse and neglect and secondary traumatising and victimisation.

The Protector of Citizens participated in the implementation of the Paediatricians' Association's and UNICEF's project "Support to Children in Early Development and their Parents through Strengthening of Paediatricians' Capacities, with Focus on Developmentally Vulnerable Groups." As part of the training course "Protection of Children's Rights in the Health Care System, with Focus on Roma and Other Vulnerable Groups of Children", the Protector of Citizens conducted training sessions for 90 paediatricians and visiting nurses in primary health care and development counselling centres in 10 municipalities with high populations of Roma children.¹⁸³ The aim of the trainings was to train the paediatricians and visiting nurses on the enjoyment of rights of vulnerable groups, with focus on the enjoyment

¹⁸¹ Available at:

http://www.ombudsman.pravdeteta.com/index.php?option=com_content&view=article&id=727%3A2015-11-18-15-23-20&catid=38%3A2012-04-09-12-59-17&Itemid=89&lang=sr.

¹⁸² Available at:

http://www.pravdeteta.com/attachments/394_Za%C5%A1tita%20dece%20-%20za%20WEB.pdf.

¹⁸³ The training included health professionals in medical centres in the territories of the following local self-governments: Zemun, Kragujevac, Novi Sad, Zrenjanin, Smederevo, Pozarevac, Nis, Pirot, Leskovac and Vranje.

of rights by the Roma population, and to introduce them to the obstacles faced by the Roma population.

Trainings of patient rights advisors and members of local health councils about the rights of the child in health care and the duties of health care institutions and health care professionals and assistants in relation to children, especially in cases of suspected child abuse and neglect, which began in 2014, were continued in 2015.¹⁸⁴

The Children's Week was commended through visits by representatives of the Protector of Citizens and members of the Panel of Young Advisors to schools in Belgrade, Subotica, Nis and Kraljevo. The panellists exchanged information and knowledge on the rights of the child with their peers, noting that the rights are not sufficient, as well as on the most frequent forms of violation of those rights at schools.

The Protector of Citizens received 78 questions from children and adults through the interactive portals www.ombudsman.pravadeteta.com and www.pravadeteta.rs and e-mail address of the Protector of Citizens. Most of the questions concerned the issues of education and upbringing, protection of the child from violence and respect for the child's best interests.

Successful cooperation with international organisations and civil society organisations in the field of rights of the child has continued. The end of 2015 marked the end of the two-year Memorandum of Understanding between the Protector of Citizens and UNICEF which saw the implementation of a number of activities aimed at promoting the rights of the child, in particular those relating to the right of the child to participation and protection from violence and in connection with the status of child victims of sexual abuse and exploitation and children living and working on the streets (through awareness-raising publications, leaflets, video material, seminars, lectures, panels, debates and other activities aimed at children and adults, as well as the activities of the Panel of Young Advisors).

The Protector of Citizens continued cooperation with the Child Rights International Network (CRIN) by submitting reports on the status of child rights in Serbia.

*Panel of Young Advisors*¹⁸⁵

To include children in the decision-making processes in which administrative authorities decide on their rights and to facilitate and enable enjoyment of the right to participation of the child, the Panel of Young Advisors initiated a gathering of their peers who sit on similar bodies attached to other authorities and organisations (the Panel of Young Advisors of the Equality Commissioner, the Children's Council of the Network of Serbian Organisations for Children and the Niš-based Open Club). Through joint work and cooperation, the children defined recommendations which they addressed to the competent administrative authorities and institutions. The recommendations are children's proposals for addressing the issues they identified in different systems, including education, health care and social security, as obstacles to full enjoyment of rights and improvement of the status of children in Serbia.

III TYPICAL CASES

A child is granted personal aide services after inspection

Notwithstanding the opinion of the Interdepartmental Committee, the Municipal Administration of the Municipality of Ćuprija did not provide the services of a personal aide to a child with developmental disability; instead, it archived the case file without deciding on the parents' application. Acting in compliance with the recommendation of the Protector of

¹⁸⁴ For more information, see the section of this Report dealing with the health sector.

¹⁸⁵ International activities of the Protector of Citizens in the field of child rights are presented in the section *International Cooperation and Projects*.

Citizens, the municipal administration remedied this omission at short notice by providing the services of a personal aide. Moreover, the Municipality of Čuprija enrolled 15 persons from the records of the National Employment Service in that municipality in training for personal aides.

Pentavalent vaccines available to all children after recommendations of the Protector of Citizens

Under the amendments to the Bylaw on Immunisation and Manner of Protection by Medicines adopted in late 2014, children who reached the age for vaccination against tuberculosis, diphtheria, tetanus, whooping cough, polio, measles, rubella, mumps, viral hepatitis B and diseases caused by haemophilus influenzae type B were treated differently depending on their date of birth, with some of them receiving trivalent vaccines, while others received the new, modern pentavalent vaccine. This shortcoming was remedied after the Protector of Citizens issued recommendations to the Ministry of Health, which then amended the Bylaw on Immunisation and Manner of Protection by Medicines and enabled children to begin vaccination with the pentavalent vaccine or continue with such vaccination if they have already received this vaccine.

Dispute with the competent authority of a foreign country leaves children without health insurance

The Protector of Citizens found that the Republic Health Insurance Fund (RHIF) had refused to issue and certify health insurance cards for two children who are Serbian nationals because their father is a Montenegrin national and has a job, while the mother, who is a Serbian national, is unemployed. Maintaining that the employment status of a parent is the “priority” basis for insurance, the RHIF forwarded the documentation to the Health Insurance Fund of the Republic of Montenegro. However, the competent Montenegrin authority refused to insure the children because they are nationals of the Republic of Serbia and live here. As the disputed issue between the two countries remained unresolved, the RHIF decided not to insure the children pending a final settlement of the legal dispute.

In compliance with the recommendations issued by the Protector of Citizens to certify without delay the health insurance cards of the children of an unemployed and socially vulnerable national of the Republic of Serbia, the Fund registered the children for health insurance and issued them with health insurance cards even before the dispute with the competent Montenegrin authority was settled.

IV PROPOSALS FOR IMPROVING CITIZENS’ POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The National Assembly** should consider bills of amendments to the Labour Law and the Law on Financial Support to Families with Children submitted by the Protector of Citizens with the aim of improving support and assistance to families with children with developmental disorders and seriously ill children.
2. **The Government** should draft and submit to the National Assembly for enactment a Bill on Ratification of the Optional Protocol to the UN Convention on the Rights of the Child on a communications procedure for filing complaints with the Committee on the Rights of the Child, which Serbia signed in February 2012, in accordance with the Initiative launched by the Protector of Citizens.
3. **The Ministry of Justice** should enact a special law that would put in place an efficient mechanism to investigate the cases of the so-called “missing babies”, in accordance with the

provision of item 92 of the judgement of the European Court of Human Rights¹⁸⁶ in the case of *Zorica Jovanovic vs. Serbia*¹⁸⁷ and recommendations issued by the Protector of Citizens.

4. **The Government** should draft and submit to the National Assembly for enactment a law that would outlaw corporeal punishment of children in all environments.

5. **The Government** should draft and submit to the National Assembly for enactment a Bill of Amendments to the Law on Financial Support to Families with Children, in accordance with the Initiative launched by the Protector of Citizens.

6. **The Ministry of Labour, Employment, Veteran and Social Affairs** should ensure (re)establishing and introduction of new services for developmental disorders and children who live or work in streets.

7. **The Government** should intensify the activities in order to ensure more efficient and effective process of protection of children from violence, abuse and neglect.

8. **The Government** should intensify the activities on prevention of children's living and working in streets, improvement of the status of children who live and work in streets and introduction of measures with the aim of reintegrating children in the community and ensuring necessary services for children who live and work in streets.

9. **The Ministry of Justice** should propose amendments to the Criminal Code and the Law on Juvenile Criminal Offenders and Criminal Law Protection of Juveniles in accordance with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, with a view to ensuring full protection of child victims from secondary traumatisation and victimisation, in accordance with initiatives and recommendations of the Protector of Citizens.

10. **The Ministry of Health** should prepare amendments to the Law on Health Insurance which would eliminate inequalities in the enjoyment of children's right to health care during a stay abroad, especially when they stay abroad for education purposes.

11. **The Ministry of Education, Science and Technological Development** should enact secondary legislation specifying in detail the requirements for and the manner of schooling of pupils in extended home or hospital treatment, home schooling and distance learning.

12. **The Ministry of Education, Science and Technological Development, authorities of autonomous provinces and self-government units** should step up their control of the manner in which education institutions handle cases of violence against pupils, including in particular timely, proper and diligent application of the Law on Basic Elements of Education System, the Regulations on the Protocol of Actions taken by Institutions in Response to Violence, Abuse and Neglect, the General Protocol on the Protection of Children from Abuse and Neglect and the Special Protocol on the Protection of Children and Pupils from Violence, Abuse and Neglect in Education Institutions.

13. **The Ministry of Education, Science and Technological Development and authorities of autonomous provinces and self government-units** should ensure efficient and timely

¹⁸⁶ Item 92 of the judgement: "In view of the above, as well as the significant number of potential applicants, the respondent State must, within one year from the date on which the present judgment becomes final in accordance with Article 44 § 2 of the Convention, take all appropriate measures, preferably by means of a *lex specialis* (see the Ombudsman's report of 29 July 2010 at paragraph 29 above), to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as or sufficiently similar to the applicant's (see paragraph 26 above). This mechanism should be supervised by an independent body, with adequate powers, which would be capable of providing credible answers regarding the fate of each child and affording adequate compensation as appropriate."

¹⁸⁷ Available at: http://www.zastupnik.gov.rs/uploads/jankovic_z_pr_21794-08_ser.pdf.

initiation and conduct of proceedings to determine personal responsibility of school staff for violations of the prohibition of violence, abuse and neglect, negligence at work and omissions in the implementation of measures to protect children from violence, abuse and neglect.

14. **The Ministry of Education, Science and Technological Development** should, in accordance with recommendations of the Protector of Citizens, amend the Bylaw on Additional Education, Health Care and Social Security Support to Children and Pupils and intensify the activities aimed at regulating the services of additional support and assistance to pupils with developmental disorders in education, the types of those services, the methods of their provision and financing, the procedure of assessment of the child's/pupil's needs and formation, operation and control of cross-departmental committees.

15. **The Ministry of Education, Science and Technological Development** should amend the bylaws setting out the criteria and standards for the financing of education institutions in a manner which will ensure a sufficient number of professional assistants at education institutions taking into account the needs of pupils, in particular with regard to implementation of inclusive education and protection of children from violence, abuse and neglect.

16. **The Ministry of Education, Science and Technological Development** should provide regular trainings at education institutions and exchange of good practice aimed at sensitising the staff to children with developmental disorders and adoption of practical skills and knowledge in the work with them.

17. **The Ministry of Education, Science and Technological in cooperation with the Ministry of Public Administration and Local Self-Government** should ensure that all local self-government units lawfully determine the amount of co-financing paid by the users of pre-school facilities and comply with the recommendations of the Protector of Citizens to consider ways to mitigate the consequences of unlawful charging of co-financing paid by parents for the placement of children in pre-school institutions.

18. **The Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry fo Health and the Ministry of Education, Science and Technological Development** should organise public awareness raising campaigns on the harmfulness of corporeal punishment of children and the alternatives to this method of disciplining children and provide expert assistance and support to parents in the education of their children through the mechanisms of social and health care services (parent counselling, phone lines, "parenting classes" etc.).

19. **The Ministry of Culture and Information and the Regulatory Authority of Electronic Media** should efficiently and timely monitor work of the media and take measures in cases of violation of media laws and child rights in the media.

20. **The Ministry of Youth and Sports** should adopt a Protocol for the Protection of Children and Youth from Violence in Sports and Recreational Activities.

21. **The Ministry of Education, Science and Technological Development** should ensure that primary school "Sreten Mladenovic Mika" complies with the recommendations of the Protector of Citizens and takes steps to determine individual responsibility for past failures to comply with the recommendations.

22. **The Ministry of Internal Affairs** should ensure that the Police Administration of Novi Sad complies with the recommendations of the Protector of Citizens and takes steps to determine individual responsibility for past failures to comply with the recommendations.

3.2. RIGHTS OF NATIONAL MINORITIES

I BACKGROUND

1. Key Government's achievements

- 1.1. The Action Plan for Exercise of Rights of National Minorities has been prepared.¹⁸⁸
- 1.2. The Strategy for Social Inclusion of Roma Men and Women has been adopted.
- 1.3. The Ministry of Public Administration and Local Self-Government formed a special working group for preparation of the Draft Law amending the Law on Protection of Rights and Freedoms of National Minorities.¹⁸⁹
- 1.4. The Law on Police has been enacted.¹⁹⁰
- 1.5. The Bylaw on the Criteria and Procedure for Enrolment of Pupils of Roma Ethnicity in Secondary Schools under Preferential Conditions to achieve Full Equality has been enacted.¹⁹¹
- 1.6. Amendments to legislation significantly improved implementation of the affirmative actions of enrolment and education of pupils of Roma ethnicity in the first year of study programmes.
- 1.7. The Institute for Education Quality and Evaluation is implementing the project "Implementation of new Achievement Standards in the Teaching of Serbian as a Second Language when taught in a Language of a National Minority."
- 1.8. Introduction of permanent sworn-in-court translators for the Bosnian language ensured exercise of the right of the Bosniak national minority to official use of language and script in administrative, judicial and other proceedings.

2. Key results achieved by the Protector of Citizens

- 2.1. The recommendations and proposals issued by the Protector of Citizens in previous Annual Reports with the aim of improving the regulatory framework for the protection of rights of members of national minorities and the exercise of public powers by National Councils have been fully accepted in the planned legislative activities provided for in the Action Plan for Exercise of Rights of National Minorities.
- 2.2. Through compliance with the recommendation given by the Protector of Citizens, the legal framework for protection of the right of national minorities to proportional representation in public administration has been improved.
- 2.3. Through compliance with the recommendation given by the Protector of Citizens, the Law on Police provided for a duty of the Ministry of Internal Affairs to ensure the composition of its police force reflects the ethnic composition of the local population.
- 2.4. Through compliance with the recommendation given by the Protector of Citizens, the regulatory framework for the organisation of bilingual teaching, in the Serbian language and languages of national minorities, has been improved.

¹⁸⁸ For more information, see: <http://www.mduls.gov.rs/aktivnosti-obavestenja.php>.

¹⁸⁹ For more information, see: <http://www.ljudskaprava.gov.rs/index.php/vesti/1469-ot pocela-izrada-izmene-zakona-o-nm>.

¹⁹⁰ Official Gazette of RS, No. 6/16

¹⁹¹ Official Gazette of RS, No. 12/16.

- 2.5. By exercising his intermediary powers, the Protector of Citizens intensified the efforts of the competent authorities, which enabled members of national minorities to enjoy the right to official use of a minority language and script at no extra cost in certain proceedings before notaries public.
- 2.6. Through acceptance of the initiative and compliance with recommendations given by the Protector of Citizens, enrolment of pupils and students of Roma ethnicity in secondary schools and study programmes has been systematically regulated by implementation of the affirmative action.
- 2.7. Through compliance with the opinion given by the Protector of Citizens, the issues resulting from the lack of translators for the Bosnian language have been eliminated.
- 2.8. Through compliance with the recommendation given by the Protector of Citizens, the Ministry of Education, Science and Technological Development regulated in detail the procedure for authorising changes to the names of public primary schools.
- 2.9. In 2015, the Protector of Citizens received 119 complaints in this field in which complainants alleged 336 violations of rights. In the same period, he completed the investigations in a total of 161 cases received in 2015 and in earlier years. Out of the total of 35 investigations conducted, 17 (48.57%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted oversights and issued 20 recommendations, of which five (25%) have been accepted and 15 (75%) have not been implemented. Based on the number of identified (37) and remedied (22) omissions¹⁹², the efficiency rate in this field is 59.46%.

3. Shortcomings at the national level

- 3.1. The law still does not provide for effective exercise of public powers by national councils of national minorities and exercise of the right to proportional representation of members of national minorities in public administration.
- 3.2. The state does not have a language policy in place and, in the absence of an executive authority that would be responsible for ensuring uniform application of regulations, citizens still exercise their right to official use of languages and scripts of national minorities only after investigations conducted by the Protector of Citizens.
- 3.3. The employment status of coordinators for Roma issues at local self-government units has not been resolved, which seems to indicate that the state does not have a strategic approach in the field of employment of the Roma which would address the duty to ensure their representation in public administration and the importance of their work for the Roma community.
- 3.4. No regulations have been passed to govern in detail the actions taken by public authorities in forced resettlement of substandard (informal) settlements and protection of human rights of the resettled citizens.
- 3.5. The state has not undertaken action to prevent media outlets that had developed their professional capacities and broadcast programming in the languages of national minorities from closing after the completion of their privatisation.

¹⁹² The number of omissions identified is the sum of suspended investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of suspended investigations and implemented recommendations.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **the Ministry of Public Administration and Local Self-Government** should, without delay, begin preparing amendments to the Law on National Councils of National Minorities or drafting a completely new law;

- That **the Ministry of Public Administration and Local Self-Government** should intensify its oversight of and cooperation with multinational municipalities and towns/cities, with a view to improving the work of competent authorities which pass decisions relevant for the exercise of public powers of national councils at the local self-government level;

- That **the Ministry of Education, Science and Technological Development** should take all actions within its mandate to enable pupils to learn the language of the local community;

- That **the Ministry of Internal Affairs** should take every effort to ensure that dual citizenship of members of national minorities, refugees and other persons does not act as an obstacle to their enrolment in police schools and subsequent employment.

4.2. The Ministry of Culture failed to comply with the recommendation of the Protector of Citizens to provide to the largest possible extent the protection and exercise of the rights to national minorities whose national councils have head offices in Central Serbia, at the level exercised by the national minorities in the Autonomous Province of Vojvodina.

4.3. Recommendations of the Protector of Citizens submitted to administrative authorities¹⁹³ in connection with implementation of affirmative actions for employment of members of national minorities, with the aim of exercising the right to their proportional representation in public administration have not been implemented.

5. Explanation

Since the first year of implementation of the Law on National Councils of National Minorities, the Protector of Citizens has been drawing attention to facts and reasons why it is necessary to improve legislative provisions governing the work and public powers of national councils, improve the official use of language and script, ensure proportional representation of members of national minorities in public administration and provide a legal basis for keeping of records of citizens' ethnicity. The opinions given by the Protector of Citizens in recent years have been reaffirmed by the statement of reasons for the Decision of the Constitutional Court of 16 January 2014 and the third opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities.¹⁹⁴

The Protector of Citizens also underscored the need to clearly and precisely define the duties and responsibilities of the bodies in charge of housing policy at national and local levels, their mutual relations and the manner of funding of social housing programmes, to improve access to appropriate housing in accordance with the Revised European Social Charter¹⁹⁵, prevent or reduce homelessness and make housing affordable to those who face financial constraints, which is of particular importance in case of the Roma.

¹⁹³ For more information, see: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/420-preporuka-organima-dravne-uprave>.

¹⁹⁴ Official Gazette of FRY-International Treaties, No. 6/98.

¹⁹⁵ Official Gazette of RS, No. 42/09.

The recommendations and proposals of the Protector of Citizens in connection with the need to improve the legal framework for the exercise of rights of national minorities have been implemented in the text of the Action Plan for the Exercise of Rights of National Minorities, the passing of which was planned under the Action Plan on Negotiation Chapter 23 within the framework of Serbia's EU accession negotiations. There are plans to amend the Law on National Councils of National Minorities and of the Law on Official Use of Languages and Scripts (or enact new ones) and to amend the Law on the Protection of Rights and Freedoms of National Minorities, in order to provide a legal basis for the recording of ethnicity of public administration employees, so as to enable planning and monitoring of implementation of measures to ensure the exercise of the right of members of national minorities to be proportionately represented in public administration. Taking into account the time limits set out in the Action Plan for implementation of these legislative actions, it can reasonably be expected that the enactment of new legislative provisions would put in place an effective minority policy, based on a consensus between all stakeholders about the appropriate system of protection for national minorities and the society as a whole.

The Strategy for Social Inclusion of Roma Men and Women has been adopted; it incorporates to a large extent the findings and recommendations contained in the Report of the Protector of Citizens on Implementation of the Strategy for Improvement of the Status of Roma. In particular, it acknowledges the recommendations of the Protector of Citizens to form a body that would be responsible for managing the Strategy, to regulate the role of pedagogical assistants and hire more of them, recommendations relating to affirmative employment policy measures etc. The Strategy will serve as the basis for measures and activities that will be undertaken and may be instrumental in further advancing the status and socio-economic position of Roma. However, a regulatory framework alone is not sufficient for addressing the human rights situation and the status of persons of Roma ethnicity and the structural poverty they face require a more efficient response and the state's commitment to changing these circumstances. For this reason, given the general nature of the measures envisaged by the Strategy, it will be necessary to adopt an Action Plan on its implementation which would substantially concretise and operationalise the measures, assuming the required budget funds are provided. The Action Plan needs to be adopted without delay.



Picture 4 Deputy Protector of Citizens for the Rights of National Minorities Robert Sepi visiting Roma settlement in Kragujevac, April 2015.

The recently enacted Law on Police provides additional guarantees to members of national minorities in terms of ensuring that national minorities are appropriately represented in the police force and that police officers are familiar with the language and script in official use in the territory served by the organisational unit of the Ministry of Internal Affairs where the person concerned is employed, for the purpose of ensuring full equality between members of national minorities and the dominant ethnic group.

However, under the Law it is possible to provide in the Bylaw on Internal Organisation and Job Classification that certain posts at the Ministry of Internal Affairs can only be staffed by persons who hold only Serbian citizenship. If the Ministry fails to pass this Bylaw within the statutory period, consistent implementation of the Law will not be possible.

Namely, as already stated in the previous Annual Report, the Ministry failed to pass secondary legislation within the statutory time limit after the enactment of the Law on Police which would specify the posts in the police force which can be staffed only by persons who hold only Serbian citizenship. For this reason, members of national minorities with dual citizenship are unable to pass police training and subsequently become employed at the police.

Given that many members of national minorities hold dual citizenship, if the Ministry fails to pass this Bylaw within the statutory period, consistent implementation of the Law will not be possible. Namely, as already stated in the previous Annual Report, the Ministry failed to pass secondary legislation within the statutory time limit after the enactment of the Law on Police which would specify the posts in the police force which can be staffed only by persons who hold only Serbian citizenship. For this reason, members of national minorities with dual citizenship are unable to pass police training and subsequently become employed at the police.

This year again the Protector of Citizens received complaints against the same omissions and violations of citizens' rights, which he has been pointing out since 2010.

Local self-governments have not complied with their statutory obligations¹⁹⁶, which harms the exercise of public powers by national councils, because no funds have been allocated for the funding of national councils of national minorities. Furthermore, local self-governments do not ask national councils to nominate members of school boards who represent the local self-government in cases of schools which hold particular relevance for a national minority.

Citizens are unable to exercise their constitutional right to use their personal name in the language and script of the national minority to which they belong in cases when official documents and certificates are printed from a single information system used by a relevant national authority. Namely, if such information system is programmed to support only the Latin script, which violates all applicable regulations, when a personal name written in the language and script of a national minority is erroneously transcribed from Latin to Cyrillic script, official documents are issued to the name of a non-existent person.

Although a lot of time has passed since the enactment of the Constitution and the Law on Official Use of Languages and Scripts, citizens are still forced to exercise their right to use personal name and the right to official use of language and script only after contacting the Protector of Citizens. This is indicative of a need for a new Law on Official Use of Languages and Scripts which would stem from the government's commitment to implement an appropriate and effective language policy.

The Ministry of education, Science and Technological Development complied with the Opinion of the Protector of Citizens¹⁹⁷ and initiated preparation of the Bylaw on Detailed Requirements for Bilingual Teaching in order to lay the foundations for further development of bilingual teaching as a model of education in the languages of national minorities.

The Ministry of Justice informed the Protector of Citizens it had passed a decision to announce a Public Call for the appointment of permanent sworn-in-court translators for the Bosnian language. The territorial jurisdictions of the Higher Courts in Užice and Novi Pazar have respectively had two and three sworn-in-court translators for the Bosnian language appointed. It is unknown why this was not done earlier, as the Protector of Citizens had drawn attention to this matter already in his Opinion¹⁹⁸ of 2012, as well as in his proposals to improve the position of citizens in relation to administrative authorities set out in earlier Annual Reports. This would have prevented the consequences caused by the absence of such translators from building up over the years, which harmed the exercise of citizens' rights and affected the legality of the procedures.

The Ministry of Education, Science and Technological Development complied with the proposals and the initiative of the Protector of Citizens to systematically regulate implementation of the affirmative action for enrolment of pupils and students of Roma ethnicity in secondary and higher education, both in terms of transparency and predetermined procedure and in terms of follow-up and continued support, to achieve the purpose of this measure. 1.5. The Bylaw on the Criteria and Procedure for Enrolment of Pupils of Roma

¹⁹⁶ Law on National Councils of National Minorities, Official Gazette of RS, No. 2/09, 20/14 - Decision of the Constitutional Court and 55/14.

¹⁹⁷ Opinion available at: <http://www.pravamanjina.rs/index.php/sr/aktivnosti/641-neophodno-precizno-urediti-nain-uslove-i-kriterijume-za-izvoenje-dvojezine-nastave>.

¹⁹⁸ Opinion available at: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/565-miljenje-zatitnika-graana-ministarstvu-pravde-i-dravne-uprave-u-vezi-sa-postavljanjem-sudskih-prevodilaca-za-bosanski-jezik>.

Ethnicity in Secondary Schools under Preferential Conditions to achieve Full Equality has been enacted.¹⁹⁹

The Ministry of Education, Science and Technological Development has amended the Technical Instructions on Enrolment in the First Year of Undergraduate and Integrated Studies at Higher Education Institutions founded by the Republic of Serbia in the School Year 2015/2016 to improve the implementation of the affirmative action for pupils of Roma ethnicity. In addition to free-of-charge preparatory education for enrolment in universities which is available to pupils of Roma ethnicity, the enrolment procedure itself has been changed and a decision has been passed to support and fund the entire duration of the studies of those candidates who apply for and enrol in study programmes under the affirmative action.

Under a relevant decision of the Government, the University of Belgrade was authorised to enrol 90 persons of Roma ethnicity through the affirmative action programme (rather than applying the cumulative percentage of 2% which includes also persons with disabilities, as had been the case in earlier years). The students who enrol in the first year of study programmes under the affirmative actions and are funded from the budget of the Republic of Serbia acquire the right to free board and meals at students' boarding houses and restaurants. They are also eligible for funding from the national budget under more favourable conditions; together with scholarships and loans provided from the budget of the Republic of Serbia, these measures will contribute significantly to the completion of their studies.

The Ministry of Education, Science and Technological Development fully complied with the recommendation of the Protector of Citizens²⁰⁰ to regulate in specific detail the procedure of approving school name changes, both in terms of the required documentation which must be enclosed with an application and in terms of measurable and objective criteria for determining the justifiability of approving or refusing to approve an application which complies with all formal requirements. This recommendation was the result of an inspection conducted pursuant to a complaint concerning the name change of a school that had special importance for a national minority. In this context, it is of particular importance that the new criteria for deciding on school name changes will allow for the majority ethnic group to learn about the historical figures of minority ethnic communities.

A communication sent by the National Council of the Hungarian National Minority has drawn attention to the problems that members of national minorities who speak minority languages have been facing in dealing with notaries public since the introduction of this profession. The issue is that applicants are now required to cover the cost of hiring a translator in the process of solemnisation of public documents in cases where a notary public is established in the territory of a local self-government where a minority language is in official use, which is a change from similar procedures that had earlier been conducted before courts, when the government covered the costs of hiring translators, which is the essence of the right to official use of language and script. Exercising his intermediary powers, the Protector of Citizens contacted the Ministry of Justice, which examined the reasons and circumstances of this initiative submitted by the National Council of the Hungarian National Minority. The Ministry sent a communication to the Chamber of Public Notaries in which it stated that the Chamber should undertake specific activities to find accurate facts of relevance for future decisions concerning the costs of hiring translators in procedures before notaries public when a party in the procedure is a member of a national minority whose language is in official use in the

¹⁹⁹ Official Gazette of RS, No. 12/16.

²⁰⁰ Available at: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/645-ministarstvo-prosvete-nauke-i-tehnologok-razvoja-ne-odluuje-u-zakonskom-roku-o-zahtevu-kole-za-promenu-naziva>.

territory where the relevant notary public is established. A meeting was arranged with the Chamber's chairperson and secretary on 15 July 2015 to address this issue.

The Protector of Citizens was informed it had been decided to undertake measures to improve the situation in this area. The Chamber had begun the necessary analysis and notaries public agreed to suspend the charging of additional points for the engagement of a sworn-in-court translator as a witness. As solemnisation is a new legal transaction that had not previously existed in proceedings before courts and the costs of hiring translators for this legal transaction can sometimes exceed the fee charged by notaries public, further decisions on this matter will be institutionalised after a thorough analysis. One possible solution is to cover the costs of hiring translators from the membership fees paid to the Chamber or to form a special Fund for that purpose.

During the reporting period, the Protector of Citizens received complaints about the consequences of the fact that the competent administrative authorities had not undertaken the mandatory and required measures to employ Roma and enable the exercise of the right to proportional representation in public administration. The complaints were filed by persons who had been employed for years by local self-governments as coordinators for Roma issues, but the ban on public service employment led to termination of their employment contracts, although the posts of Roma coordinators had been scheduled and vacant in the municipalities concerned. The investigation found that the application filed by the relevant municipality through the competent Ministry in accordance with the Decree on the Procedure for Obtaining Approval for New Employment and Additional Staff Engagement at Users of Public Funds had not been approved by the Committee on Approval for New Employment and Additional Staff Engagement at Users of Public Funds. This happened even though the municipality had frequently filed the application on the requisite form. It is therefore necessary to regulate the labour law status of the coordinators for Roma issues at local self-government units, because the general agreement is that they have contributed significantly to improved relations between the Roma community and local authorities.

In this reporting period, the Protector of Citizens again received complaints in connection with forced resettlement and evictions of citizens. The investigation conducted by the Protector of Citizens in connection with the resettlement of the "Grmeč" community in Zemun once again showed that competent administrative authorities had not implemented the recommendations of the Protector of Citizens²⁰¹, nor had they adopted regulations that would govern the actions taken by public authorities when resettling communities and affording the protection of human rights of the resettled citizens.

In 2015, privatisation of the media was completed and the public learned about issues faced in the application of the Law on Public Information and the Media, in the sense that the measures envisaged for mitigating the potential effects of privatisation have not been effectively applied, in particular with regard to information in the languages of national minorities. The public was informed about various issues faced in the implementation of the Law, including, according to media reports, practical problems encountered with regard to the conduct and results of calls for applications for co-funding of media programming in the languages of national minorities. National councils of national minorities have drawn attention of the Protector of Citizens to the fact that the relevant technical committee of the Ministry of Culture and Information did not take into account their opinions about the projects

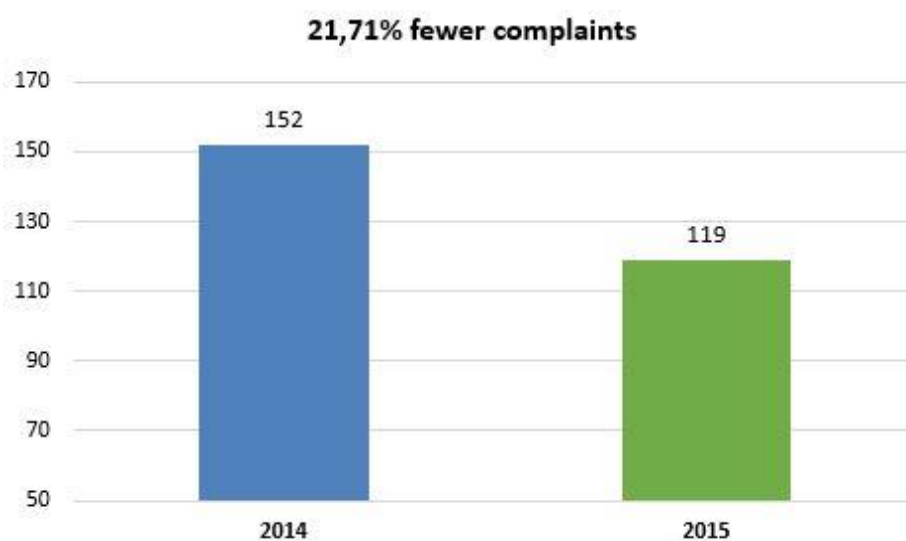
²⁰¹ Recommendation available at: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/483-preporuka-nadlenim-dravnim-organima-u-vezi-sa-raseljavanjem-romskih-porodica-sa-lokacije-u-ulici-dr-ivana-ribara-u-bloku-72-na-novom-beogradu-i-svim-buduim-raseljavanjem-neformalnih-romskih-naselja>.

for which applications were made pursuant to the calls for applications. Unfortunately, privatisation of the media has put out of business some media outlets which had been developing their professional capacities for decades and had broadcasts in the languages of national minorities. One of the reasons for this was the fact that, in some cases (e.g. Radio Zrenjanin), employees of those media outlets that failed to find a buyer did not receive free shares, as is required under the Law.

II COMPLAINTS

In the field of rights of national minorities, the Protector of Citizens received 115 complaints and investigated four cases on his own initiative. These 119 complaints account for 1.91% the total number of complaints received by the Protector of Citizens in 2015. The number of complaints in this year is 21.71% lower compared with the previous year.

Chart 3 - Rights of national minorities - Number of complaints received in 2015 compared with 2014



In 2015, the Protector of Citizens closed a total of 161 cases, of which 95 were received in 2015, while the remaining ones were carried forward from previous years.

Table 15 - Rights of national minorities - outcome of cases handled in 2015 and in earlier years

	Number	Percentage
Unfounded complaints	79	49.07%
Dismissed complaints	51	31.68%
Cases covered by recommendations issued in expedited oversight procedure	17	10.56%
Cases covered by recommendations issued in oversight procedure	6	3.73%
Opinion	3	1.86%
Complaint dropped by complainant	5	3.11%
Total	161	

The Protector of Citizens dismisses the majority of the complaints received because the conditions for acting upon them provided for by the Law are not met. Complaints are

dismissed on the grounds of lack of jurisdiction, belatedness, prematurity, anonymity of complainant or formal deficiencies.

Table 16 - Rights of national minorities - reasons for dismissal of complaints in 2015

	Number	Percentage
Declined jurisdiction - complainant referred to competent authority	28	54.90%
Premature complaint - complainant advised on available remedies	16	31.37%
Formally deficient complaint	4	7.84%
Anonymous complaint	2	3.92%
Unauthorised complainant	1	1.96%
Total	51	100%

Assistance in the form of legal advice accounts for a significant share of the actions taken by the Protector of Citizens pursuant to complaints; he provides this type of assistance even in the cases where he declines jurisdiction or dismisses a complaint as premature. In such cases, the Protector of Citizens refers the complainant to the competent authority or provides advice on available remedies.

As can be seen in the following table, in 86.27% of dismissed complaints the Protector of Citizens gave the citizens legal assistance in the exercise of their rights before the competent authorities.

Table 17 - Rights of national minorities - assistance provided in the form of legal advice

	Number	Percentage
Dismissed complaints	51	100%
Declined jurisdiction - complainant referred to competent authority	28	54.90%
Premature complaint - complainant advised on available remedies	16	31.37%
Total: assistance provided in the form of legal advice	44	86.27%

In the field of rights of national minorities, 336 different violations of special rights have been identified pursuant to 119 complaints. Most of the complaints in this field were against violations of civil and political rights. As regards special rights of members of national minorities, many of the reported violations concerned the status of the Roma. Other frequent grievances included numerous violations in the field of good governance, e.g. administrative silence and the resulting violation of the right to due process.

Table 18 - Rights of national minorities - violations of rights reported by complainants

	Number	Percentage
Special rights in the field of members of national minorities	130	38.69%
Civil and political rights	121	36.01%
Right to good governance	51	15.18%
Economic, social and cultural rights	34	10.12%
Total	336	100%

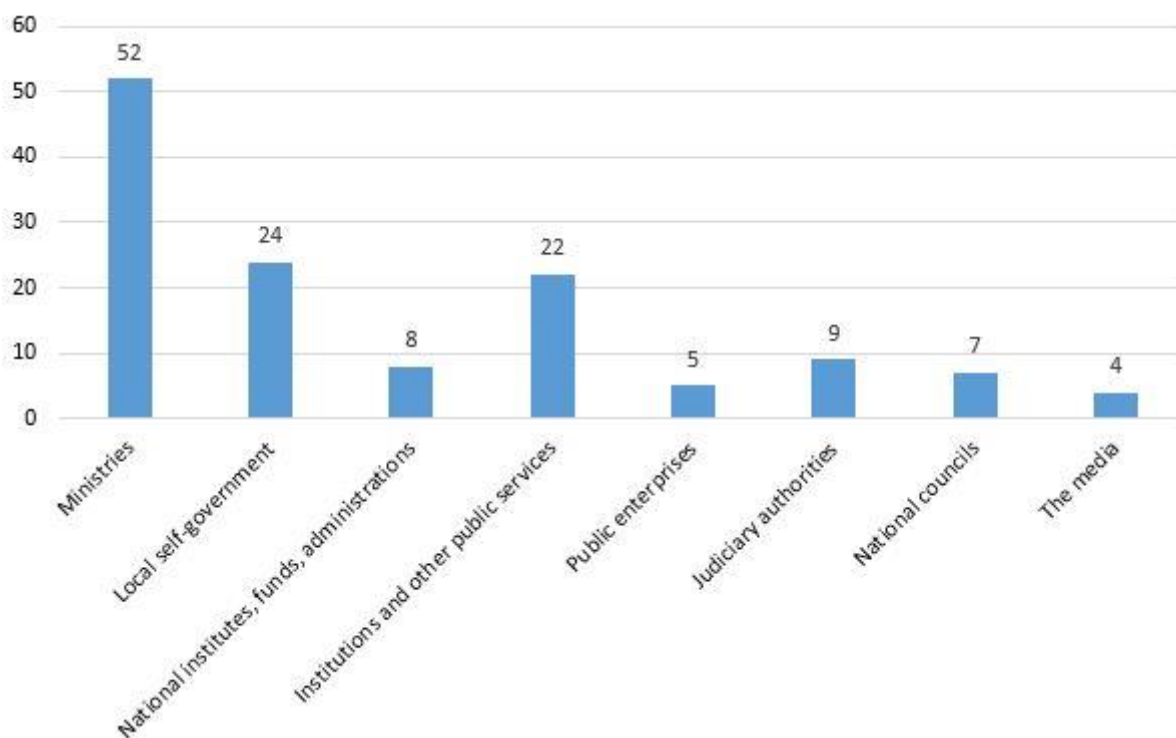
The following table shows the structure of special rights based on 130 registered violations of these rights.

Table 19 - Violations of special rights of members of national minorities, their number and percentage

Type of right violated	Number	Percentage
Special rights of the Roma	63	48.46%
Prohibition of discrimination based on ethnicity	22	16.92%
Right to exercise the powers of the National Councils of National Minorities	11	8.46%
Right to official use of languages and scripts national minorities	9	6.92%
Right to education in mother tongue	9	6.92%
Equality in the conduct of public affairs	6	4.62%
Right to direct elections for National Councils of National Minorities	6	4.62%
Right to information in mother tongue	2	1.54%
Legally invisible persons	2	1.54%
Total	130	100%

The authorities most frequently complained against in the complaints registered in the field of national minority rights were ministries, in particular the Ministry of Internal Affairs and the Ministry of Education, Science and Technological Development. As regards institutions, most of the complaints were lodged against institutions in the field of social security.

Chart 4 - Authorities and organisations most frequently complained against by the citizens in the field of rights of national minorities



III OTHER ACTIVITIES²⁰²

During this reporting period, the Protector of Citizens continued his regular practice of receiving complaints in multinational communities and in Roma settlements in Belgrade, Kragujevac, Leskovac, Bor and Prokuplje.

The Protector of Citizens held a roundtable discussion in April in Belgrade on the topic “How to improve the Procedures and Results of applying Affirmative Action for the Enrolment of Students of Roma Ethnicity”, in order to enable administrative authorities and the academia to discuss, for the first time at the same table, to discuss possibilities for improvement and proposals for solutions based on past experiences.

In the field of rights of national minorities, in 2015 the Protector of Citizens continued his cooperation with the national councils of national minorities in order to address issues and effectively eliminate obstacles in the exercise of their public powers.

This institution has also cooperated with OSCE within the framework of trainings for mobile teams for Roma inclusion. A representative of the Protector of Citizens delivered a lecture for twenty mobile teams for Roma inclusion in connection with the powers of the Protector of Citizens and the existing mechanisms and affirmative action for more efficient exercise of the rights of Roma. The participants displayed great interest in the work of the Protector of Citizens and underscored the importance of actions taken by the Protector of Citizens with regard to protection of the rights of Roma.

In cooperation with UNICEF and the Paediatricians’ Association of Serbia, trainings were held for paediatricians and visiting nurses, in which representatives of the Protector of Citizens delivered lectures on the status of Roma, affirmative action in the health care system and other issues concerning the status of vulnerable groups.

Cooperation with UNCHR and the Ministry of Justice and Public Administration was successfully continued on further addressing of the issue of “legally invisible persons”. Trainings for judges, registrars, employees of centres for social work and Roma civil society were continued.

Representatives of the Secretariat of the Protector of Citizens took part in a number of international conferences (Seminar of the European Commission against Racism and Intolerance of the Council of Europe held in Strasbourg, Seminar on the Status of Stateless Persons in Budapest etc.). At the invitation of the organisers of the international conference “Education on the Genocide of the Roma and Sinti during the Holocaust” held in April 2015 in Stockholm, OSCE/ODIHR and the Swedish Ombudsman, a representative of the Secretariat of the Protector of Citizens held a presentation on the current situation of the Roma in Serbia and the work of the Protector of Citizens with the Roma community.

Within the framework of the project “Building the Capacities of Local Self-Government Officials in the Field of National and International Standards of Human and Minority Rights”, implemented by the Municipality of Bosilegrad with the financial support of the Council of Europe, representatives of the Protector of Citizens held a workshop with employees of the municipal administration and representatives of the Municipal Council of Bosilegrad. Workshop participants were introduced to the international and national legal frameworks for the protection of rights of national minorities and the powers and practice of the Protector of Citizens in this field.

²⁰² International activities of the Protector of Citizens in the field of rights of national minorities are presented in the section of this Report titled “International Cooperation and Projects”

Regular cooperation with NGOs the Belgrade Centre for Human Rights, the Standing Conference of Roma Civic Associations, Praxis, the Network for Intercultural Relations and the Forum for Ethnical Relations was continued.

As in previous years, the Protector of Citizens also cooperated with the Serbian Academy of Science and Arts (SANU): representatives of the Protector of Citizens attended a number of science conferences, including the international science conference titled "Situation and Perspective of Multiculturalism in Serbia and Countries in the Region."

IV TYPICAL CASES

Technical issues in an information system as an excuse for violation of the rights of national minorities

A member of the Hungarian national minority filed a complaint seeking protection for the right to choose and use her personal name in the language and according to the orthography of her minority. Upon examination of the documents provided, it was found that her name had been written in a tax assessment in Serbian, using Cyrillic letters; however, the tax assessment did not state the name as it was written in the original, which means the document was issued to the name of a non-existent person.

An oversight was conducted at the relevant branch and the Head Office of the Tax Administration, which found that the complainant's personal name had been lawfully and correctly written in the records kept by the branch in question, in the Hungarian language and according to the Hungarian orthography, which are in official use in the territory where the branch in question is established. However, as all tax assessments are printed at the Head Office, which uses an information system that supports only Latin script, it is not possible to record personal names of members of national minorities as they are written in the registers of birth, in the language and script of the relevant national minority.

This omission was remedied during the investigation when the branch served a new tax assessment on the complainant, with her name written in the Hungarian language and according to the Hungarian orthography, and the Tax Administration began migrating to a new operating system and developing a Single Tax Administration Register in order to address the issue of inaccurate transcription of taxpayers' personal names. The investigation was subsequently terminated.

Political considerations hinder the application of the law

The National Council of the Bosniak National Minority filed a complaint against unlawful actions of the Assembly of the City of Novi Pazar, which had passed a decision to appoint new representatives of the local self-government to serve as members of a primary school board without first asking the National Council to nominate the members. Although an education inspector, after the Protector of Citizens initiated his control, conducted an inspection and ordered the authority concerned to remedy the irregularity and conduct the appointment of school board members in accordance with the law and on the basis of a proposal made by the National Council, the Municipal Assembly failed to do so within the statutory period.

In view of these circumstances, the Minister of Education acted in compliance with the law and relieved the current school board of duty. A new school board was appointed on the basis of a proposal made by the National Council, which resulted in termination of the investigation by the Protector of Citizens.

V PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Government** should ensure the planned legislative activities under the Action Plan for Exercise of Rights of National Minorities are implemented within set time limits.
2. **The Government** should adopt the National Strategy for Social Inclusion of Roma Men and Women and the supporting Action Plan for its implementation.
3. **The competent ministries** should propose ways for the Government to hire Coordinators for Roma Issues to staff the vacant jobs before the end of the fiscal year.
4. **The Ministry of Public Administration and Local Self-Government** should consider ways to address the issue of classifying the existing positions of Coordinators for Roma Issues at the level of local self-government units, increasing their number and building their capacities in those communities that have a high share of the Roma population.
5. **The Government, in cooperation with the Ministry of Culture and Information, representatives of the media and national councils of national minorities,** should consider the possibilities and manner of undertaking additional measures to mitigate and/or eliminate consequences of the now completed privatisation of media outlets.
6. **The Ministry of Internal Affairs** should make every effort to ensure that dual citizenship of members of national minorities does not act as an obstacle to their enrolment in police schools and subsequent employment.
7. **The Ministry of Construction, Transport and Infrastructure** should prepare a legal instrument which would govern the actions of competent authorities when resettling and moving settlements, in compliance with the basic principles of legality and protection of human rights and the right to alternative housing and should notify local authorities of these actions.
8. **The Ministry of Education, Science and Technological Development,** in cooperation with national councils of national minorities, should develop an adequate model of bilingual teaching in the Serbian language and languages of national minorities.
9. **The Ministry of Education, Science and Technological Development** should undertake measures to ensure that a new syllabus is in place before the beginning of the new school year for the course "Serbian as a Second Language" where teaching is done in the languages of national minorities.

3.3. GENDER EQUALITY AND RIGHTS OF LGBTI PERSONS

I BACKGROUND

1. Key Government's achievements

- 1.1. A Council²⁰³ has been formed to oversee the execution of the Action Plan on implementation of the Strategy of Prevention and Protection from Discrimination for the period 2014-2018²⁰⁴.
- 1.2. The Law amending the Law on Budget System²⁰⁵ has been enacted.
- 1.3. The Law amending the Law on Health Insurance²⁰⁶ has been enacted.
- 1.4. The Law amending the Law on Serbian Army²⁰⁷ has been enacted.
- 1.5. The Law on textbooks²⁰⁸ has been enacted.
- 1.6. The Law on Police²⁰⁹ has been enacted.
- 1.7. The Constitutional Court of Serbia upheld the motion of the Protector of Citizens and the Equality Commissioner and passed a decision to suspend the execution of any individual instruments passed under the contested provisions of Article 20 of the Law on Determining the Maximum Number of Employees in the Public Sector.
- 1.8. The Bylaw on the Protection of Minors in the Provision of Media Services²¹⁰ and the Bylaw on the Protection of Human Rights in the Provision of Media Services²¹¹ have been passed.
- 1.9. The National Gender Equality Strategy for the period 2016-2020 with the Action Plan for the period 2016-2018²¹² has been passed.
- 1.10. The National Action Plan on Employment for 2016²¹³ has been adopted.
- 1.11. The National Youth Strategy for the period 2015-2025²¹⁴ and the Action Plan on implementation of this Strategy for the period 2015-2017²¹⁵ have been passed.

²⁰³ The Council is tasked with monitoring progress in the execution of measures, implementation of activities, compliance with the envisaged timeframe and providing timely warning of any challenges in the execution of measures under the Action Plan on implementation of the Strategy of Prevention and Protection from Discrimination for the period 2014-2018.

²⁰⁴ Official Gazette of RS, No. 72/15 and 109/15.

²⁰⁵ Official Gazette of RS, No. 103/15.

²⁰⁶ Official Gazette of RS, No. 106/15.

²⁰⁷ Official Gazette of RS, No. 88/15.

²⁰⁸ Official Gazette of RS, No. 68/15.

²⁰⁹ Official Gazette of RS, No. 6/16.

²¹⁰ Official Gazette of RS, No. 25/15.

²¹¹ Official Gazette of RS, No.55/15.

²¹² Strategy adopted on 14 January 2016, available at:

http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678

²¹³ Available at: <http://www.minrzs.gov.rs/lat/dokumenti/zaposljavanje/plan-zaposljavanja>.

²¹⁴ Available at:

http://www.mos.gov.rs/mladisuzakon/attachments/article/389/nacionalna_strategija_za_mlade0101_cyr.pdf.

²¹⁵ Available at:

<http://www.mos.gov.rs/wp-content/uploads/download-manager-files/AP%20NSM%202015-2017.VLADA.pdf>.

- 1.12. The National Strategy on Addressing the Issues of Refugees and Internally Displaced Persons for the period 2015-2020²¹⁶ has been passed.
- 1.13. The Minister without Portfolio for European Integration signed the Joint Declaration to end Violence and Hate Crimes against LGBTI Persons, together with relevant Ministers and Deputy Ministers of Montenegro, Croatia, Albania and Bosnia and Herzegovina.
- 1.14. Competent authorities have enabled the Belgrade Pride Parade to be held in peace for the second time and a Trans Parade to be held for the first time.
- 1.15. The Government partially addressed the issue of irregular, unfair and counterproductive collection of the so-called “solidarity tax” and put in place a mechanism to compensate citizens.²¹⁷

2. Key results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens has prepared the Special Report on Training for Acquiring and Improving Knowledge and Competences for Prevention, Elimination and Protection of Women from Domestic and Intimate Partner Violence.²¹⁸
- 2.2. Acting in compliance with the recommendation given by the Protector of Citizens in the 2014 Annual Report, the Government initiated preparation of the Draft National Gender Equality Strategy²¹⁹ and the supporting Action Plan, as well as the Draft Action Plan on implementation of the UN Security Council Resolution 1325 for the period 2016 - 2020.
- 2.3. In 2014, The Protector of Citizens initiated the drafting of a Model Law on Gender Equality²²⁰, which he presented during the reporting period to the Coordination Body for Gender Equality and the Working Group of the Coordination Body for Gender Equality, which is in charge of preparing the Draft Law on Gender Equality.
- 2.4. The Government has enabled the Belgrade Pride Parade to be held in peace for the second time, which the Protector of Citizens had underscored as necessary in numerous opinions, stands and recommendations issued in previous years.
- 2.5. By issuing an Opinion in the drafting of the Law amending the Law on Health Insurance, which the Ministry of Health accepted for the most part, the Protector of Citizens contributed to fairer and more efficient disbursement of the applicable share of salary compensation provided from the national budget in cases of temporary incapacitation of pregnancy complications.
- 2.6. Acting in compliance with the recommendation of the Protector of Citizens²²¹, the Republic Health Insurance Fund included in its official website a new tab with information concerning the payment of salary compensation to pregnant women and all

²¹⁶ Available at: <http://www.kirs.gov.rs/docs/Nacionalna%20strategija%20za%20izb%20i%20irl%202015-2020.pdf>.

²¹⁷ For more information, see the section of this report dealing with the finance sector.

²¹⁸ Report available at: <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/4613-2016-02-26-10-48-42>.

²¹⁹ Strategy adopted on 14 January 2016.

²²⁰ Available at: http://www.zastitnik.rs/attachments/3621_druga%20verzija%201.pdf.

²²¹ Available at: <http://zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/3796-2015-04-16-08-39-50>.

other insured persons during temporary incapacity due to illness, starting from the 31st day of temporary incapacity.²²²

- 2.7. The Protector of Citizens issued an opinion to the Republic Health Insurance Fund and the Tax Administration, prompting them to undertake measures to enable the exercise of compulsory health insurance rights to a particularly vulnerable category – pregnant women.²²³
- 2.8. Acting pursuant to the motion for constitutional review of Article 20 of the Law on Determining the Maximum Number of Employees in the Public Sector filed by the Protector of Citizens and the Equality Commissioner, the Constitutional Court passed a decision by which it suspended all individual instruments passed or actions undertaken pursuant to the said provision that would have the effect of terminating the employment of superannuated female employees in the public sector by operation of the law at a younger age than their male counterparts.
- 2.9. Acting in compliance with recommendation of the Protector of Citizens²²⁴, after almost two years the Government passed a Resolution intended to end the practice of irregular and unfair collection of solidarity tax from pregnant women and nursing mothers whose employers had not paid their salary compensations on time and to compensate all those who had already paid tax in this way.²²⁵
- 2.10. In recognition of the relevant Opinion of the Protector of Citizens concerning the Draft Law on Textbooks, the Law now incorporates the principles of equal opportunity and non-discrimination in accordance with the Anti-Discrimination Law.²²⁶
- 2.11. By giving an Opinion in the process of drafting the Law on Sports, which the Ministry of Youth and Sports accepted for the most part, the Protector of Citizens contributed to the advancement of female sports and the status of female athletes, protection from discrimination, protection of athletes and imposition of misdemeanour penalties.²²⁷
- 2.12. In 2015, the Protector of Citizens received 232 complaints in this field in which complainants alleged 387 violations of rights. In the same period, he completed the investigations in a total of 226 cases received in 2015 and in earlier years. Out of the total of 155 investigations conducted, 13 (8.39) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted oversights and issued 46 recommendations, of which 7 (15.22%) have been accepted, 2 (4.35%) have not been implemented and 37 are still pending. Based on the number of identified (22) and remedied (20) omissions²²⁸, the rate of efficiency in this field is 90.91%.

²²² Available at: <http://www.rfzo.rs/index.php/osiguranalica/57-bolovanja>.

²²³ Opinion available at: http://www.ombudsman.rodnaravnopravnost.rs/index.php?option=com_content&view=article&id=192%3A2015-12-24-10-54-39&catid=14%3A2012-12-12-13-45-14&Itemid=27&lang=sr. For more information, see the section of this Report dealing with the health sector.

²²⁴ Available at: http://www.xn--80aneakq7ab5c.xn--90a3ac/attachments/3231_utvrdjenje%20i%20preporuka.pdf.

²²⁵ Resolution of the Government 05 number 121-13591/2015 of 16 December 2015.

²²⁶ Opinion available at: <http://www.zastitnik.rs/index.php/lang-sr/2011-12-11-11-34-45/3756-2015-03-26-08-07-55>.

²²⁷ For more information, see the section of this Report dealing with youth and sports.

²²⁸ The number of omissions identified is the sum of suspended investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of suspended investigations and implemented recommendations.

3. Shortcomings at the national level

- 3.1. Employees at the authorities in charge of prevention, elimination and protection of women from violence²²⁹ have not been provided with sufficient trainings on the protection of women from domestic violence and intimate partner violence and training on the content and implementation of the General and Special Protocols on Protection of Women from Violence.²³⁰
- 3.2. A law which would properly regulate the field of gender equality has not been enacted.
- 3.3. The Criminal Code has not been harmonised with the Council of Europe Convention on preventing and combating violence against women and domestic violence.²³¹
- 3.4. Protection of women from domestic violence and intimate partner violence is still insufficiently effective.²³²
- 3.5. Equal access to justice for all citizens has not been ensured because the citizens' right to free legal assistance has still not been regulated.
- 3.6. Implementation of the Law on Gender Equality by local self-governments across Serbia has been patchy, particularly with regard to the establishment of permanent working bodies or appointment of gender equality officers and equal opportunities officers.
- 3.7. Health care services are not sufficiently available to all women, particularly female Roma living in rural areas, women with disabilities and women who have been left without health insurance due to omissions of their employers and other persons.
- 3.8. Women farmers who are the registered holders of farms and women who engage in temporary and occasional work do not have access to compensation of salary during pregnancy leave, maternity leave, child care leave and special child care leave.
- 3.9. The National Assembly has not reviewed the Bill of Amendments to the Law on Financial Support to Families with Children submitted by the Protector of Citizens.²³³
- 3.10. Notwithstanding the Bylaw on the Protection of Human Rights in the Provision of Media Services which has been passed, media reporting about women remains fraught

²²⁹ Findings of the Special Report on Training for Acquiring and Improving Knowledge and Competences for Prevention, Elimination and Protection of Women from Domestic and Intimate Partner Violence. The term "authorities" is deemed to include all authorities, organisations, institutions and services responsible for prevention, elimination and protection of women from violence, including: the Ministry of Internal Affairs, the Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Justice, the Ministry of Health, the Ministry of Education, Science and Technological Development, courts, prosecutor's offices, social security institutions, health care institutions and education institutions.

²³⁰ General Protocol on Acting and Cooperation between Institutions, Authorities and Organisations in Situations of Domestic Violence and Intimate Partner Violence against Women, Special Protocol of the Ministry of Health of the Republic of Serbia on the Protection and Treatment of Women subjected to Violence, Special Protocol on Acting of Police Officers in Cases of Domestic Violence and Intimate Partner Violence against Women, Special Protocol on Acting of Centres for Social Work in Cases of Domestic Violence and Intimate Partner Violence against Women and Special Protocol for the Judiciary in Cases of Domestic Violence and Intimate Partner Violence against Women.

²³¹ Law on Ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Official Gazette of RS - International Treaties No. 12/13).

²³² For more information, see the Special Report of the Protector of Citizens on implementation of the General and Special Protocols on protection of women from violence, available at: <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebni-izvestaji/3710-2015-02-24-13-35-38>.

²³³ For more information, see the section of this Report dealing with the rights of the child.

with sensationalism and gender stereotypes²³⁴, without respect for women's privacy, dignity and integrity.

- 3.11. The rights of citizens with different sexual orientation and gender identity are not fully protected.
- 3.12. There are no services in place for young LGBTI persons who had to leave their homes after being disowned by their families upon coming out with their sexual orientation and gender identity.
- 3.13. The Law on Basic Elements of the Education System in the Republic of Serbia²³⁵ does not provide for an explicit prohibition of discrimination based on sexual orientation and gender identity.
- 3.14. No implementing regulation has been adopted that would lay down detailed criteria for recognition of forms of discrimination by the staff, the pupils or third parties in education institutions.
- 3.15. There are no normative provisions that would regulate the legal consequences of sex and gender reassignment.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

- 4.1. No actions have been taken to comply with the following proposals for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:
 - That **the Government** should propose to the National Assembly a law that would govern the provision of free legal assistance, to improve the position of all vulnerable groups, including in particular the victims of domestic violence;
 - That **the Government** should ensure full exercise and protection of the rights of LGBT persons, in particular their physical and mental integrity;
 - That **the Government** should continually implement measures and activities aimed at raising awareness of gender equality and measures to improve the status of women;
 - That **the Government** should propose and the National Assembly should enact a law that would regulate the issues relevant for gender equality, which will provide for gender mainstreaming, respect for international standards of gender equality and equal opportunity principles, prohibition of and protection from discrimination based on sex, gender and gender identity and special measures for achieving the principle of gender equality, including measures for protection from gender-based violence;
 - That **public authorities** should continually implement measures and activities aimed at raising public awareness of the need to respect the rights of LGBTI persons.
 - That **The Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Health, judicial authorities and local self-administrative authorities** should provide for more effective protection of women from domestic violence and intimate partner violence, in compliance with the recommendations of the Protector of Citizens given in the Special Report on

²³⁴ For more information, see: <http://www.rra.org.rs/uploads/useruploads/izvestaji-o-nadzoru/Rodnavoravnopravnost-RTS-1.pdf>

²³⁵ Official Gazette of RS, No. 72/09, 52/11 and 55/13.

Implementation of the General Protocol and the Special Protocols on the Protection of Women against Violence.

- That **the Ministry of Justice** should consider the Initiative of the Protector of Citizens to amend the Criminal Code with regard to criminal law protection of victims of domestic violence and step up the efforts to harmonise Serbian legislation with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.
- That **the Ministry of Labour, Employment, Veteran and Social Affairs**, in cooperation with local self-governments and **civil society organisations**, should establish support services for young LGBTI persons who had to leave their homes after being disowned by their families upon coming out with their sexual orientation and gender identity.
- That **the Ministry of Education, Science and Technological Development** propose amendments to the Law on Basic Elements of the Education System in order to provide for an explicit prohibition of discrimination based on sexual orientation and gender identity.
- That **the Ministry of Education, Science and Technological Development** should pass an implementing regulation that would lay down detailed criteria for recognition of forms of discrimination by the staff, the pupils or third parties in education institutions, including in particular discrimination based on the sexual orientation and gender identity of a pupil, a teacher or another member of school staff.
- That **the Ministry of Education, Science and Technological Development and the National Education Council** should include in the curricula and syllabuses of primary and secondary schools, and subsequently also the textbooks, content that would acceptably, and yet professionally cover all major issues relating to the rights of the LGBT population.
- That **the Ministry of Justice, the Ministry of Public Administration and Local Self-Government, the Ministry of Labour, Employment, Veteran and Social Affairs and the Ministry of Education, Science and Technological Development** should prepare draft legislation to regulate the legal consequences of sex and gender reassignment.
- That **The Ministry of Justice and Public Administration and the Republic Secretariat for Legislation** should propose measures for the introduction of gender-sensitive language in the work of public authorities, including the drafting of laws and other instruments.
- That **the Ministry of Labour, Employment, Veteran and Social Affairs** should, when overseeing local self-government units, order the formation of permanent working bodies on gender equality and equal opportunity or appointment of a gender equality and equality opportunity officer in accordance with the Law on Gender Equality.
- That **the Ministry of Health and the Republic Health Insurance Fund** should put in place measures to ensure that all women have access to medical services at all levels of health care.
- That **the Human Resources Management Office** should include gender equality issues in the technical training material for all public administration staff.

5. Explanation

In view of the fact that the linear budgeting model was definitely abolished in 2015 in favour of programme budgeting across all levels of government, enactment of the Law amending the Law on Budget System provided for the introduction of gender budgeting at all levels of government. The purpose of gender budgeting is to make the budget process sensitive to the needs and priorities of women and men, as well as of different groups of women and men, and their respective roles and to identify any areas where national budget distribution is unfair. Gender budgeting involved gender mainstreaming across all budget processes and restructuring of revenue and expenditure to improve gender equality. Gender objectives have been included in the 2016 budgets of 28 budget spending units.²³⁶

Amendments to the Law on Health Insurance in compliance with the Opinion of the Protector of Citizens ensured higher efficiency of acting and improved protection of the right of pregnant women and nursing mothers to salary compensation. In his Opinion, the Protector of Citizens noted it was necessary to amend regulations to ensure that a portion of the salary compensation paid in case of temporary incapacity during illness of pregnancy complications is paid from the budget through the Republic Health Insurance Fund, rather than by the insurance beneficiary, as had been the case.

Amendments to the Law on Serbian Armed Forces have introduced positive novelties regarding the right of employees at the Ministry of Defence and the Serbian Armed Forces during pregnancy, maternity leave, child care or special child care.²³⁷

The competition for enrolment in the Military Academy for the school year 2014/2015 did not include a restrictive 15% quota for the enrolment of women, nor did it include a condition relating to applicants' civil and parental status. Also, 55 female cadets were promoted to the rank of second lieutenant in 2014, among them one woman who ranked – for the first time – as one of the top three cadets. In the school year 2014/2015, female pupils were allowed to enrol in the Military High School for the first time and the top 90 candidates included 31 girls.

The Law on Textbooks, in compliance with the Opinion of the Protector of Citizens on the Draft Law on Textbooks²³⁸ includes a provision with the heading “Equal Opportunities and Non-Discrimination”, which provides that textbooks, manuals and teaching materials, electronic supplements to textbooks, supplemental teaching materials, didactic tools and didactic play tools must have such form and content that they enable the application of the equal opportunity principle and may not discriminate against or put at a disadvantage any groups or individuals or condone such behaviour, in accordance with the non-discrimination law.²³⁹

The Bylaw on the Protection of Minors in the Provision of Media Services and the Bylaw on the Protection of Human Rights in the Provision of Media Services contain provisions which protect human rights and the rights of the child in electronic media. The provisions of the Bylaw on the Protection of Human Rights in the Provision of Media Services which promote

²³⁶ According to the data of the Ministry of Finance, available at:

<http://www.mfin.gov.rs/UserFiles/File/budzetski%20korisnici/2016/Uputstvo%20za%20pripremu%20budzeta%202016.pdf>

²³⁷ Article 75 of the Law on Serbian Armed Forces: “A professional serviceperson who is prevented from serving due to pregnancy, maternity leave, child care or special child care shall not be relieved of duty and shall have the rights granted under general labour legislation.”

²³⁸ Opinion available at: <http://www.zastitnik.rs/index.php/lang-sr/2011-12-11-11-34-45/3756-2015-03-26-08-07-55>.

²³⁹ Article 11 of the Law on Textbooks.

the exercise and protection of rights of women, including in particular women who are victims of violence, impose an obligation on media service providers to provide their services in a way which respects the personal dignity of audiences, participants and persons to whom published information relates²⁴⁰; they outlaw the broadcasting of programmes depicting violence, substance abuse, degrading treatment, torture or any other inhuman treatment of a human being in a way that condones, glorifies, justifies or trivialises such treatment or otherwise represents it in a way which violates human dignity; it prohibits any violation of human dignity, including in particular by showing diseased persons or victims of violence or a tragic event who are dying or suffer severe physical or mental anguish²⁴¹; and outlaw belittling, discriminatory, inhuman or degrading treatment of participants in programmes^{242, 243}

The National Gender Equality Strategy for the period 2015-2020 provides for a number of measures aimed at increasing the protection of women from gender-based domestic and intimate partner violence and preventing and eliminating gender-based, sexual and intimate partner violence against young women, improving support programmes for young persons who were victims of violence, including in particular gender-based violence, and developing special programmes aimed at young perpetrators of gender-based violence. These measures are in line with the recommendations given by the Protector of Citizens in his 2013 and 2014 Annual Reports, the Special Report of the Protector of Citizens on the Protection of Women against Domestic and Intimate Partner Violence and announcements of the Protector of Citizens.

The Action Plan on Implementation of the National Gender Equality Strategy for the period 2016-2018 includes also measures aimed at improving women's health and enabling equal access to health care services, as well as measures aimed at improving women's economic status and their position in the labour market, in accordance with the recommendations issued by the Protector of Citizens in his 2013 and 2014 Annual Reports. Special measures are aimed at female members of vulnerable social groups.

New strategic documents (the National Strategy for Addressing the Issues of Refugees and Internally Displaced Persons for the period 2015-2020, the National Action Plan on Employment for 2016 and the National Youth Strategy for the period 2015-2025 with the supporting Action Plan), in accordance with the recommendations of the Protector of Citizens contained in Regular Annual Reports for 2013 and 2014 and the Special Report "LGBT Population in Serbia - Situation of Human Rights and Social Status" of 2011²⁴⁴, contain measures aimed at: promoting female entrepreneurship and employing women from vulnerable groups; improving the employability, employment and social inclusion of young persons, including in particular those who are at risk of social exclusion; promoting gender equality and an inclusive society; educating the young in the vulnerable groups and increasing outreach to young persons who dropped out of or were not included in formal education; support to young parents, in particular young mothers, for continuing education; reducing the marked gender inequalities in the refugee population; and other measures intended to improve the situation of vulnerable social groups.

The Government formed the Council for Monitoring Implementation of the Action Plan on implementation of the Strategy of Prevention and Protection from Discrimination, as an *ad hoc*

²⁴⁰ Article 20 of the of the Bylaw on the Protection of Human Rights in the Provision of Media Services.

²⁴¹ Article 21 of the of the Bylaw on the Protection of Human Rights in the Provision of Media Services.

²⁴² Article 22 of the of the Bylaw on the Protection of Human Rights in the Provision of Media Services.

²⁴³ For more information, see the section of this Report dealing with culture and information.

²⁴⁴ Available at: http://www.zastitnik.rs/attachments/2107_Izvestaj%20LGBT.doc.

working body of the Government. Some of the activities, which the Protector of Citizens had underscored as important in his recommendations, have still not been implemented, although the timeframe for their implementation specified in the Action Plan has expired.²⁴⁵ Furthermore, shortcomings have been observed in the way in which the authorities identified in the Action Plan as responsible for implementing specific activities evaluated compliance with the planned indicators when submitting reports for the fourth quarter of 2014 and the first quarter of 2015, as well as in the volume of the information provided. The reports were submitted to the Office for Human and Minority Rights, on the basis of a Questionnaire drawn up by that Office for the purpose of monitoring implementation of the Action Plan.

Acting pursuant to complaints filed by dozens of women and organisations, the Protector of Citizens conducted an oversight of the Tax Administration of the Ministry of Finance. The Protector of Citizens found that the solidarity tax had not been charged only on monthly salaries higher than RSD 60,000, as provided by the law; instead, it was also charged on back wages paid cumulatively in arrears in case of temporary incapacitation due to illness or pregnancy complications, as well as on salary compensation paid during maternity leave, child care leave and special child care leave. The Government passed a resolution, which was two years overdue, to terminate the irregular and unfair collection of solidarity tax from pregnant women and nursing mothers who had received past-due salary compensations from their employers past and to make refunds to those from whom the tax had already been collected in this manner.²⁴⁶

Acting in compliance with the opinion of the Protector of Citizens²⁴⁷, the Ministry of Health initiated enactment of the Law amending the Law on Health Insurance, which clarified the provisions of Article 96, paragraph 5 of the Law on Health Insurance, thus ensuring that the salary compensation paid in case of temporary incapacity during illness of pregnancy complications from the budget through the Republic Health Insurance Fund is credited to the employer's account, which allows for greater efficiency.²⁴⁸

In his opinion issued to the Republic Health Insurance Fund and the Tax Administration²⁴⁹, the Protector of Citizens highlighted the issue of delayed and hampered exercise of pregnant women's entitlement to salary compensation during periods of temporary incapacitation due to illness or pregnancy complications in cases where their employer entered into an agreement with the Tax Administration to delay the payment of due health insurance contributions. Due to this issue, pregnant women are unable to receive salary compensation until their employer has fully settled any outstanding due health insurance contributions covered by such debt rescheduling agreement.

²⁴⁵ Recommendations given by the Protector of Citizens in the 2013 and 2014 Annual Reports, including those relating to: improving the quality of textbooks, curricula and syllabuses and contents of textbooks and other teaching materials at all levels of education in order to eliminate any discriminatory content (in particular with regard to gender, sexual orientation and gender identity, among other things); passing the Bylaw on Detailed Criteria for recognising Forms of Discrimination in Education Institutions; preparing the Draft Law amending the Law on Basic Elements of the Education System and specifically identifying sexual orientation and gender identity as a prohibited basis for discrimination (which should have been done in the second quarter of 2015 according to the Action Plan); organising support groups for LGBTI persons forced to live in the streets at municipal centres for social work and support groups for the parents of LGBTI children and youth.

²⁴⁶ For more information, see the section of this report dealing with the finance sector.

²⁴⁷ Opinion available at:

http://www.ombudsman.rodnaravnopravnost.rs/index.php?option=com_content&view=article&id=170%3A2015-07-29-13-44-40&catid=14%3A2012-12-12-13-45-14&Itemid=27&lang=sr

²⁴⁸ For more information, see the section of this Report dealing with the health sector.

²⁴⁹ Opinion available at: http://www.ombudsman.rodnaravnopravnost.rs/index.php?option=com_content&view=article&id=192%3A2015-12-24-10-54-39&catid=14%3A2012-12-12-13-45-14&Itemid=27&lang=sr

Believing that Article 20 of the Law on Determining the Maximum Number of Employees in the Public Sector, which provides that the employment of every public sector employee shall be terminated upon reaching the mandatory requirements for retirement (after completing the required number of years of employment covered by insurance contributions and after reaching the required age), violated the prohibition of discrimination set out in Article 21 of the Constitution because it affected only women employed in the public sector, the Protector of Citizens and the Equality Commissioner filed a joint motion for a constitutional review. Pursuant to the motion filed by these two independent authorities, the Constitutional Court said provision. The Constitutional Court found that setting an age threshold that applied only to women as a statutory basis for retirement, thus effectively indirectly turning a right granted under the law (namely the right to retire under more favourable conditions in terms of the retirement age threshold) into a statutory basis for termination of employment, was inconsistent with the prohibition of gender-based discrimination provided for in the Constitution and indirectly also with the Constitutional guarantee of accessibility of all jobs to all citizens under equal conditions.

The Law on Gender Equality does not properly regulate the field of gender equality and is not harmonised with the international commitments assumed in the field of gender equality and the relevant subsidiary legislation. There are also numerous deficiencies in the way in which gender equality mechanisms are regulated, established and implemented. Among other things, the Law lacks implementation mechanisms and penalties for non-compliance with the statutory provisions and does not contain sufficiently specific provisions that would govern the gender equality mechanisms. The fact that the gender equality mechanisms are non-functional bears witness to the deficiencies of the Law. The practice of the establishment of permanent working bodies or appointment of gender equality officers and equal opportunity officers and the operation of these bodies are uneven. In some municipalities and towns/cities there are either no gender equality mechanisms at all or they are not functional.

Emphasizing the necessity of enactment of regulations which would ensure full implementation of the gender equality principles, the Protector of Citizens initiated preparation of the Model Law on Gender Equality, presented it to the public²⁵⁰ and then submitted it to the Working Group of the Coordination Body on Gender Equality tasked with preparing the Draft Law on Gender Equality. The purpose of the Model Law is to eliminate the identified deficiencies in the existing legislation and harmonize it with the assumed international duties in the field of gender equality and subsidiary legislation.

The number of women who are victims of domestic and intimate partner violence remains alarmingly high and the fact that the number of women who were murdered in intimate partner and domestic violence increased in 2015 is a particular concern.²⁵¹ The response of competent authorities remains inefficient and belated, the measures that are undertaken are not an adequate response to the violence suffered by women and usually focus on temporarily removing the female victims from their household, usually only for a short time for a specific period, usually a short one. Key issues in this regard include absence of multidisciplinary

²⁵⁰ Last time at the Assembly of the Autonomous Province of Vojvodina and premises of the Standing Conference of Towns and Municipalities in February 2015.

²⁵¹ According to media reports, chairwoman of the Coordination Body for Gender Equality Zorana Mihajlović stated on 25 November 2015 that 34 women had been murdered between 1 January and 24 November 2015. For more information, see: <http://www.blic.rs/vesti/beograd/obelezjen-medunarodni-dan-borbe-protiv-nasilja-nad-zenama/yq8svtd>. According to media reports, in 2014 there were 27 women who were victims of domestic violence. Available at: <http://www.blic.rs/vesti/drustvo/stop-nasilju-nad-zenama-ove-godine-34-nove-zrtve-borba-morabiti-zajednicka/l2rw5xl>.

cooperation and lack of exchange and feedback information between guardianship authorities, the police, health care institutions, public prosecutor's offices and courts and lack of follow-up action on measures imposed to protect victims from domestic violence, which are (supposed to be) overseen by guardianship authorities, but are effectively not overseen by any authority. In 2014 the Protector of Citizens prepared the Special Report on Implementation of the General Protocol and the Special Protocols on the Protection of Women against Violence²⁵², which was presented to those administrative authorities in 2015. The Report identified a number of shortcomings, including insufficient recognition of violence against women, misunderstanding of the situation faced by women who are victims, insufficient availability of information on the existence and content of the General Protocol and the Special Protocols, lack of appropriate records and unsatisfactory cooperation between competent authorities.

One of the recommendations made by the Protector of Citizens in the Special Report on Implementation of the General Protocol and the Special Protocols on the Protection of Women against Violence was to conduct regular, planned, coordinated and continual information and training of professionals at the authorities and institutions responsible for protecting women from violence. In 2015, the Protector of Citizens analysed the availability of trainings on the protection of women from violence and the efficiency and coverage of staff with such trainings. The findings were presented in the Special Report on Training for Acquiring and Improving Knowledge and Competences for Prevention, Elimination and Protection of Women from Domestic and Intimate Partner Violence²⁵³, in which the Protector of Citizens identified shortcomings and issued relevant recommendations. Among other things, the Protector of Citizens found that employees at public authorities were not provided with sufficient trainings on the protection of women from domestic and intimate partner violence, that there were evident differences between different systems in terms of the number of trainings provided and the number of employees covered by such trainings, that relevant records were not kept of trainings, their content and objectives and the number of employees who attended such trainings and that public authorities did not evaluate the knowledge and skills acquired by the employees who were directly in charge of protecting women from violence or the practical application of the knowledge they had acquired.

Health care services are still insufficiently available to women, particularly female Roma, women living in rural areas and women with disabilities and women and are completely unavailable to women who are left without health insurance through a fault of their employer or other persons. Health care facilities are not sufficiently accessible to women with disabilities and are not sufficiently adapted to their specific needs. Gynaecological and dental services are also not adapted to the needs of women with disabilities in most health care institutions (few health care institutions have the special gynaecological examination tables and dental chairs). Women who are insured as employed persons are left without health insurance and health care covered by compulsory health insurance if their employers fail to pay health insurance contributions. Female employees are forced to bear the burden of their employers' negligence, while competent authorities fail to take appropriate measures to ensure financial discipline and provide health insurance to employees who are not responsible for the non-payment of contributions. Women who live in rural areas often have no health insurance, while those that do are forced to travel great distances to the nearest health care institution and often have no available public transport links to towns or cities where specialist medical examinations are provided. Specific services aimed at women in particularly vulnerable situations (Roma

²⁵² Report available at: <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/3710-2015-02-24-13-35-38>.

²⁵³ Report available at: <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/4613-2016-02-26-10-48-42>.

women, women in extreme poverty and victims of violence) have not been developed and are mostly unavailable to this population of women.

The newly-enacted Law on Police contains an Article on prevention of discrimination²⁵⁴ which explicitly prohibits discrimination based on sex, gender and gender identity. This provision is a step forward in the treatment by administrative authorities of transgendered and transsexual persons, as a population category that is vulnerable in many different regards and subjected to frequent violations of their rights. Nevertheless, a persisting shortcoming of this Law is the fact that it does not specifically prohibit discrimination based on sexual orientation.

The Law on Police specifically provides that the police shall develop the professional capacities, competences and ethics of police officers for socially responsible acting of the police service, with full respect for human and minority rights and freedoms and protection of all vulnerable groups.²⁵⁵ The Law provides that, in cases of domestic violence, police officers must cooperate with other competent authorities and immediately undertake the required measures and actions in accordance with the applicable law which prevents continued violence that may result in bodily harm or death.²⁵⁶ The Protector of Citizens has underscored the importance of coordination and cooperation between all authorities in the system put in place to protect victims of domestic and intimate partner violence in his Annual Reports, in the Special Report on the Protection of Women from Domestic and Intimate Partner Violence and in the recommendations issued to relevant authorities after investigations into the regularity and legality of their work.²⁵⁷

In 2011 and again in 2012, the Protector of Citizens submitted to the Ministry of Justice an Initiative to Amend the Criminal Code with regard to criminal law protection of victims of domestic violence and sexual abuse. Although the Protector of Citizens issued recommendations to the Ministry of Justice to consider this initiative on several occasions²⁵⁸, the initiative has not been considered and the Criminal Code has not been harmonised with the Council of Europe Convention on preventing and combating violence against women and domestic violence. With the aim of improving criminal law protection of women who are victims of violence, it is necessary to amend the Criminal Code, including through introduction of criminal offence of stalking and sexual harassment, redefining of criminal offences against sexual freedom, more stringent penalties, new security measures and special duties.

A Pride Parade has been held in Belgrade without incidents for the second consecutive year and a Trans Pride Parade has been held for the first time, which has enabled persons of different sexual orientation and gender identity to exercise their freedom of assembly. This inter alia ensured compliance with the recommendations given by the Protector of Citizens in his Annual Reports for 2013 and 2014 and his Special Report "LGBT Population in Serbia - Human Rights Situation and Social Status" of 2011.

²⁵⁴ Article 5 of the Law on Police.

²⁵⁵ Article 27 of the Law on Police.

²⁵⁶ Article 28 of the Law on Police.

²⁵⁷ For more details on the Law on Police, see the section of this report dealing with internal affairs.

²⁵⁸ Annual Reports of the Protector of Citizens for 2012, 2013 and 2014.



Picture 5 Deputy Protector of Citizens for Children's Rights and Gender Equality Gordana Stevanović participating in the Pride Parade in Belgrade, September 2015.

The society at large still holds widespread misconceptions and stereotypes about persons of different sexual orientation and gender identity and these persons are still largely exposed to discrimination. Persons with minority sexual orientations and gender identities, as well as persons who advocate the rights of LGBTI persons, face discrimination and violence, including physical violence and mistreatment. It is not uncommon for young LGBTI persons to have to leave their homes after being disowned by their parents and family members upon coming out with their sexual orientation and gender identity. Many of these persons drop out of education for this reason and, as they are unemployed and mostly unemployable, they often end up homeless. At this moment there are no safe houses or other shelter services in the Republic of Serbia, or indeed any other measures and services for young LGBTI persons who find themselves in this situation.²⁵⁹ The Action Plan on implementation of the National youth Strategy for the period 2015-2017 contains activities aimed at: establishing local services; developing counselling and psychological support programmes for young persons at risk of social exclusion; developing gender equality and gender perspective training programmes; and developing programmes aimed at sensitising employees at institutions within the system to ensure more efficient support to young persons who are at risk of social exclusion.

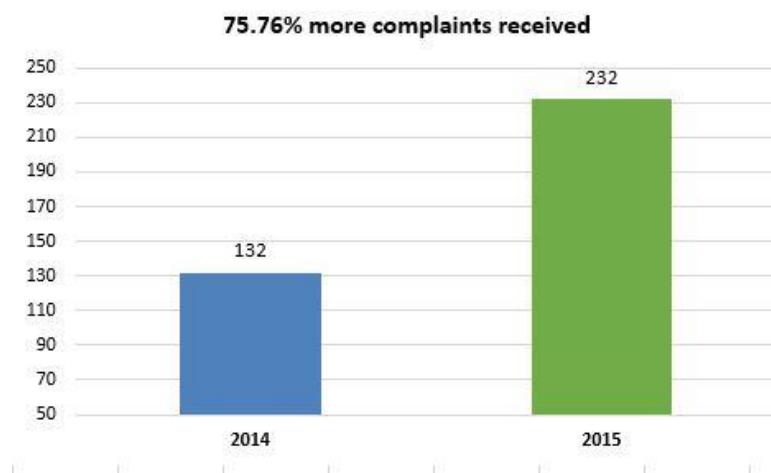
The widespread intolerance of LGBTI persons among the youth underscores the need to make additional efforts to teach tolerance, non-discrimination and non-violent society in all forms and at all levels of education. Furthermore, in this reporting period competent authorities have once again failed to include an explicit prohibition of discrimination based on sexual orientation and gender identity in the text of the Law on Basic Elements of the Education System in the Republic of Serbia, nor have they adopted an implementing regulation that would set out detailed criteria for recognising forms of discrimination by the staff, the pupils or third parties in education institutions. Furthermore, the curricula and syllabuses of primary and secondary schools, and consequently also the relevant textbooks, do not contain elements that would cover in an appropriate and professional way all important issues concerning the rights of the LGBTI population.

²⁵⁹ The complexity of the family situation of LGBTI persons was raised as a concern in the Strategy on Prevention and Protection from Discrimination and the supporting Action Plan, available at: http://www.ljudskaprava.gov.rs/images/Akcioni_plan_-_srpski.pdf.

II STATISTICS

In the field of gender equality, the Protector of Citizens received 224 complaints and investigated eight cases on own initiative. The said 232 complaints accounted for 3.72% of the total number of complaints received by the Protector of Citizens in 2015. The number of complaints in this year was 75.76% higher than last year.

Chart 5 - Gender equality - Number of complaints received in 2015 compared to 2014



In 2015, the Protector of Citizens closed a total of 226 cases, of which 212 were received in 2015 while the remaining ones were carried forward from previous years.

Table 20 - Gender equality - outcome of cases handled in 2015 and in earlier years

	Number	Percentage
Dismissed complaints	68	30.09%
Cases covered by recommendations	91	40.27%
Unfounded complaints	47	20.80%
Terminated investigation	13	5.75%
Complaint dropped by complainant	5	2.21%
Opinions and announcements of the Protector of Citizens	2	0.88%
Total	226	100%

The Protector of Citizens dismisses the majority of the complaints received because the conditions for acting upon them provided for by the Law are not met. Complaints are dismissed on the grounds of lack of jurisdiction, belatedness, prematurity, anonymity of complainant or formal deficiencies.

Table 21 - Gender equality - reasons for dismissal of complaints in 2015

	Number	Percentage
Premature complaint - complainant advised on available remedies	36	52.94%
Declined jurisdiction - complainant referred to competent authority	16	23.53%
Formally deficient complaints	8	11.76%
Complaint filed by unauthorised persons	5	7.35%
Anonymous complaints	2	2.94%
Belated complaints	1	1.47%
Total	68	100%

Assistance in the form of legal advice accounts for a significant share of the actions taken by the Protector of Citizens pursuant to complaints; he provides this type of assistance even in the cases where he declines jurisdiction or dismisses a complaint as premature. In such cases, the Protector of Citizens refers the complainant to the competent authority or provides advice on available remedies.

As can be seen in the following table, in 76.47% of the dismissed of complaints the Protector of Citizens provided the citizens legal advice in the exercise of their rights before competent authorities.

Table 22 - Gender equality - assistance provided in the form of legal advice

	Number	Percentage
Dismissed complaints	68	100%
Premature complaint - complainant advised on available remedies	36	52.94%
Declined jurisdiction - complainant referred to competent authority	16	23.53%
Total: assistance provided in the form of legal advice	52	76.47%

In the field of gender equality, 387 different violations of rights have been identified pursuant to 232 complaints. The largest number of complaints pointed to violations of special rights in the field of gender equality.

Table 23 - Gender equality - violations of rights reported by complainants

	Number	Percentage
Special rights in the field of gender equality	196	50.65%
Economic, social and cultural rights	148	38.24%
Civil and political rights	39	10.08%
Right to good governance	4	1.03%
Total	387	100%

The most frequently violated economic, social and cultural rights were the right to social security and the right to protection of families, mothers and single parents, as well as the right to work and rights arising from employment.

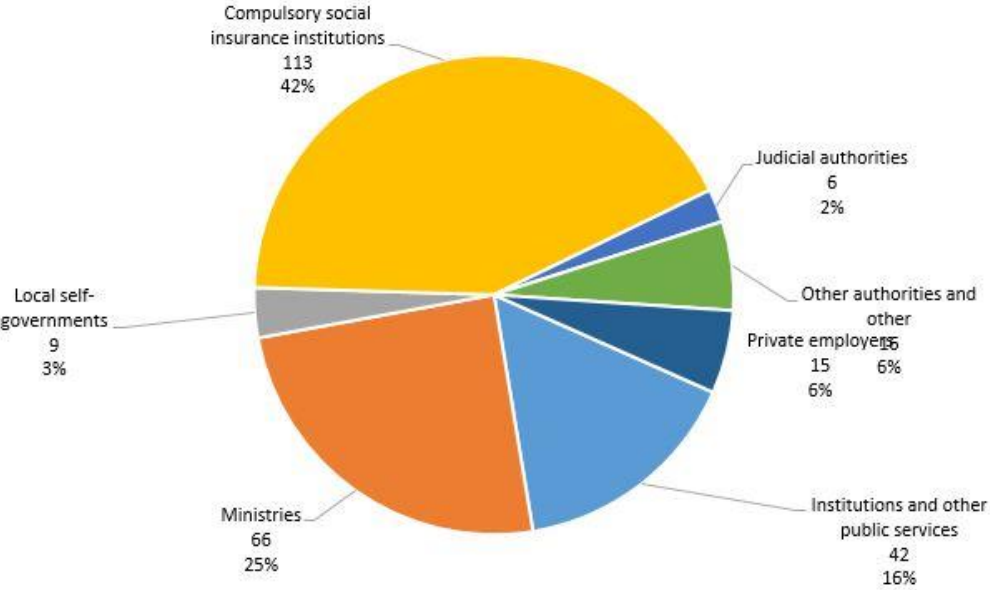
The following table shows the structure of special rights based on 196 registered violations of these rights.

Table 24 - Special rights in the field of gender equality, their number and percentage

Type of right violated	Number	Percentage
Right to salary compensation during pregnancy leave, childbirth leave and child care leave	136	69.39%
Domestic violence	37	18.88%
Rights of pregnant women and nursing mothers	17	8.67%
Sexual violence	3	1.53%
Parental right	3	1.53%
Total	196	100%

Most of the complaints pointed to violations of rights by social insurance organisations, institutions in the field of social security and ministries, as shown in the following chart.

Chart 6 - Authorities and organisations most frequently complained against by the citizens in the field of gender equality in 2015



III OTHER ACTIVITIES

Gender Equality Council of the Protector of Citizens

The Gender Equality Council²⁶⁰ held seven sessions during the past year. Among other activities, members of the Council took part in the commendation of the International Human Rights Day and presentation of the Report on Implementation of the General Protocol and the Special Protocols on the Protection of Women against Violence.

In cooperation with the Council and the OSCE Mission to Serbia, a training was held for employees at the Secretariat of the Protector of Citizens to mark the International Women's Day on 8 March. The aim of the training was to enable the employees to identify issues of relevance for applying the principle of gender equality within their spheres of competence and to ensure they act properly, thus contributing to advancement of the status of women.

Other activities

The Protector of Citizens presented the Model Law on Gender Equality, the drafting of which he had initiated, at the Assembly of the Autonomous Province of Vojvodina. He noted that shortcomings of the existing law included in particular the ineffectiveness of the institutional mechanisms put in place to implement the legislation in the field, i.e. at the level of local self-governments, where persons in practice exercise their right to gender equality.

The Deputy Protector of Citizens for Child Rights and Gender Equality presented the Special Report of the Protector of Citizens on Implementation of the General Protocol and the Special Protocols on the Protection of Women against Violence to representatives of the authorities included in the system for protecting women from domestic and intimate partner violence. The presentation was held at Palace of Serbia in Belgrade. The Deputy Protector of Citizens also presented the findings contained in the said Report relating to numerous identified shortcomings in the legislative framework and in practice at the session of the Committee on Human and Minority Rights and Gender Equality of the National Assembly which was convened to address the increasingly frequent cases of violence against women and domestic violence in which the victims are murdered.

The Deputy Protector of Citizens for Child Rights and Gender Equality took part in the session "The Role of Independent Human Rights Institutions in the Fight against Discrimination of Women and Gender-Based Discrimination in Serbia" at the OSCE/ODIHR 2015 Human Dimension Implementation Meeting in Warsaw, where she presented the key findings of the Special Report on Implementation of the General Protocol and the Special Protocols on the Protection of Women against Violence and the activities undertaken by the Protector of Citizens to improve the status of victims of domestic and gender-based violence. The participants underscored the importance of this kind of research and the collected data for studying the phenomenon of domestic violence and for eliminating this negative social tendency.

The Protector of Citizens took part in a protest against the recent spike in domestic and intimate partner violence against women which resulted in murders. The protest was held in the centre of Belgrade by the Autonomous Women's Centre. The Deputy Protector of Citizens for Child Rights and Gender Equality took part in a public event organised as part of the global

²⁶⁰ The Gender Equality Council of the Protector of Citizens provides technical and advisory support to the Protector of Citizens. Members of the Council are persons with experience and knowledge in improving the status of women and LGBTI persons, with special emphasis on the rights and status of Roma women, women with disabilities and women who experience domestic violence and intimate partner violence. Members of the Council point to problems faced by particularly vulnerable social groups with the aim of improving their status. The Council meets once a month in the offices of the Protector of Citizens.

campaign One Billion Rising, dedicated to preventing violence against women and protecting women from violence. This event was organised by civil society organisations Centre of Modern Skills and E8 Centre.

The Deputy Protector of Citizens for Child Rights and Gender Equality participated in a number of roundtables, debates and conferences held to advance gender equality, protect women from domestic and intimate partner violence and improve the status of LGBTI persons and other vulnerable social groups.²⁶¹

At the international conference "Implementation of the Council of Europe Convention on Preventing and Combating Violence against Women – Two Years after its Ratification in the Republic of Serbia", the Deputy Protector of Citizens for Child Rights and Gender Equality presented some of the results of the analysis conducted by the Protector of Citizens in connection with the trainings for case officers which addressed the issues of violence against women and domestic violence. The conference was organised by the Autonomous Women's Centre at the Serbian Chamber of Commerce in Belgrade.

The Deputy Protector of Citizens for Child Rights and Gender Equality and her assistants visited the Penal and Correctional Institution for Women in Pozarevac, the only facility in Serbia where women are incarcerated, to monitor their status and examine the exercise of their rights.

In the capacity of the National Preventive Mechanism, in August, September and October 2015 the Protector of Citizens monitored the status and the exercise of rights of female refugees and asylum seekers found in the territory of the Republic of Serbia, including in particular women belonging to vulnerable social groups, pregnant women, nursing mothers, women with disabilities, elderly women, women who travel unaccompanied, as well as the actions taken by Serbian authorities and their capacities to provide appropriate, available shelter, food and clothing and urgent medical care, social security and protection from domestic and intimate partner violence, sexual violence and human trafficking. These activities were conducted at police administrations, centres for social work, regional border police centres, asylum centres and reception centres in Banja Koviljaca, Loznica, Pirot, Dimitrovgrad, Presevo, Subotica and Kanjiza.²⁶²

In honour of the 10th of December, the International Human Rights Day, a presentation was held at the head office of the Protector of Citizens of the Report on the Right of Women with Disabilities to Parenting and Family, which had been prepared by the organisations "Out of Circle – Belgrade" and "IDEAS – Centre for Research and Social Development.

During a study visit to the Republic of Serbia, Members of Parliament and members of the National Gender Equality Council of Belarus visited the Protector of Citizens, with the support of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), met with the Deputy Protector of Citizens for Child Rights and Gender Equality and discussed the

²⁶¹ The meeting "Female Platform for Serbia's Development 2015", a meeting with the competent authorities of the town of Jagodina titled "Children and Women who are Victims of Domestic Violence – Elimination and Prevention of Violence"; the event titled "Breakfast with a Cause" within the framework of the campaign Roma Women's Activism Month in Belgrade; opening of the "Bagel" shop in Belgrade, an oasis for victims of human trafficking; roundtable "Integrated Response to Violence against Women in Serbia"; a debate at the Faculty of Political Sciences about the work and powers of the Protector of Citizens of the Republic of Serbia regarding protection of women from domestic and intimate partner violence; roundtable "Possibilities for Efficient Cooperation between Governmental and Non-Governmental Sectors in the Elimination of Domestic Violence" organised by International Assistance Network (IAN); MEETING TITLED "Why mutual cooperation is important in formulating non-discrimination employment policies in Serbia, the region and the EU" held at the Media Centre; and conference titled "Strengthening Social Dialogue about the Rights of Vulnerable Groups in Employment."

²⁶² For more details on this matter, see the section of this Report dealing with the rights of detained persons and the NPM.

activities of the Protector of Citizens which provide examples of good practice in the work of independent human rights institutions mandated to protect women from domestic and intimate partner violence.

A rainbow flag was flown on the building of the Protector of Citizens on 17 May 2015 to mark the International Day Against Homophobia, Biphobia and Transphobia (IDAHO/T), as a symbolic gesture of support to persons with different sexual orientation and gender identity and a reminder of the problems these persons face on a daily basis.

The Deputy Protector of Citizens took part in the International Conference "Representation of Gender Minority Groups in the Media", which the Faculty of Media and Communications of the Singidunum University held in Belgrade, together with its partner institutions from the region – the Faculty of Drama Arts of Cetinje (Montenegro) and the Skopje-based coalition Sexual and Human Rights of Marginalised Communities to Health. She also delivered a speech on the topic of "LGBT Persons and Citizens' Rights" at the seminar "The Media and Reporting about the LGBT Population.

This year's Pride Parade, which was held on 20 September, was attended by Deputy Protector of Citizens for Gender Equality Ms Gordana Stevanović, together with her assistants from the Secretariat of the Protector of Citizens and the chairwoman and members of the Gender Equality Council of the Protector of Citizens. She also attended the opening of the 2015 Belgrade Pride Week, which was organised by the association Belgrade Pride held at Mixer House.

A representative of the Secretariat of the Protector of Citizens participates as an observer in the work of the Government's Political Council with institutional bodies and mechanisms for implementation of the National Action Plan (NAP) on Implementation of United Nations Security Council Resolution 1325 – Women, Peace and security in the Republic of Serbia (2010-2015). Female representatives of the Secretariat also took part in a number of meetings which addressed the advancement of gender equality and status of LGBTI persons.²⁶³

In the field of gender equality and rights of LGBTI persons, the Protector of Citizens has continued his successful cooperation with various civil society organisations, including the Autonomous Women's Centre, the Victimology Society of Serbia, IAN, Labris, Gejten LGBT, "Duga" (Rainbow) Association of Sabac, Gay-Straight Alliance, the Belgrade Centre for Security Policy, YUCOM and "Bibija", as well as the Standing Conference of Towns and Municipalities, the Women's Centre of Uzice, the association "Pescanik" based in Kraljevo, the Academy of Female Leadership, Group 484, "Zenski prostor" (Women's Space) of Nis, the Nis-based association "Osvit", the Human Rights Committee/SOS Line of Vranje and the association "Generator" based in Vranje.

²⁶³ Pre-conference "Democracy for All: Political Participation of LGBTI Persons in the Western Balkans" held at the National Assembly of the Republic of Serbia, which was organised by the Labris association, the Gay-Lesbian Victory Institute and Hirschfeld Eddy Foundation, in cooperation with the Committee on Human and Minority Rights and Gender Equality; Conference "Democracy for All: Political Participation of LGBTI Persons in the Western Balkans", to highlight the benefits of involving LGBTI advocates and LGBTI leaders in democratic processes and good practice examples in the processes of democratic participation and protection of human rights of LGBTI persons in the Balkans; the 63 scientific meeting of Serbian psychologist, within the framework of the Symposium "Research by Psychologists in Human Rights Institutions" organised by the Autonomous Women's Centre, in which they presented the results of work of the competent authorities included in the system for protecting women from domestic and intimate partner violence, which were detailed in the Special Report on Implementation of the General Protocol and the Special Protocols on the Protection of Women against Violence, with an assessment of the current situation and recommendations.

IV TYPICAL CASES

Late payment of salary compensation during temporary incapacitation due to pregnancy complications

Between January and March 2015, payment of salary compensation during temporary incapacitation due to pregnancy complications was interrupted and delayed because the Republic Health Insurance Fund failed to ensure an appropriate way of processing the documentation on the basis of which this entitlement is granted and failed to appropriately inform the beneficiaries, their employers and the public about this interruption and delay in the payment of salary compensation.

The Protector of Citizens ordered the said authority to undertake additional affirmative measures. The Republic Health Insurance Fund forthwith complied with the recommendations issued by the Protector of Citizens in connection with the exercise of the entitlement to maternity pay, making the information concerning that entitlement timely available to the beneficiaries and the public. In the future, the Fund will provide the Labour Inspectorate, as the body responsible for inspection in the field of labour and employment relations, with monthly information on those employers whose salary calculations for employees during temporary incapacitation are late. In accordance with the recommendation given by the Protector of Citizens, the Ministry of Health has initiated an amendment of the relevant provision of the Law on Health Insurance, which would ensure that the Republic Health Insurance Fund pays to the account of the relevant employer the full amount of salary compensation to which a beneficiary is entitled in case of incapacitation in case of illness or pregnancy complications starting from the 31st day of her incapacitation.

Although the case was found to be an administrative omission, nursing mothers in Niš have been waiting for salary compensation for nineteen months

The Administration for Child Care, Social Security and Primary Health Care of the City of Niš had not timely obtained information on bankruptcy proceedings instituted against a company established in that city, which resulted in the payment of salary compensations for maternity leave and child care leave to a wrong, blocked account of their employer. In addition, the complainant was not properly informed about the responsibility for this omission made by the administrative authority in question; instead, all blame was laid on the complainant's employer. Even after nineteen months of the omission, the Administration has not yet undertaken appropriate measures to remedy its own omission and pay salaries to nursing mothers. For the purpose of remedying the omission made by the Administration for Child Care, Social Security and Primary Health Care of the City of Niš, improving the exercise of citizens' rights and preventing similar omissions from occurring in the future, the Protector of Citizens issued a recommendation to the said Administration. The recommendation has not been implemented even after an urging.

Competent authorities failed to cooperate and respond to domestic violence reports for years

For quite some time, the Police Administration of Kragujevac and the Centre for Social Work in Kragujevac did not respond adequately to reports by women of domestic/intimate partner violence; they did not exchange information or establish cooperation, which left women who are victims of domestic and intimate partner violence without timely protection. As a result of this omission, violence was allowed to go on for years without proper response by the competent authorities, with one woman succumbing to injuries sustained in domestic violence.

The Protector of Citizens issued to the Police Administration of Kragujevac and the Centre for Social Work in Kragujevac a number of recommendations which must be fully implemented in order to remedy/mitigate the effects of this omission to the maximum possible extent, to improve the work of the authorities and to prevent identical or similar omissions from repeating in the future. the protector of Citizens has been continually monitoring the implementation of these recommendations.

VI PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Ministry of Justice** should prepare a legislative text that would govern the provision of free legal assistance, to improve the position of all vulnerable groups, including in particular the victims of domestic violence.
2. **The Government** should ensure full exercise and protection of the rights of LGBTI persons, in particular their physical and mental integrity and freedom of peaceful assembly, in particular by continual holding of a Pride Parade.
3. **The Government** should continually implement measures and activities aimed at raising awareness of gender equality and measures to improve the status of women.
4. **The Government** should propose and the National Assembly should enact a law that would regulate the issues relevant for gender equality, which will provide for gender mainstreaming, respect for international standards of gender equality and equal opportunity principles, prohibition of and protection from discrimination based on sex, gender and gender identity and special measures for achieving the principle of gender equality, including measures for protection from gender-based violence.
5. **The Government** should prepare and propose to the National Assembly to enact a law which would harmonize the legal framework of the Republic of Serbia with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in accordance with initiatives and recommendations of the Protector of Citizens.
6. **The Ministry of Labour, Employment, Veteran and Social Affairs** should amend regulations to ensure the exercise of the right to salary compensation during pregnancy leave, maternity leave, child care leave and special child care leave by female farmers who are the holders of registered agricultural holdings and by women who perform temporary and occasional work.
7. **Public authorities** should continually implement measures and activities aimed at raising public awareness of the need to respect the rights of LGBTI persons.
8. **The Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Health, judicial authorities and local self-administrative authorities** should provide for more effective protection of women from domestic violence and intimate partner violence, in compliance with the recommendations of the Protector of Citizens given in the Special Report on Implementation of the General Protocol and the Special Protocols on the Protection of Women against Violence.
9. **The Ministry of Labour, Employment, Veteran and Social Affairs**, in cooperation with local self-governments and civil society organisations, should establish support services for young LGBTI persons who had to leave their homes after being disowned by their families upon coming out with their sexual orientation and gender identity.
10. **The Ministry of Education, Science and Technological Development** should propose amendments to the Law on Basic Elements of the Education System in order to provide for an explicit prohibition of discrimination based on sexual orientation and gender identity.
11. **The Ministry of Education, Science and Technological Development** should pass an implementing regulation that would lay down detailed criteria for recognition of forms of discrimination by the staff, the pupils or third parties in education institutions, including in particular discrimination based on the sexual orientation and gender identity of a pupil, a teacher or another member of school staff.

12. **The Ministry of Education, Science and Technological Development and the National Education Council** should include in the curricula and syllabuses of primary and secondary schools, and subsequently also the textbooks, content that would acceptably, and yet professionally cover all major issues relating to the rights of the LGBT population.
13. **The Ministry of Justice, the Ministry of Public Administration and Local Self-Government, the Ministry of Labour, Employment, Veteran and Social Affairs and the Ministry of Education, Science and Technological Development** should prepare draft legislation to regulate the legal consequences of sex and gender reassignment.
14. **The Ministry of Justice and Public Administration and the Republic Secretariat for Legislation** should propose measures for the introduction of gender-sensitive language in the work of public authorities, including the drafting of laws and other instruments.
15. **The Ministry of Public Administration and Local Self-Government** should, in the process of supervision of local self-governments, order the establishment of permanent working bodies or appointment of gender equality officers and equal opportunities officers, in accordance with the Law on Gender Equality.
16. **The Ministry of Health and the Republic Health Insurance Fund** should put in place measures to ensure that all women have access to medical services at all levels of health care.
17. **The Government** should ensure compliance with the Special Report on Training for Acquiring and Improving Knowledge and Competences for Prevention, Elimination and Protection of Women from Domestic and Intimate Partner Violence.

3.4. RIGHTS OF PERSONS WITH DISABILITIES AND RIGHTS OF THE ELDERLY

I BACKGROUND

1. Key Government's achievements

- 1.1. The Law amending the Law on Prevention of Discrimination against Persons with Disabilities²⁶⁴ has been enacted.
- 1.2. The Law on Dog Guide Assistance²⁶⁵ has been enacted.
- 1.3. The Law on Sign Language²⁶⁶ has been enacted.
- 1.4. The Law on Textbooks²⁶⁷ has been enacted.
- 1.5. The Law on Sports²⁶⁸ has been enacted.

2. Key results achieved by the Protector of Citizens

- 2.1. In 2015, the Protector of Citizens promoted the Roadmap for Deinstitutionalisation in the Republic of Serbia²⁶⁹ by a number of activities.
- 2.2. The Protector of Citizens, in cooperation with the United Nations Population Fund (UNFPA), made an analysis of the international and the Serbian legal framework for rights of the elderly.
- 2.3. Accepting the relevant Initiative filed by the Protector of Citizens, the Committee on Justice, Public Administration and Local Self-Government of the National Assembly endorsed amendments to the Law amending the Law on Public Notaries.²⁷⁰
- 2.4. The Protector of Citizens, together with the Accessibility Audit Association, prepared the interactive Accessibility Map.²⁷¹
- 2.5. For preventive reasons, the Protector of Citizens provided the city of Belgrade and other towns/cities with urban and suburban public transport with proposals of measures they should consider and adopt in order to promote and enable the exercise of the right of persons with disabilities to travel with assistance dogs on public transport.²⁷²
- 2.6. In 2015, the Protector of Citizens received 293 complaints in this field, in which complainants alleged 303 violations of rights. In the same period, he completed the investigations in a total of 298 cases received in 2015 and in earlier years. Out of the total of 86 investigations conducted, 44 (51.16%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted oversights and issued four recommendations, of which two (50%) have been accepted and two (50%) have not been complied with. Based on the number of identified (48) and remedied (46) omissions²⁷³, rate of efficiency in this field is 95.83%.

²⁶⁴ Official Gazette of RS, No. 33/2006, 13/2016.

²⁶⁵ Official Gazette of RS, No. 29/15.

²⁶⁶ Official Gazette of RS, No. 38/15.

²⁶⁷ Official Gazette of RS, No. 68/15.

²⁶⁸ Official Gazette of RS, No. 10/16.

²⁶⁹ Available at: <http://www.ombudsman.osobesainvaliditetom.rs/attachments/Mapa%20puta.pdf>.

²⁷⁰ Available at: <http://zastitnik.rs/index.php/lang-sr/zakonske-i-druge-inicijative/3648-2015-01-21-09-30-00>

²⁷¹ Accessibility map is available at: <http://www.mapapristupacnosti.rs/>.

²⁷² Available at: <http://www.ombudsman.rs/index.php/lang-sr/2011-12-25-10-17-15/4517-o->

²⁷³ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

3. Shortcomings at the national level

- 3.1. There is still no clear commitment and no clear plan for the “deinstitutionalisation” process.
- 3.2. No appropriate and effective support and assistance mechanism is in place for parents who care for children with developmental disorders, children with disabilities or severely ill children whose condition requires constant care, attendance and support.²⁷⁴
- 3.3. An appropriate system for additional educational support to children with developmental disorders and disabilities has not been sufficiently developed and those services that are available are not sufficiently provided.
- 3.4. The Ministry of Education, Science and Technological Development has not passed secondary legislation that would set out in detail the conditions for and manner of schooling of pupils in extended home or hospital treatment, home schooling and distance learning, which obstructs the development of new forms of educational support to pupils with health issues, developmental disorders and disabilities.²⁷⁵
- 3.5. Inclusive education of children and youth with disabilities and developmental disorders is not sufficiently developed.
- 3.6. The system of support services for persons with disabilities and the elderly is insufficiently developed and financially unsustainable.
- 3.7. The Bylaw on the Formation and Operation of the Capability Assessment Bodies of the Republic Pension and Disability Insurance Fund²⁷⁶ and the Bylaw on Detailed Manner, Costs and Criteria for Capability Assessment and Possibilities of Employment and Continued Employment of Persons with Disabilities are not mutually harmonised.²⁷⁷
- 3.8. Public buildings are insufficiently accessible to persons with disabilities, which impedes or prevents the exercise of those persons’ guaranteed rights.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens’ position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That the **Ministry of Health** should initiate the reform of mental health care and propose mental health care and prevention systems, in particular through further development of community-based mental health treatment and care;
- That the **Ministry of Construction, Transport and Infrastructure** should, in cooperation with local self-governments, organise trainings for the employees of municipal and city bodies responsible for design approval, issuing of zoning and building permits and certificates of occupancy, for inspectorates and for the professional community (licensed designers, contractors...) to ensure through education and familiarisation with the applicable regulations that no new buildings are inaccessible and to adapt the already constructed buildings to the adopted principles and standards;
- That the **Ministry of Labour, Employment, Veteran and Social Affairs** should, independently and in cooperation with other public authorities, ensure a financially sustainable system of community-based support services for persons with disabilities;

²⁷⁴ For more details, see the sections of this Report dealing with child rights and youth.

²⁷⁵ For more details, see the section of this Report dealing with education.

²⁷⁶ Official gazette of RS, No. 59/08, 75/08 - corrigendum, 24/11 and 7/12.

²⁷⁷ Official Gazette of RS, No. 36/10 and 97/13.

- That **local self-governments** should ensure more efficient operations of competent inspectorates and more effective oversight of their work with regard to authorities with the mandate to directly influence the *de facto* implementation of laws and implementing regulations which impose a duty to adhere to the standards of accessibility;
- That **local self-governments** should develop community-based support systems for persons with disabilities and the elderly;
- That **the Government** should pass clear decisions and plans for transformation of residential and psychiatric;
- That **the National Assembly** should consider the Bills of Amendments to the Labour Law and the Law on Financial Support to Families with Children submitted by the Protector of Citizens.

5. Explanation

The situation of persons with disabilities in Serbia is still very difficult. Even with the improved legal framework and the fact that the Convention on the Rights of Persons with Disabilities has been ratified and laws have been enacted to ensure implementation of the Convention, the situation of persons with disabilities has not been satisfactory in practice. Although there have been some improvements compared to the previous reporting period, there is still no clear commitment and no clear plan for the “deinstitutionalisation” process. While the actions of certain social security institutions in this area can serve as examples of good practice, there is a need for an efficient system based on a plan, to ensure that “deinstitutionalisation” is not done sporadically and selectively, but as a continual process which implies the establishment of a number of permanent support services in Serbia’s social security system.

The economic crisis and austerity at all levels contributed to cancelling or reduction of support services for persons with disabilities and the elderly. In addition to the lack of financial resources, what is particularly worrying is that there is no developed and sustainable support service system in place for these persons. Apart from the fact that it is far from certain that these services would be provided at all, the transparency and objectiveness of public calls for applications and the award of funds to prospective service providers are often called into question. Contributing factors to this include frequent and arbitrary changes to the terms and conditions of public calls for applications, their belated publication or even cancellation of announced public calls and repurposing of funds that have already been provided for this purpose. With these concerns in mind, the Protector of Citizens is of the opinion that it is necessary to develop a financially sustainable support service system for persons with disabilities and the elderly which would ensure that social security services are provided systematically, rather than sporadically, to all those who need them, rather than just a limited number of beneficiaries for whom funding has been secured. Furthermore, beneficiaries of support services must be aware of the opportunities they provide to them and the services must be available regardless of the financial crisis or any austerity measures that may be in place. This is the only way to ensure an efficient social security system for the most vulnerable social groups, such as persons with disabilities and the elderly.

While investigating complaints, the Protector of Citizens observed the need to harmonize two regulations²⁷⁸ governing the employment and rehabilitation of persons with disabilities and

²⁷⁸ The Bylaw on the Formation and Operation of the Capability Assessment Bodies of the Republic Pension and Disability Insurance Fund and the Bylaw on Detailed Manner, Costs and Criteria for Capability Assessment and Assessment of the Possibility of Employment or Remaining in Employment for Persons with Disabilities.

the procedure for exercising the entitlement to disability pension. Namely, in practice it is not uncommon for the National Employment Service to determine in its decision (passed on the basis of findings, opinion and assessment of a committee formed by the capability assessment body of the Republic Pension and Disability Insurance Fund) that a person has complete or multiple third-degree disabilities, which means he/she cannot seek or maintain employment either under the general or the special conditions. On the other hand, when the same person applies to the Republic Pension and Disability Insurance Fund for a disability pension, the application is rejected on the basis of findings, opinion and assessment of the capability assessment body of the Fund because the capability assessment body has not determined total incapacitation. This means that, according to a decision of the National Employment Service, such person cannot be employed either under the general conditions or under the special conditions, while according to the Republic Pension and Disability Insurance Fund he/she is not eligible for disability pension because he/she is not found to be totally incapacitated under a decision of the Republic Pension and Disability Insurance Fund. In other words, two committees of the Republic Pension and Disability Insurance Fund often give two contradictory assessments of the status and degree of disability of the same person.

The key Government's achievement in 2015 in the field of persons with disabilities is enactment of the Law on Dog Guide Assistance and the Law on Sign Language. The Law on Dog Guide Assistance provides for the right of persons with disabilities to travel with assistance dogs in public transport and to move with assistance dogs in public buildings and areas and in workspaces. The Law on Sign Language provides for the right to use sign language and the right to use the services of sign language interpreters, the manner in which the services of sign language interpreters can be used, measures aimed at promoting and advancing the use of sign language through provision of information and education in sign language and other issues of relevance for the use of sign language. The enactment of these Laws ensured partial compliance with the proposals to improve the status of persons with disabilities which the Protector of Citizens made in his 2014 Annual Report.

The Law amending the Law on Prevention of Discrimination against Persons with Disabilities imposes a duty on public authorities, in proceedings held before those authority, and on legal and natural persons that provide services, against consideration or free of charge, within the framework of their business activity or permanent profession, to allow persons with disabilities who have permanent bodily or sensory damage or diseases to sign documents with a stamp that contains information on their personal identity or with a stamp with engraved signature (facsimile), in addition to the way in which those documents are normally signed in accordance with specific regulations.

The new Law on Textbooks introduced new institutes and new categories of textbooks and teaching aids in order to improve the quality and availability of textbooks for pupils with developmental disorders and disabilities (with specially adapted content and/or format). Although the previously applicable Law also provided for the publication of textbooks designed specifically for pupils with developmental disorders and disabilities, new or appropriate textbooks and teaching aids for this category of pupils were virtually non-existent.

A novelty introduced by the Law on Sports is the duty of the Republic of Serbia, autonomous provinces, local self-government units and organisations in the field of sport to undertake specific activities aimed at increasing the participation of persons with disabilities in sporting activities and to ensure that persons with disabilities are treated equally in sports.

Through implementation of a number of activities during this reporting period, the Protector of Citizens promoted the "Roadmap for Deinstitutionalisation in the Republic of Serbia", encouraging the deinstitutionalisation process and underscoring this process is inevitable,

while its development should be planned with coordination of public authorities and with gradual phasing out of the institutions which must be coupled with more robust support services. One of the activities was an expert meeting which addressed the issue of deinstitutionalisation, which drew attention to the need for regular exchange of information and the importance of raising public awareness of deinstitutionalisation and ensuring greater involvement of the media in the efforts to address this issue.

Acting at the motion for a legislative initiative filed by the National Organisation of Persons with Disabilities of Serbia (NOOIS), the Protector of Citizens filed an Initiative to amend the Bill of Amendments to the Law on Notaries Public, which the Committee on Justice, Public Administration and Local Self-Government endorsed. The proposed amendment was intended to prevent discrimination against blind persons, persons with hearing loss and persons with disabilities who are unable to speak. Namely, the Bill of Amendments to the Law on Notaries Public unjustifiably imposed an obligation on these persons to use the services of notaries public when drawing up property sale agreements. The National Assembly adopted the proposed amendment and excluded the contested provision from the Law amending the Law on Notaries Public.

The Protector of Citizens once again specifically notes that accessibility of institutions and other facilities, as a key precondition for integration of persons with disabilities in the society, remains poor. Namely, many social security institutions, which are the primary links in the system for exercising the rights of these persons, are either inaccessible or hardly accessible to persons with disabilities and the elderly, as well as to all other citizens who need their services. Furthermore, a certain number of branches of the Republic Health Insurance Fund and the Republic Pension and Disability Insurance Fund, medical centres and other facilities in the social security and health care systems and education institutions are also hardly accessible or inaccessible to this category of citizens. A particular reason for concern is the fact that some competent authorities and institutions lack the awareness of the problems and obstacles faced by persons with disabilities in the exercise of their rights due to inaccessibility of buildings and the awareness of the fact that authorities and institutions have a duty to make those buildings accessible to these citizens if they have not already done so. The fact that public institutions and buildings are inaccessible to persons with disabilities means they are denied almost all other rights which allow them to independently and fully participate in the community, from the right to health care, through the right to education and the right to work and freely choose a profession to a number of other rights which are affected by such obstacles.

In this context, in 2015 the Protector of Citizens worked together with the Association for Accessibility Audit to develop a database on accessibility of public buildings and spaces, i.e. an interactive "Accessibility Map". The map contains information on accessible buildings and spaces in Serbia's municipalities and towns/cities (public transport stops, public parking spaces reserved for persons with disabilities, pedestrian crossings and public buildings and spaces managed by local self-government units and power utility buildings), as well as on support services for persons with disabilities and the citizens who need them. The database currently includes almost 10,000 entries, grouped by categories which are considered useful for the users. The map rates the accessibility of buildings and spaces, i.e. it specifies whether they can be accessed and used by persons with disabilities, as well as the elderly, pregnant women and parents with children.



Picture 6 Vladana Jović, the Deputy Protector for the Rights of Persons with Disability, presenting the Accessibility Map, Belgrade, Decembre 2015.

II COMPLAINTS

In the field of rights of persons with disabilities, the Protector of Citizens received 269 complaints and investigated 25 case on his own initiative. These complaints accounted for 4.72% of the total number of complaints received by the Protector of Citizens in 2015. The number of complaints in this year was 15.75% higher than last year.

Chart 7 - Rights of persons with disabilities - Number of complaints received in 2015 compared to 2014



In 2015, the Protector of Citizens closed a total of 296 cases, including 183 opened in 2015, while the remaining ones were carried forward from previous years.

Table 25 - Rights of persons with disabilities - outcome of cases handled in 2015 and in earlier years

	Number	Percentage
Dismissed complaints	141	47.32%
Unfounded complaints	73	24.50%
Cases covered by recommendations issued in expedited oversight procedure	44	14.77%
Opinions	21	7.05%
Complaint dropped by complainant	12	4.03%
Cases covered by recommendations issued in oversight procedure	5	1.68%
Death of complainant	2	0.67%
Total	298	100%

The Protector of Citizens dismisses the majority of the complaints received because the conditions for acting upon them provided for by the Law are not met. Complaints are dismissed on the grounds of lack of jurisdiction, belatedness, prematurity, anonymity of complainant or formal deficiencies.

Table 26 - Rights of persons with disabilities - reasons for dismissal of complaints in 2015

	Number	Percentage
Declined jurisdiction - referred to competent authority	69	48.94%
Premature complaint - complainant advised on available remedies	44	31.21%
Formally deficient complaint	19	13.48%
Belated complaint	8	5.67%
Anonymous complaints	1	0.71%
Total	141	100%

Assistance in the form of legal advice accounts for a significant share of the actions taken by the Protector of Citizens pursuant to complaints; he provides this type of assistance even in the cases where he declines jurisdiction or dismisses a complaint as premature. In such cases, the Protector of Citizens refers the complainant to the competent authority or provides advice on available remedies.

As can be seen in the table below, in 80.14% of dismissed complaints the Protector of Citizens gave the citizens legal assistance in the exercise of their rights before the competent authorities.

Table 27 – Rights of persons with disabilities – assistance provided in the form of legal advice

	Number	Percentage
Dismissed complaints	141	100%
Premature complaint - complainant advised on available remedies	69	48.94%
Declined jurisdiction - complainant referred to competent authority	44	31.21%
Total: assistance provided in the form of legal advice	113	80.14%

In the field of rights of persons with disabilities, 303 different violations of rights have been identified pursuant to 294 complaints. The largest number of complaints pointed to violations of special rights of persons with disabilities and the elderly, as well as violations of economic and social rights, including in particular the right to pension and disability insurance and the right to social security. The complaints also pointed to numerous violations in the field of good governance, such as administrative silence and violations of the process.

Table 28 – Rights of persons with disabilities – violations of rights reported by complainants

	Number	Percentage
Special rights of persons with disabilities and the elderly	166	54.79%
Economic, social and cultural rights	76	25.08%
Right to good governance	49	16.17%
Civil and political rights	12	3.96%
Total	303	100%

The following table shows the structure of special rights based on 166 reported violations of these rights.

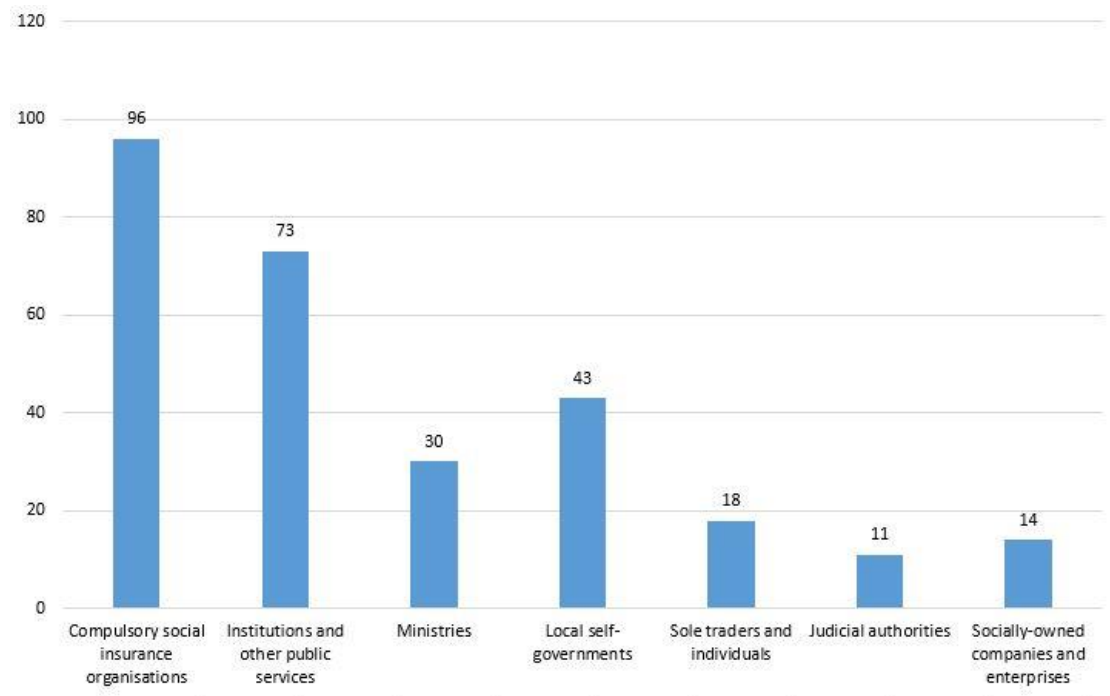
Table 29 – Violations of special rights of persons with disabilities, their number and percentage in 2015

Type of right violated	Number	Percentage
Right to equal accessibility of services	38	22.89%
Discrimination based on disability	28	16.87%
Right to employment and professional rehabilitation	21	12.65%
Entitlement to an allowance for assistance with activities of daily living	15	9.04%
Right to disability pension	14	8.43%
Rights of persons declared incompetent	10	6.02%
Right to the status of a veteran of war	9	5.42%
Entitlement to increased income for assistance with activities of daily living	7	4.22%
Rights arising from the status of a veteran of war	6	3.61%
Entitlement to allowance for physical impairment	5	3.01%

Right to orthopaedic aids	4	2.41%
Right to public transport discounts and benefits	4	2.41%
Entitlement to an increased allowance for assistance with activities of daily living	2	1.20%
Right to participation in decision-making	2	1.20%
Architectural accessibility of buildings	1	0.60%
Total	166	100%

Most of the complaints pointed to violations of rights of persons with disabilities by the Republic Pension and Disability Insurance Fund, the Ministry of Labour, Employment and Social Policy and social security institution, which was to be expected given that persons with disabilities exercise the majority of their rights through those institutions, as can be seen in the following chart.

Chart 8 – Authorities and organisations most frequently complained against by the citizens in the field of rights of persons with disabilities in 2015



III OTHER ACTIVITIES

To promote the *Roadmap for Deinstitutionalisation in the Republic of Serbia*, the Protector of Citizens held an expert meeting on deinstitutionalisation, which was attended by representatives of a number of public administration bodies and other organisations, institutions and non-governmental organisations included in the deinstitutionalisation process.

In cooperation with the United Nations Population Fund (UNFPA), the Protector of Citizens completed the first stage of a project of preparing a report on the status of the elderly in the

Republic of Serbia with recommendations for improvements and conducted an analysis of the international and national legal frameworks governing the rights of this vulnerable group.

The Protector of Citizens held roundtables titled “Community-Based Support Systems for Persons with Disabilities and the Elderly” in Sombor and Bačka Palanka, which addressed the exercise of rights of persons with disabilities and the elderly²⁷⁹. On these occasions, representatives of the Protector of Citizens and representatives of all relevant local institutions and associations discussed the importance of establishing and developing systems of services and support for persons with disabilities and the elderly and the problems they face which prevent consistent application of the law and the exercise of guaranteed rights. The participants highlighted inaccessibility of buildings and spaces, insufficiently developed community-based services for persons with disabilities and the elderly and frequent discrepancies between different pieces of legislation as the main obstacles to the exercise of the rights of these vulnerable population groups and their full social inclusion. Apart from the fact that many of the services had still not been established in Sombor and Bačka Palanka, the participants noted it was particularly worrying that even those service systems that were in place were not sufficiently available and it was still common for pupils with developmental disorders to have no teacher aides assigned and for gerontology services not to make visits to the elderly citizens with sufficient frequency.

Council for Persons with Disabilities and the Elderly

The sessions and activities of the Council for Persons with Disabilities and the Elderly²⁸⁰ have helped identify the issues faced by persons with disabilities and the elderly and have increased the effectiveness of the Protector of Citizens in the protection and promotion of rights of persons with disabilities and the elderly.

Health care for persons with disabilities

The Protector of Citizens also held several one-day training sessions on patient rights to introduce patient rights advisors and members of local health councils in 98 municipalities and towns/cities to the special rights afforded to persons with disabilities in the health care system.

The Protector of Citizens in ENNHRI

The Protector of Citizens participates in the project “Human Rights of Older Persons and Long-Term Care”, implemented by the European Network of National Human Rights Institutions (ENNHRI), as a member of the advisory group. The objectives of this two-year project include: to clarify which human right standards are relevant for older persons in long-term care; to introduce human rights standards in the approach to social policy and long-term care of older persons; to increase awareness of human rights of older persons living in or seeking access to long-term care, particularly in relation to residential care; and to strengthen the capacity of NHRIs to monitor and support human rights in this area.

International conference on rights of the elderly

A Deputy Protector of Citizens took part in an international conference on preventing abuse and neglect of older persons held in Brussels on the World Elder Abuse Awareness Day. At this conference, representatives of the Council of Europe, the European Commission and

²⁷⁹ The roundtables were organised within the framework of the project “Promoting Human and Minority Rights through Intensified Outreach of the Protector of Citizens to Citizens”, implemented with financial support from the Norwegian Government.

²⁸⁰ Members of the Council are Ms Gordana Rajkov, Damjan Tatic, PhD, Ms Ivanka Jovanovic, Mr. Vidan Dankovic, Ms Dragana Ciric Milovanovic, Mr. Miodrag Pocuc and Milos Nemanjic, PhD

international organisations underscored the importance of developing mechanisms for early prevention of violence against the elderly, which is often concealed and its detection is fraught with numerous difficulties.

IV TYPICAL CASES

Pupils able to continue their education after investigation by the Protector of Citizens

The director of primary and secondary school for children with developmental disorders decided to terminate the education of four pupils, who were then referred to day care, which is a service provided by social security, without an opportunity to continue their education. Following a control of legality and regularity of work of the school in question and recommendations issued by the Protector of Citizens, the pupils were allowed to continue their education and freely exercise their right to equal accessibility of education, without any distinction based on developmental disorders or disabilities. Furthermore, when the pupils resumed their education, the school adopted an Individual Syllabus for each of them, thus providing for additional educational support in accordance with their capacities and abilities.

Persons with disabilities should be allowed to travel with assistance dogs on public transport

The Protector of Citizens learned from the media about the case where a city bus driver in Belgrade asked a passenger who travelled with an assistance dog to leave the bus. Just one day later, the same passenger found herself in an identical situation on a different public transport line, when a tram driver asked her to leave the vehicle. During these incidents it was noted that other passengers acted very rudely and offensively to the passenger: they insulted her and demanded that she disembark, claiming they were in a hurry, going home from work or had other business to attend to.

Prompted by this, the Protector of Citizens, acting within his mandate and in accordance with the principle of cooperation, preventively gave proposals which competent city authorities should consider and adopt in order to contribute to increased protection of the guaranteed rights of persons with disabilities. The Protector of Citizens proposed that the competent authorities of the city of Belgrade and other cities and towns²⁸¹ that provide urban and suburban transport should issue a notice to their public transport operators which should present the main provision of the Law on Moving with Assistance Dogs and the rights and responsibilities of public sector employees and undertake all necessary measures and actions to inform and raise awareness of citizens/users of public transport about the right of persons with disabilities to travel with assistance dogs on public transport through appropriate billboards, brochures etc. A praiseworthy example, highlighted also in the said communication, was the timely response of the City Public Transport Company of Belgrade, which issued a public apology to the passenger for the violation of her rights. Other authorities should follow suit in cases of omissions in their work by making efforts to undertake without delay all necessary activities to remedy the harmful consequences.

In response to the proposals of measures, the competent authorities of the towns and cities concerned notified the Protector of Citizens they had accepted the proposed course of action and undertaken specific measures to improve the status of this vulnerable group of citizens. Certain towns and cities initiated procedures to amend their regulations governing public passenger transport, informed their employees of the rights of blind and visually impaired

²⁸¹ Communications with preventive proposals were sent to 18 towns and cities: Čačak, Požarevac, Novi Sad, Jagodina, Subotica, Niš, Pancevo, Sremska Mitrovica, Zrenjanin, Kragujevac, Novi Pazar, Valjevo, Šabac, Krusevac, Kraljevo, Zaječar, Vranje and Uzice.

persons and provided information to citizens on websites, billboards and pictograms on public transport vehicles.

V PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Government** should pass a clear decision and plan for “deinstitutionalisation” in the Republic of Serbia.
2. **The Ministry of Labour, Employment, Veteran and Social Affairs** should, independently and in cooperation with other public authorities, ensure a financially sustainable system of community-based support services for persons with disabilities and the elderly.
3. **The Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Health and the Republic Pension and Disability Insurance Fund** should improve and harmonize the implementing regulations and their compliance in the procedure of exercising the rights to disability pension, employment and rehabilitation by persons with disabilities.
4. **Local self-governments** should develop community-based support systems for persons with disabilities and the elderly.
5. **Local self-governments** which provide urban and suburban public transport services should undertake all necessary activities to inform transport operators and to inform and raise awareness of the citizens/users of public transport of the right of persons with disabilities to travel with assistance dogs.

3.5. RIGHTS OF PERSONS DEPRIVED OF LIBERTY, POLICE POWERS AND PREVENTION OF TORTURE

USE OF POLICE POWERS

I BACKGROUND

1. Key Government's achievements

- 1.1. The Ministry of Internal Affairs has improved the physical condition of certain detention rooms.
- 1.2. The majority of police administrations have improved the way in which they allow the exercise of the rights of persons brought in by the police and persons in custody.
- 1.3. The Ministry of Internal Affairs has produced written forms which list in the languages of national minorities the rights of persons remanded in custody.

2. Key results achieved by the Protector of Citizens

- 2.1. In compliance with the recommendations of the Protector of Citizens, the Ministry of Internal Affairs improved the physical condition in certain detention rooms.
- 2.2. In compliance with the recommendations of the Protector of Citizens, the majority of police administrations have improved the way in which they allow the exercise of the rights of persons brought in by the police and persons in custody.
- 2.3. In compliance with the recommendations of the Protector of Citizens, the Ministry of Internal Affairs has produced written forms which list in the languages of national minorities the rights of persons remanded in custody.

3. Shortcomings at the national level

- 3.1. Certain provisions of the Instructions on Treatment of Persons brought in by Police and Persons in Custody²⁸² are still not compliant with the applicable regulations and standards (mandatory use of physical restraints when transporting persons in custody²⁸³ and mandatory presence of police officers during medical examinations of detained persons²⁸⁴).
- 3.2. The Ministry of Internal Affairs has not organised training for police officers on the use police powers against persons with mental disorders in spite of the recommendation of the Protector of Citizens.
- 3.3. Numerous illegalities and irregularities were identified on two occasions in the work of the Municipal Police of the city of Belgrade, including numerous instances of overstepping of authority in relation to journalists, which resulted in violations of their physical and mental integrity and dignity and interfered with their performing of work of public interest.

²⁸² Instructions on Treatment of Persons brought in by Police and Persons in Custody, 01 No. 7989/12-10 of 10 December 2012.

²⁸³ Section 13, paragraph 2 of the Instructions.

²⁸⁴ Section 26, paragraph 3 of the Instructions.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That the **Ministry of Internal Affairs** should adapt the existing and provide new detention rooms in compliance with the applicable standards;
- That the **Ministry of Internal Affairs** should harmonise certain provisions of the Instructions on Treatment of Persons brought in by Police and Persons in Custody with the applicable regulations and standards.
- That the **Ministry of Internal Affairs** should train police officers in all police administrations in the Republic of Serbia on how to use police powers against persons with mental disorders.

5. Explanation

During visits to certain police administrations and their subordinated police stations, the Protector of Citizens saw improvements in the physical condition of detention rooms in police administrations in Kikinda and Kraljevo, police stations in Vrnjačka Banja, in Guča in the municipality of Lučani, in Arandjelovac, Lapovo and Bela Palanka and at the Traffic Police Outpost in Čačak. Most of these improvements were due to the assistance provided by local self-governments. After the recommendations issued by the Protector of Citizens, the Police Station in Knjaževac improved the living conditions in its holding cell. However, conditions in many holding cells used by the police remain below the required standard.

Although the Protector of Citizens has been pointing to the need to amend the Instructions on Treatment of Persons brought in by Police and Persons in Custody in his recommendations for the past three years, the Ministry of Internal Affairs has not taken any activities to bring it in compliance with positive regulations and standards. Acting in accordance with the Instructions, the police officers of certain police administrations use physical restraints on all persons brought in their police stations, instead of limiting their use only to specific situations where the circumstances warrant it, i.e. to cases when, in accordance with the Law on Police, it is impossible to prevent by other means the resistance or flight of a person, to deflect an attack against a law enforcement officer or to prevent self-harming or harming of others. It has also been observed that police officers, adhering to the letter of the current Instructions, attend the medical examinations of persons in custody, which violates the right of those persons to privacy and doctor-patient confidentiality.

Since the Law on the Protection of Persons with Mental Disabilities²⁸⁵ provides for treatment of these persons by police officers in certain cases, the Protector of Citizens believes it is paramount that the Ministry of Internal Affairs give police officers training on how to use police powers against this category of particularly vulnerable persons.

²⁸⁵ Official Gazette of RS, No. 45/13.

6. TYPICAL CASES

Municipal Police of the City Administration of the City of Belgrade unlawfully uses its powers against journalists

During the reporting period, the Protector of Citizens conducted two investigations and found numerous irregularities in the way the Municipal Police of the City of Belgrade treated reporters of the Istinomer news website and the "KRIK" Crime and Corruption Research Network.

The most significant omissions made in the work of the Municipal Police include illegal and irregular use of force, unlawful seizure of cameras from journalists and deletion of footage taken on a body-worn video and audio recording device, baseless warning of citizens that recording of actions of municipal police officers was prohibited, repeated checking of citizens' identity during a single intervention, threat by a municipal police officer he would damage a recording device if recording is not stopped and failure to respect the dignity of the citizens against whom the officers exercised their powers.

In both of these investigations, the chief of Municipal Police gave inaccurate information in his statements provided to the Protector of Citizens, which was decisive for the investigation and for determining whether the actions taken by the Municipal Police had been legal and regular.

As the chief of Municipal Police was found to be responsible for violations of citizens' rights which caused substantial damage, neglected his duty to ensure that municipal police officers act lawfully and to undertake statutory measures and actions in case of any identified irregularities and was directly involved in some of the identified illegalities and irregularities, and as he repeatedly behaved in a way which clearly showed he had no intention of cooperating with the Protector of Citizens, the Protector of Citizens publicly recommended that the chief of Municipal Police be removed from office.

The Municipal Police notified the Protector of Citizens it had accepted all recommendations issued to it by this institution in connection with the treatment of the reporters of the Istinomer news website. The period for implementing the recommendations issued in the case of KRIK will expire after the statutory date for submission of this Report.

7. PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Ministry of Internal Affairs** should adapt the existing and provide new detention rooms in compliance with the applicable standards.
2. **The Ministry of Internal Affairs** should harmonise certain provisions of the Instructions on Treatment of Persons brought in by Police and Persons in Custody with the applicable regulations and standards.
3. **The Ministry of Internal Affairs** should train police officers in all police administrations in the Republic of Serbia on how to use police powers against persons with mental disorders.

ENFORCEMENT OF DETENTION MEASURES AND PRISON SENTENCES

I BACKGROUND

1. Key Government's achievements

- 1.1. Numerous implementing regulations have been passed, including: the Bylaw on Commitment of Convicted Persons, Persons punished for Misdemeanours and Detained Persona to Penal Institutions²⁸⁶, the Bylaw on the Manner of Execution of Non-Prison Sentences and the Organisation and Work of the Commissioner²⁸⁷, the Bylaw on Treatment, Treatment Programmes, Classification and Re-classification of Convicted Persons²⁸⁸ and the Bylaw on Supervision of Penal Institutions²⁸⁹.
- 1.2. The physical condition of certain penal institutions has been improved.
- 1.3. For the first time in the Republic of Serbia, the District Prison in Belgrade provided communal rooms for detainees and enabled detained persons spend the spare time during the day outside their cells, in communal areas with other detainees who have not been segregated under court order.
- 1.4. The penal and correctional institutions in Požarevac and Belgrade have improved their treatment of convicted persons in terms of respecting their right to dignity when conducting security procedures and when moving convicts inside the institution.

2. Key results achieved by the Protector of Citizens

- 2.1. In compliance with the recommendations of the Protector of Citizens, the physical condition has improved in the District Prison in Leskovac, the District Prison in Belgrade, the Juvenile Correctional Institution in Valjevo and the Special Prison Hospital.



Picture 7 *Improved physical conditions in Juvenile Correctional Institution in Valjevo*

- 2.2. In compliance with the recommendations of the Protector of Citizens, the District Prison in Belgrade provided communal rooms for detainees, thus allowing detained persons spend the spare time during the day outside their cells, in communal areas with other detainees who have not been segregated under court order.

²⁸⁶ Official Gazette of RS, No. 31/15.

²⁸⁷ Official Gazette of RS, No. 30/15.

²⁸⁸ Official Gazette of RS, No. 66/15.

²⁸⁹ Official Gazette of RS, No. 85/15.

2.3. In compliance with the recommendations of the Protector of Citizens, the District Prison in Belgrade has improved the situation of detained women by transferring them to a cell block where they are able to watch TV and listen to the radio.

2.4. In compliance with the recommendations of the Protector of Citizens, in the Correctional Institution in Sombor persons convicted of criminal offences and persons punished for misdemeanours are placed separately.

2.5. In compliance with the recommendations of the Protector of Citizens, the Correctional Institution "Zabela" in Požarevac provided for new security procedures which do not violate the dignity of convicts, while the Penal and Correctional Institution in Belgrade repealed during an investigation an instrument which ordered all convicts to move within the Institution with their hands behind their back.

2.6. The Penal and Correctional Institution in Belgrade remedied the identified omissions in its working immediately upon learning that the Protector of Citizens had initiated an investigation of its work. The Administration for Enforcement of Penal Sanctions ordered the physicians at all penal institutions to give proposals for granting the status of a person with disabilities to convicts where appropriate so they can exercise the entitlement to disability pension.

2.7. In compliance with the recommendations of the Protector of Citizens, the Administration for Enforcement of Penal Sanctions ordered the wardens of penal institutions to ensure that medical examinations of convicts are conducted without the presence of any non-medical staff and to undertake all necessary actions to ensure detailed and timely documentation of any bodily changes or other indications that a convict may have been treated violently or subjected to torture.

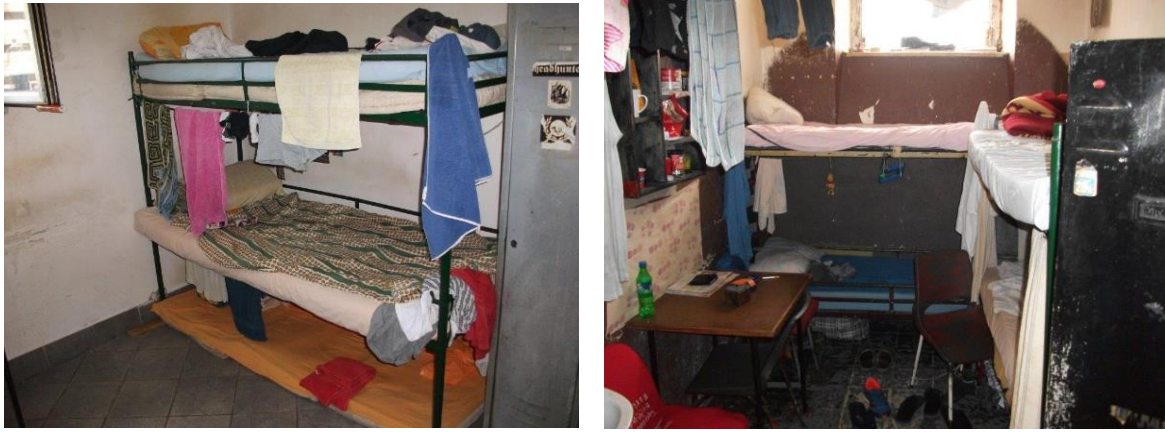
2.8. In compliance with the recommendations of the Protector of Citizens, the district Prison in Novi Sad has hired 40 new employees for its Security Service and has purchased one police vehicle.

2.9. In compliance with the recommendations of the Protector of Citizens, the Administration for Enforcement of Penal Sanctions has issued all institutions with instructions on conducting searches on persons who visit persons deprived of liberty.

2.10. In compliance with the recommendations of the Protector of Citizens, the Administration for Enforcement of Penal Sanctions has ordered all penal institutions to undertake all necessary measures to provide persons with disabilities with appropriate placement and other living conditions in accordance with their individual needs.

3. Shortcomings at the national level

3.1. The physical conditions in which convicts are held at certain penal institutions are still non-compliant with the applicable standards.



Picture 8 *Physical conditions in several penal institutions are non-compliant with applicable standards – penal institution in Sremska Mitrovica*

3.2. Many persons who serve prison sentences or are detained are still not allowed to spend spare time during the day outside their dormitories, in communal areas with other convicts or detainees who have not been segregated under court order.

3.3. Provision of health care to persons serving prison sentences remains fraught with numerous shortcomings, due primarily to a shortage of medical staff, in particular physicians, including both general practitioners and specialists; problems with providing medicinal products and treatments have also been observed.

3.4. Notwithstanding the visible progress in terms of providing work for persons serving prison sentences in penal institutions, many persons deprived of liberty, particularly detainees, still have no work assignments and are not included in social and cultural activities.

3.5. The alternative sanctions system does not have sufficient capacity and scope and certain offices are not staffed with a sufficient number of probation officers.

3.6. Persons with mental disorders are still placed in regular prison facilities, which are not adequate for their medical and psycho-social treatment.

3.7. There is still only one penal institution for women, one juvenile penal institution and one juvenile correctional facility available for women and juvenile offenders serving prison sentences and for juveniles sent to a correctional institution.

3.8. The District Prison in Prokuplje has committed a number of serious violations of citizens' rights, including admitting and incarcerating a person who had been given a suspended sentence and admitting and incarcerating a person who had been sentenced by a court both to imprisonment and to a safety measure in the form of compulsory rehabilitation from alcohol addiction, although the safety measure had not been performed before incarceration.

3.9. Health care services for persons deprived of liberty at penal institutions are not attached to the Ministry of Health and remain attached to the Administration for Enforcement of Penal Sanctions instead.

3.10. The Supervision Unit is still an organisational part of the Administration for Enforcement of Penal Sanctions.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **the Ministry of Justice** should put in place measures within its sphere of competence to adopt regulations which would increase the number of institutions where women and juvenile offenders can serve prison sentences and correctional sentences;
- That **the Ministry of Justice** should take all necessary measures to include the Supervision Unit within that Ministry as its separate organisational part, outside the Administration for Enforcement of Penal Sanctions.
- That **the Administration for Enforcement of Penal Sanctions** should ensure that persons with mental disorders serving prison sentences are transferred from regular correctional facilities and provided with health care appropriate to their disease and their treatment needs;
- That **penal institutions** should enable all convicts and detained persons to spend their spare time during the day outside their dormitories, in communal areas with other convicts or detained persons who have not been segregated under court order;
- That **penal institutions** should continue providing more opportunities for occupational engagement to convicts and detained persons and their inclusion in social and cultural activities;
- That **penal institutions** should improve the provision of health care, both in terms of treatment and medical examinations and in terms of access to therapy and medicinal products;
- That **penal institutions** should ensure a sufficient number of prison educators, intensify individual and group correctional sessions with inmates and improve the system of subsequent categorisation of inmates;
- That **the health care services** for persons deprived of liberty within penal institutions should be an organisational part of the Ministry of Health.

4.2. The Administration for Enforcement of Penal Sanctions has not complied with the recommendation of the Protector of Citizens to notify competent courts whether and to what extent penal institutions have the capacities for proper placement of detained and convicted persons with physical, sensory and mental disorders.

5. Explanation

In compliance with the recommendations issued by the Protector of Citizens, at the District Prison in Leskovac Pavilion A has been adapted, with the construction of a new building that will have the capacity to hold 200 persons deprived of liberty scheduled for 2016. Renovation and adaptation work has also been done to the buildings of the Juvenile Penal and Correctional Institution in Valjevo, the District Prison in Belgrade and the Special Prison Hospital. The Administration for Enforcement of Penal Sanctions has prepared a Reconstruction Plan for living areas used by persons deprived of liberty at all penal institutions operating within the Administration's System, which includes a Reconstruction Plan for the cell blocks used by persons deprived of liberty placed at the District Prison in Belgrade, which provides for successive reconstruction of the entire building, i.e. all cell blocks, by 2019.

Contrary to the applicable standards and the recommendations issued by the Protector of Citizens, in most penal institutions detainees are still not allowed to spend their spare time during the day outside their cells, in communal areas with other detainees who have not been

segregated under court order. However, in compliance with the recommendations of the Protector of Citizens, the largest dormitories in the renovated cell blocks at the District Prison in Belgrade have been converted and fitted with the required fixtures and fittings so that persons held in those blocks can use them as communal areas.

In compliance with recommendations of the Protector of Citizens, until the completion of construction works in its "women's block", the District Prison in Belgrade has moved female detainees to one of the renovated cell blocks. In this way, female detainees will be able to watch TV and listen to radio and will be placed in compliance with the applicable standards.

In compliance with the recommendation of the Protector of Citizens, the Penal and Correctional Institution in Sombor erected a wall to separate the existing semi-open unit and thus made arrangements for separate placement of convicted persons and persons punished for misdemeanours.

At the Correctional Institution "Zabela" in Požarevac, convicts were forced, upon leaving their cells to the hall of the pavilion, stand against the wall, facing the wall, with their hands crossed behind their backs and with their heads bowed down. In compliance with the recommendations issued by the Protector of Citizens, the Institution implemented new security procedures which do not violate the dignity of convicted persons in the aforementioned way.

During an investigation, the Penal and Correctional Institution in Belgrade eliminated a shortcoming because of which convicts were required to move through the Institution with their hands behind their back at all times except when they were in the rooms where they were placed, in the walking ground or in the sports centre or when they received visits, performed work assignments or underwent medical or dental examinations at the outpatient unit within the Institution. The Institution's warden complied with the order of the director of the Administration for Enforcement of Penal Sanctions and repealed the instruments which ordered convicts to move through the Institution with their hands behind their back.

The Administration for Enforcement of Penal Sanctions has eliminated a shortcoming in its work because of which physicians at all penal institutions did not give proposals for granting the status of a person with disabilities to convicts where appropriate, which prevented those persons from applying to the competent authority in order to exercise their entitlement to disability pension.

Non-medical staff still attend medical examinations even when health professionals do not demand it, which violates privacy of convicts and the right to confidentiality of data on their health status. In compliance with the recommendations of the Protector of Citizens, the Administration for Enforcement of Penal Sanctions ordered the wardens of all penal institutions to ensure that medical examinations of convicts are performed without the presence of non-medical staff, except where specifically demanded by a health care professional, and that, in cases where the medical examination report states that the examined person sustained injuries, the physician must include a statement of the examined person about the origin of the injuries and the physician's opinion whether the injuries could have been caused in the manner alleged by the convict and must notify the warden of any sign or indication that the convict was subjected to violence and submit to the warden the medical examination report with relevant medical documentation pertaining to the identified injuries and, in case of medical examination after the use of measures of compulsion, also details of the measures of compulsion which prompted the medical examination.

To ensure that persons deprived of liberty are treated appropriately and are taken to scheduled specialist medical examinations and medical interventions at health care institutions outside

of penal institutions, in accordance with the recommendation of the Protector of Citizens, the District Prison in Novi Sad hired 40 new employees for its Security Service and has purchased one police vehicle.

In compliance with recommendations of the Protector of Citizens, the Administration for Enforcement of Penal Sanctions issued instructions to all institutions in connection with the manner of conducting searches and other procedures to which visitors to persons deprived of liberty are subjected, which must be done with full respect for visitors' dignity, belongings and personal integrity. Furthermore, body cavity search must be done only by a health care professional, without the presence of other persons, with full respect for visitors' mental and physical integrity.

For the purpose of ensuring compliance with the recommendation of the Protector of Citizens, the director of the Administration for Enforcement of Penal Sanctions ordered the wardens of all penal institutions, in cases where the existing rooms at their institutions are not suitable for the individual needs of persons deprived of liberty who are currently placed there, undertake all available measures to remedy the shortcomings and provide those persons with appropriate conditions of placement and health care. The recommendation of the Protector of Citizens for the Administration for Enforcement of Penal Sanctions to notify competent courts whether and to what extent penal institutions have the capacities for proper placement of detained and convicted persons with physical, sensory and mental disorders has not been implemented by the Administration. Since courts do not inquire with the Administration about the availability of suitable placement conditions for the individual person with disability when committing that person to imprisonment or detention at an institution, the Protector of Citizens believes that compliance of the Administration with this recommendation would be in line with the principles of good administration, with the aim of preventing violations of the right to appropriate accommodation, health care and other living conditions of persons with disabilities who are deprived of liberty.

In his previous reports, the Protector of Citizens also drew attention to numerous shortcomings in provision of health care to persons serving prison sentences. Medical examinations at admission are superficial and there are no unified protocols. The main reason for this is the shortage of medical staff, in particular physicians – both general practitioners and psychiatry specialists. A particularly grave concern is the shortage of physicians at the Special Prison Hospital in Belgrade, where five physicians were retired in 2015. The Administration for Enforcement of Penal Sanctions has addressed this understaffing issue through new hiring, but the Hospital still faces a shortage of medical staff. In addition, the issues concerning the provision of required medicinal products and treatments and the bad practice of administering medicinal products and treatment by non-medical staff have not been addressed.

Notwithstanding the recommendations issued by the Protector of Citizens, detainees are still not provided with an opportunity to work and are not included in social and cultural activities. The Protector of Citizens has already highlighted the fact that detainees spend all day locked up in their cells/dormitories as a problem of the detention system in Serbia.

Complaints filed with the Protector of Citizens by detainees in 2015 mainly related to the work of judicial authorities and violation of the right to a fair trial, violation of the right to a trial within a reasonable period and the excessive duration of detention.

Alternative sentencing is not used in the anticipated capacity and scope in the Republic of Serbia and are fully dependent on the prison system. This is true both in terms of technical support and in terms of human resources support. Probation Offices attached to higher courts

have been opened in all cities and a total of 24 probation officers have been hired to date. However, five Offices still do not have a single probation officer (in Sombor, Zrenjanin, Šabac, Čačak and Vranje). Furthermore, the work of probation officers has been reduced to mere administration of non-prison penal sanctions, i.e. probation officers spend the least time on correctional work with sentenced persons, their resocialisation or post-penal acceptance. Due to a shortage of staff and equipment needed for implementation of alternative sentencing, those sentences that are imposed are hardly ever enforced.

After an investigation of the work of the District Prison in Prokuplje, the Protector of Citizens issued a recommendation to that prison to abolish the practice of committing to imprisonment those persons who have been sentenced by a court both to imprisonment and to a safety measure in the form of compulsory rehabilitation from alcohol addiction until such safety measure has been applied at an appropriate institution. Acting contrary to this recommendation is a breach of positive legislation and violates the right of the convicted person to health care.

6. TYPICAL CASES

Citizen imprisoned on the basis of a court judgment under which he received a suspended sentence

In an investigation of legality and regularity of work of the District Prison in Prokuplje, the Protector of Citizens found that prison had incarcerated a citizen who had not been sentenced by a court to imprisonment, but instead received a suspended sentence. The citizen had been deprived of liberty for 21 days on the basis of that court decision.

The Protector of Citizens issued a recommendation to the Administration for Enforcement of Penal Sanctions to undertake all measures within its mandate in order to determine the responsibility of law enforcement officers at the District Prison in Prokuplje for the omissions which resulted in the unfounded deprivation of the complainant of liberty. Furthermore, the Protector of Citizens issued recommendations to the Ministry of Justice, advising it that the complainant must be instructed how to exercise his entitlement to compensation for wrongful deprivation of liberty and that the Public Attorney's Office must be advised once the compensation has been paid in order to undertake the necessary activities to recover the amount of compensation thus paid from the civil servant who caused the damage, whether deliberately or through gross negligence.

Although the Protector of Citizens had reminded the director of the Administration that disciplinary responsibility could rest both with the civil servant directly responsible for the act or omission which constituted the illegal or irregular action of the Administration and the civil servant who had been in charge of overseeing the work of the institution and its units, disciplinary action was taken only against a civil servant with secondary school qualifications employed at the General Affairs Unit of the District Prison in Prokuplje.

Convict's right to privacy violated and access to effective protection from abuse denied

Acting pursuant to a complaint filed by a convict, who alleged that an officer of the Security Service at the Penal and Correctional Institution in Sremska Mitrovica had caused him bodily harm by punching him in the nose with his fist, in the ensuing investigation the Protector of Citizens found deficiencies in the way in which the convict in question had been treated at the Institution. The deficiencies included the fact that a medical examination of the convict had been attended by an officer of the Security Service, although this had not been demanded by the physician who was examining the convict, and the fact that the physician had not filed a report of signs and indications of possible violent treatment of the convict to the warden of the Institution. Due to these omissions in the work of the Institution, the origin of the convict's

injury had not been determined and the person who had caused the injury had not been identified.

The Administration for Enforcement of Penal Sanctions and the Penal and Correctional Institution in Sremska Mitrovica accepted the recommendations for eliminating the shortcomings in the future work of the Institution's physicians and security officers. The Protector of Citizens underscored that conducting medical examinations in accordance with professional rules and positive legislation was a crucial precondition for an efficient fight against impunity for any form of ill-treatment and an important aspect of preventing violence against persons deprived of liberty, whether committed by other convicts or through unlawful actions of law enforcement officers.

7. PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Administration for Enforcement of Penal Sanctions** should continue its activities on bringing the accommodation condition in penal institutions in compliance with the applicable standards.
2. **Penal institutions** should ensure all persons serving prison sentence or detention measures are allowed to spend the spare time during the day outside their dormitories, in communal areas with other convicts and detainees who have not been segregated under court order.
3. **Penal institutions** should continue providing more opportunities for occupational engagement to persons serving prison sentence or detention measures.
4. **Penal institutions** should ensure sufficient number of health professionals, in particular physicians, sufficient quantities of medicinal products and treatment and improve provision of health care.
5. **The Administration for Enforcement of Penal Sanctions** should improve the use of alternative sentencing in the Republic of Serbia.
6. **The Administration for Enforcement of Penal Sanctions** should ensure that persons with mental disorders serving prison sentences are transferred from regular correctional facilities and provided with health care appropriate to their disease and their treatment needs in an adequate in-patient medical unit within the institution, the Special Prison Hospital or other appropriate health facility.
7. **The Ministry of Justice** should put in place measures within its sphere of competence to pass regulations which would increase the number of institutions where women and juvenile offenders can serve prison sentences and correctional sentences, as well as correctional institutions for juveniles sentenced to correctional treatment.
8. **The Ministry of Justice** should take all necessary measures to include the Supervision Unit within that Ministry as its separate organisational part, outside the Administration for Enforcement of Penal Sanctions.
9. **The Ministry of Justice** should take all necessary measures to include health care services for persons deprived of liberty within penal institutions in the Ministry of Health as its organisational part.
10. **The Administration for Enforcement of Penal Sanctions** should ensure occupational engagement to detainees and their inclusion in social and cultural activities.

II BACKGROUND

1. Key Government's achievements

1.1. The Ministry of Health has made brochures on the rights of psychiatric patients, as well as numerous instructions and forms²⁹⁰, in order to introduce a uniform practice in the treatment of persons with mental disorders and improving the quality of health care and has provided psychiatric hospitals with those brochures, instructions and forms.

1.2. Clinic for Psychiatric Diseases "Dr. Laza Lazarević" in Belgrade has significantly reduced the duration of hospitalisation by developing a community-based treatment programme, which also contributed to reduction of the number of repeated hospitalisations.

2. Key results achieved by the Protector of Citizens

2.1. In compliance with the recommendation of the Protector of Citizens, the Ministry of Health has prepared brochures on the rights of psychiatric patients.

2.2. In compliance with the recommendation of the Protector of Citizens, General Hospital "Dr. Laza K. Lazarević" has put in place procedures which provide health care professionals with additional clarifications regarding the procedure that should be followed when using physical restraints on persons with mental disorders and has trained health care professionals on the use of physical restraints.

2.3. In compliance with the recommendation of the Protector of Citizens, Special Hospital for psychiatric diseases "Gornja Toponica" uses the services of physicians who are not employed at the Hospital when obtaining expert evaluation of patients in involuntary commitment procedures.

2.4. In compliance with the recommendation of the Protector of Citizens, the number of juvenile beneficiaries at the "Veternik" Residential Institution has been reduced to 49, which is in compliance with the applicable regulations, and has moved bed-ridden beneficiaries placed in Pavilion B from the upper floor to the ground floor of the building.

2.5. In compliance with the recommendation of the Protector of Citizens, the Unit for Placement of Adults and the Elderly with Intellectual and Mental Disabilities in Tešica has undertaken measures to ensure the institution respects patients' right to privacy and improves its observance of their religious rights.

3. Shortcomings at the national level

3.1. No activities have been undertaken to provide non-institutional care and community-based support to persons with mental disorders (and their families) through streamlining of units at secondary and tertiary care psychiatric institutions, focusing on day hospitals and outpatient treatment and forming community-based mental health care facilities.

3.2. The provisions of the Law on the Protection of Persons with Mental Disabilities²⁹¹ and the Bylaw on Detailed Conditions for Use of Physical Restraint and Solitary Confinement of

²⁹⁰ Forms for involuntary and voluntary commitment; commitment order forms in cases of involuntary commitment; forms for individual treatment plans; house rules of mental health care institutions etc.

²⁹¹ Official Gazette of RS, No. 45/2013.

Persons with Mental Disorders Hospitalised for Treatment in Psychiatric Institutions²⁹² contain material deficiencies with regard to formation of community-based mental health protection services, voluntary and involuntary hospitalisation procedures, the role of police in relation to persons with mental disorders, the use of physical restraint and in particular solitary confinement of patients.²⁹³

3.3. Most psychiatric hospitals²⁹⁴ still obtain expert evaluations for the purposes of involuntary commitment from physicians employed at their hospitals.

3.4. Most psychiatric hospitals²⁹⁵ still have many patients in long-term care whose conditions of placement are not in accordance with the applicable standards; large-capacity dormitories have not been converted to smaller rooms, special rooms for visits to patients or special rooms in which restrained patients could be placed.



Picture 9 Large capacity dormitory have not been converted to smaller rooms – a Clinic for Psychiatric Diseases “Dr Laza Lazarević” in Belgrade

3.5. The majority of psychiatric hospitals²⁹⁶ do not have enough medical staff (paramedics and psychiatrists) and occupational therapists.

3.6. Residential social security institutions still have too many residents, because systemic activities have still not been put in place in the context of deinstitutionalisation nor have been facilitation of community-based care and support for persons with intellectual and mental problems (and their families) ensured.

3.7. Beneficiaries of residential social security institutions with intellectual and mental disabilities have limited freedom of movement outside of those institutions, without valid legal grounds, and there are no appropriate procedures in place that would regulate their detention at the institutions and granting of ground privileges.

²⁹² Official Gazette of RS, No. 94/2013.

²⁹³ See more at: Milos Jankovic, Freedom and Rights of Persons with Mental Disorders, *Crimen*, 1/2015, pp. 61-80. Available at: http://www.ius.bg.ac.rs/crimenjournal/articles/crimen_001-2015/Crimen%202015-01-4.pdf.

²⁹⁴ Clinic for Psychiatric Diseases “Dr. Laza Lazarević”, Special Hospital for Psychiatric Diseases “Dr. Slavoljub Bakalovic” and Special Hospital for Psychiatric Diseases “Sveti Vracevi”.

²⁹⁵ Special Hospital for Psychiatric Diseases “Gornja Toponica”, Clinic for Psychiatric Diseases “Dr. Laza Lazarević”, Special Hospital for Psychiatric Diseases “Kovin” and Special Hospital for Psychiatric Diseases “Dr. Slavoljub Bakalovic”.

²⁹⁶ Special Hospital for Psychiatric Diseases “Gornja Toponica”, Special Hospital for Psychiatric Diseases “Dr. Slavoljub Bakalovic” and Special Hospital for Psychiatric Diseases “Sveti Vracevi”.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **the Ministry of Health** should implement all necessary activities aimed at rationalisation of services in secondary and tertiary psychiatric institutions, focusing on day hospitals and out-patient treatment and should initiate intensive activities on the introduction of the services of community-based mental health protection.
- That **the Ministry of Health** should implement activities to amend the provisions on solitary confinement of patients of the Law on the Protection of Persons with Mental Disabilities and the Bylaw on Detailed Conditions for Use of Physical Restraint and Solitary Confinement of Persons with Mental Disorders Hospitalised for Treatment in Psychiatric Institutions.
- That **the Ministry of Labour, Employment, Veteran and Social Affairs** should intensify activities on comprehensive deinstitutionalisation, i.e. reduction of capacities and closing of the existing residential social security institutions, as well as on community-based support and care for the existing beneficiaries and all other persons with intellectual and mental problems;
- That **the Ministry of Health** should put in place measures to adapt the accommodation capacities of the Special Hospital for psychiatric diseases "Kovin";
- That **the Ministry of Labour, Employment, Veteran and Social Affairs** should put in place measures within its sphere of competence to pass a regulation that would govern the conditions and procedure for restricting the freedom of movement and using physical restraints on users in residential social security institutions.

5. Explanation

In this reporting period, the Ministry of Health prepared and distributed to psychiatric hospitals numerous instructions and forms with the aim of improving the quality of health care and protection of rights of persons with mental disorders and facilitating the implementation of certain legal provisions in practice at hospital for psychiatric diseases. In addition, trainings on the use of physical restraint on persons with mental disorders were organised for health professionals to ensure they fully comply with the applicable regulations and standards, since this ensures provisions of necessary health care, inviolability of physical and mental integrity and dignity of persons with mental disorders. Recommendations issued by the Protector of Citizens to General Hospital "Dr. Laza K. Lazarević" in Šabac have been forwarded to other institutions where persons with mental disorders are placed with the aim of improving their work and ensuring uniformity of practice.

Clinic for Psychiatric Diseases "Dr. Laza Lazarević" in Belgrade has reduced the number of resident patients, as it has been developing a community-based treatment programme, which includes tertiary prevention services aimed at strengthening links between the patient, his/her family and treatment providers on the one hand and the community on the other, to prepare the patient for release from the institution and continual care. All of this has contributed to shorter hospitalisation terms, a lower rate of repeated hospitalisations and a higher number of

outpatient examinations. However, most other psychiatric hospitals still have a large number of resident patients in long-term care.²⁹⁷

Some buildings of certain psychiatric hospitals are still old and dilapidated and are difficult to maintain, while high-capacity dormitories have not been converted into smaller rooms. Conditions of placement are particularly bad at Special Hospital for Psychiatric Diseases "Kovin", where many buildings used for placing patients are dilapidated. Certain hospitals do not have designated rooms for visits; instead, visitors meet with patients in the wards and in communal areas or, if the weather allows and if the patient's condition permits, in the Hospital yard. Some hospitals do not even have designated rooms for restrained patients and such patients are instead placed in the same rooms as others. A major problem faced by psychiatric hospitals is shortage of medical staff and occupational therapists and the inadequate structure of human resources creates a gap between what the patients need and what the staff actually has the capacity to provide.

Many beneficiaries are still placed at residential social security institutions solely because no community-based support has been provided and because they have been declared incompetent. Families and guardians of such beneficiaries usually do not have support for providing adequate care. Beneficiaries placed at social security institutions have limited freedom of movement outside of those institutions, without valid legal grounds, and there are no appropriate procedures in place that would regulate their detention at the institutions. In connection with restrictions on the freedom of movement of beneficiaries placed at social security institutions, the Protector of Citizens issued a recommendation to the Ministry of Labour, Employment, Veteran and Social Affairs for the latter to undertake measures within its sphere of competent in order to address this issue. However, the Ministry has not notified the Protector of Citizens of the legal basis for restricting the freedom of movement outside of the institutions and has not put in place procedures for restricting beneficiaries' movement and for granting them ground privileges.

6. TYPICAL CASES

Right of a person with mental disorders to health care and inviolability of physical and mental integrity violated

After an investigation conducted on own initiative, the Protector of Citizens found that the right of a person with mental disorders to health care and inviolability of physical and mental integrity had been violated during his commitment at General Hospital "Dr. Laza K. Lazarević" in Šabac, in that he had not been provided with necessary health care after a physical altercation with another patient at the Psychiatric Ward and had been illegally and irregularly physically restrained after that altercation. The Protector of Citizens issued the following recommendations to General Hospital "Dr. Laza K. Lazarević" in Šabac: in its future work, after any physical altercation between patients, the persons involved must undergo a medical examination without delay and must be provided with the required health care; any physical altercation between patients must be recorded without delay and reported to the director or a person authorised by the director; physical restraint by mechanical means, the so-called fixation, should be done in full compliance with the regulations and the established standards of treating persons with mental disorders; and health care professionals should be trained on the conditions and procedure for using physical restraints on agitated patients and trained to use advanced techniques of non-violent physical restraint, based on a special plan

²⁹⁷ Special Hospital for Psychiatric Diseases "Dr. Slavoljub Bakalovic", Special Hospital for Psychiatric Diseases "Sveti Vracevi", Special Hospital for Psychiatric Diseases "Gornja Toponica" and Special Hospital for Psychiatric Diseases "Kovin".

of training for health care professionals on the conditions and procedure for using physical restraints. General Hospital "Dr. Laza K. Lazarević" in Šabac complied with the recommendations.

7. PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Ministry of Health** should without any further delay implement all necessary activities aimed at introduction of non-institutional, community-based support for persons with mental disorders (and their families) and rationalisation of services in secondary and tertiary psychiatric institutions, focusing on day hospitals and out-patient treatment, and should ensure formation of special organisational units performing the tasks of community-based mental health protection.
2. **The Ministry of Health** should put in place measures within its sphere of competence to enact the Law amending the Law on the Protection of Persons with Mental Disabilities, i.e. to improve the provisions relating to formation of community-based mental health protection services, voluntary and involuntary hospitalisation procedures; the role of police in relation to persons with mental disorders; physical restraint and in particular solitary confinement of patients. It is also necessary to amend the Bylaw on Detailed Conditions for Use of Physical Restraint and Solitary Confinement of Persons with Mental Disorders Hospitalised for Treatment in Psychiatric Institutions accordingly.
3. **The Ministry of Health** should put in place measures to adapt the accommodation capacities in large psychiatric hospitals.
4. **The Ministry of Health** should put in place measures to employ sufficient number medical staff (paramedics and psychiatrists) and occupational therapists with the aim of enhancing the provision of health care services and improving psychosocial rehabilitation activities.
5. **The Ministry of Labour, Employment, Veteran and Social Affairs** should, in coordination with other competent authorities, implement systemic activities on comprehensive deinstitutionalisation, i.e. reduction of capacities and closing of the existing residential social security institutions, as well as on community-based care for persons with intellectual and mental difficulties (and their families).
6. **The Ministry of Labour, Employment, Veteran and Social Affairs** should put in place measures within its sphere of competence to pass a regulation that would govern the conditions and procedure for restricting the freedom of movement and using physical restraints on beneficiaries in residential social security institutions.

TREATMENT OF REFUGEES/MIGRANTS

III BACKGROUND

1. Key Government's achievements

- 1.1. The Government passed the Decision regulating registration of refugees in transit through Serbia.
- 1.2. Towards the end of the reporting period, the Ministry of Internal Affairs abolished the practice of issuing certificates of stated intent to seek asylum to refugees/migrants who did not state such intent.
- 1.3. Police officers have abolished the practice of filing misdemeanour charges for illegal crossing of the national borders and illegal stay in the country against refugees/migrants who pass through the Republic of Serbia on their way to developed European countries.

- 1.4. The Ministry of Internal Affairs identifies and register all refugees/migrants passing through the territory of the Republic of Serbia on their way to developed European countries.
- 1.5. Refugees/migrants are advised of their rights and responsibilities in Serbia.
- 1.6. Refugees/migrants are provided with adequate humanitarian aid (food, footwear, clothing, sanitary packs etc.).
- 1.7. The Commissariat for Refugees and Migration has increased its capacities for temporary placement of the refugees/migrants who pass through the territory of the Republic of Serbia.

2. Key results achieved by the Protector of Citizens

- 2.1. In compliance with proposals of the Protector of Citizens, the Government passed the Decisions regulation registration refugees in transit through Serbia.
- 2.2. At the end of the reporting period, the Ministry of Internal Affairs began implementing the Decision passed by the Government which provides for registration of refugees in transit through Serbia and abolished the practice of issuing certificates of stated intent to seek asylum to refugees/migrants who did not state such intent.
- 2.3. In compliance with the recommendation of the Protector of Citizens, police officers no longer file misdemeanour charges for illegal crossing of the national borders and illegal stay in the country against refugees/migrants who pass through the Republic of Serbia on their way to developed European countries.
- 2.4. In compliance with the recommendation of the Protector of Citizens, the Ministry of Internal Affairs identifies and registers all refugees/migrants passing through the territory of the Republic of Serbia on their way to developed European countries.
- 2.5. In compliance with the recommendation of the Protector of Citizens, refugees/migrants are advised of their rights and responsibilities in Serbia.
- 2.6. In compliance with the recommendation of the Protector of Citizens, conditions for admission of refugees/migrants at the Reception Centre in Preševo have been improved.
- 2.7. In compliance with the recommendation of the Protector of Citizens, penal institutions allow migrants punished for misdemeanours to make phone calls to their country of origin and they do not notify the diplomatic and consular missions of the person's country of origin without his/her explicit consent.

3. Shortcomings at the national level

- 3.1. In 2015, all refugees/migrants who passed through Serbia on their way to developed European countries were issued with certificates of stated intent to seek asylum (some 600,000 certificates in total), although most of them never stated or had any such intent.
- 3.2. Measures have not been undertaken to arrange for the transport of vulnerable categories of refugees/migrants from their entry into Serbia from Macedonia to the Camp in Miratovac.
- 3.3. Access to the Camp in Miratovac has not been enabled for all vehicles which transport refugees/migrants free of charge from the Camp to the Reception Centre in Preševo.
- 3.4. At the Reception Centre in Preševo, police officers do not take photographs of all minors when issuing them with certificates of stated intent to seek asylum and the issued certificates do not include under the heading "Other information and comments" the name and surname of the person who accompanies the minor and the number of the certificate issued to such persons.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. **The Ministry of Internal Affairs** has not put in place available measures to ensure compliance with the recommendation of the Protector of Citizens to form the Asylum Office as a stand-alone organisational unit that is not attached to the Border Police Directorate.

4.2. **The Ministry of Internal Affairs** has not complied with the recommendation of the Protector of Citizens to enable access to the Camp in Miratovac has not been enabled for all vehicles which transport refugees/migrants free of charge from the Camp to the Reception Centre in Preševo.

4.3. **The Ministry of Internal Affairs** has not complied with the recommendation of the Protector of Citizens that its officers **at the Reception Centre** in Preševo should take photographs of all minors when issuing them with certificates of stated intent to seek asylum and that the issued certificates should include under the heading "Other information and comments" the name and surname of the person who accompanies the minor and the number of the certificate issued to such persons.

5. Explanation

Since the beginning of 2015, the Protector of Citizens has made 59 visits to competent authorities which handle refugees/migrants. Visits have been made to the asylum centres in Tutin, Sjenica, Banja Koviljača and Krnjača, the Reception Centres in Preševo, Kanjiža, Sombor and Šid, the Shelter for Foreigners in Padinska Skela, "Nikola Tesla" Airport, Regional Border Police Centres on the borders with Macedonia, Bulgaria, Hungary and Croatia, many police stations within 15 police administrations, six centres for social work, shelters for unaccompanied foreign minors and prisons where migrants punished for misdemeanours are committed. To improve the treatment of these persons, the Protector of Citizens has issued 36 recommendations to competent authorities in his special reports since the beginning of the refugee crisis in mid-2015. Of the total number of issued recommendations, competent authorities have implemented 23, two have not been implemented, while the implementation of the remaining 11 recommendations is currently followed up.

After a visit to the Regional Border Police Centre at the Hungarian border and the Police Station in Kanjiža,²⁹⁸ the Protector of Citizens issued a recommendation to the Ministry of Interior to abolish the practice of filing misdemeanour charges for illegal crossing of the national border and illegal stay against persons fleeing from war-torn countries. The main reason for this recommendation was the fact that even those refugees/migrants who have been punished for misdemeanours are released after serving the punishment to leave the territory of the Republic of Serbia of their own volition within a specified period on the basis of expulsion orders. In most cases, they do not hold a valid passport and other required documents that would enable them to legally leave Serbia, while on the other hand the current situation in their countries of origin means they cannot be repatriated.

Following relevant recommendations of the Protector of Citizens, the Reception Centre in Preševo²⁹⁹ expedited its procedure of issuing certificates of stated intent to seek asylum and at the "Nikola Tesla" Airport all persons who are issued certificates of stated intent to seek asylum are photographed and fingerprinted, which ensures that all refugees/migrants who enter the Republic of Serbia are registered. Furthermore, a canopy has been erected at the Reception Centre in Preševo for the refugees/migrants queueing in front of the Reception Centre, in accordance with the recommendation of the Protector of Citizens, to give them

²⁹⁸ Visit was made on 17 and 18 September 2015.

²⁹⁹ Visits to the Shelter in Presevo were made on 9 and 24 November and 7 December 2015.

shelter from precipitation, and the rooms where these persons are placed have been refurbished. Refugees/migrants are advised of their rights in the Republic of Serbia. In addition to numerous brochures that are distributed to them upon entry in the Republic of Serbia, a mobile application is also available which provides them with information on the asylum application procedure, their rights and all other practical information they need during their stay in Serbia (situation at border crossing points, bus timetables etc.). The Protector of Citizens had issued a recommendation relating to advising foreigners of their rights and responsibilities already in 2014.³⁰⁰

According to the figures of the Ministry of Internal Affairs, in 2015 almost 600,000 registered refugees/migrants who were issued certificates of stated intent to seek asylum. Although most of those persons never stated they intended to seek asylum in the Republic of Serbia, police officers nevertheless issued them with certificates of stated intent to seek asylum (almost all those persons left the territory of the Republic of Serbia within two days). Due to the actions of the competent Serbian authorities, the number of persons who stated they intend to seek asylum has been misrepresented. Although the Government of the Republic of Serbia had passed the Decision on Issuing of Certificates of Entry in the Territory of the Republic of Serbia for Migrants arriving from Countries where their Lives are in Danger³⁰¹, certificates were not issued in accordance with that decision in the course of 2015 and this approach was not implemented systemically until early 2016. The certificate entitles the holder to stay in the Republic of Serbia for 72 hours and use bank services, stay at hospitality establishments and obtain any medical assistance they may need.

Notwithstanding the large number of issued certificates of stated intent to seek asylum in the Republic of Serbia, of the 669 persons registered in 2015, 586 applied for asylum, 16 were granted asylum, 14 received subsidiary protection, 29 asylum applications were dismissed, 11 asylum applications were rejected and 547 asylum procedures were terminated.

Asylum Centres admitted a total of 11,360 persons in 2015 (the total capacity of Asylum Centres is 1,060 persons). Of that number, 2,294 were women, 1,284 were accompanied minors and 1,278 were unaccompanied minors. During the same period, 10,615 persons left Asylum Centres. This also indicates that the persons who pass through Serbia have no real intent to seek asylum in the Republic of Serbia, since the number of those who actually showed up at Asylum Centres decreased even as the total number of those persons increased, and even those who were admitted at Asylum Centres did not stay there very long; indeed, almost all of them left of their own volition and continued their journey.

Refugees/migrants enter the Republic of Serbia from the Republic of Macedonia and access the Camp in Miratovac by a dirt road, a stretch of which must be travelled on foot by vulnerable categories of these persons (persons with disabilities, pregnant women, women with small children, ill or frail persons) before they can board vehicles which take them to the Camp in Miratovac. In addition, although van provided by the International Organisation for Migration (IOM) and the UNHCR transport vulnerable categories from the Camp in Miratovac to the Reception Centre in Preševo, they are unable to transport all persons who belong to these vulnerable categories. Only the vans provided by IOM and UNHCR can access the Camp in Miratovac, while other buses that could transport refugees/migrants free of charge are unable to access it.

At the Reception Centre in Preševo, police officers do not take photographs of minors under 14 years of age when issuing certificates of stated intent to seek asylum. In most cases, it is

³⁰⁰ See Recommendations of the Protector of Citizens number 75-6/14, Part I, Section 2.

³⁰¹ Official Gazette of RS, No. 81/15.

accepted that the child's parent or guardian is the person who claims he/she has such capacity (if they have no documents to prove such claim, which is usually the case). In view of the foregoing, in potential cases of abuse of children perpetrated by the foreigners who pose as parents or guardians of minors, photographs of minors under 14 years of age would be of use to competent authorities. The Reception Centre in Preševo has no reliable means of determining whether minors are accompanied or unaccompanied. The procedure of issuing certificates of stated intent to seek asylum to refugees/migrants is swift.

6. TYPICAL CASES

Unaccompanied foreign minor refugee not provided with support of guardian appointed by Centre for Social Work

When the Protector of Citizens made a visit to the Asylum Centre in Banja Koviljača³⁰², a foreign minor aged 14 who had entered the Republic of Serbia unaccompanied was placed there. The minor in question was a Syrian refugee who had been found in Belgrade with a certificate of stated intent to seek asylum, in which he was instructed to report to the Asylum Centre in Sjenica. Upon placement at the Centre, a guardian from the Centre for Social Work in Loznica was appointed to the minor in question, who was present during the minor's registration, when he was photographed and fingerprinted, but did not have an interview with him. The minor had spent 12 days at the Centre at the time when the team of the Protector of Citizens made its visit and the appointed guardian had still not interviewed him.

In view of the foregoing, the Protector of Citizens issued recommendations for the Commissariat for Refugees and Migrations and the Asylum Centre in Banja Koviljača to provide translators at that Asylum Centre and for the Ministry of Labour, Employment, Veteran and Social Affairs to hire a person at the Centre for Social Work in Loznica whose sole duty would be to act as guardian to unaccompanied foreign minors who are placed at the Asylum Centre in Banja Koviljača.

7. PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

7. **The Government** should prepare a Plan for Providing Care to Refugees/Migrants found in or returned to Serbia; a Plan of Action for refugees/migrants who are denied protection in Serbia; and a Plan of Integration for those who are granted asylum in Serbia.

8. **The Ministry of Internal Affairs** should put in place all available measures to ensure the Asylum Office is not attached to the Police Directorate.

9. **The Ministry of Internal Affairs** should put in place an efficient asylum system.

10. **The Ministry of Internal Affairs** and **the Commissariat for Refugees and Migration** should put in place measures to ensure the transport of vulnerable categories of refugees/migrants from border crossing points to the nearest Reception Centre, where they would be provided with humanitarian aid.

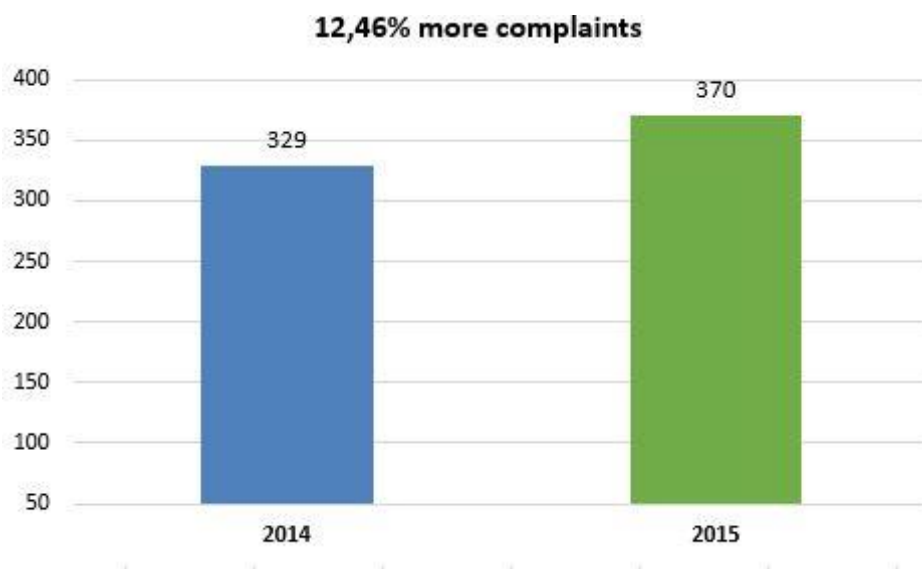
11. **The Ministry of Internal Affairs** should put in place measures to ensure that police officers take photographs of all minors when issuing them with certificates of stated intent to seek asylum and that the issued certificates should include under the heading "Other information and comments" the name and surname of the person who accompanies the minor and the number of the certificate issued to such persons.

³⁰² The visit was made on 24 August 2015.

II STATISTICS

In the field of rights of persons deprived of liberty, the Protector of Citizens received 363 complaints, with 7 cases investigated on his own initiative. Those 370 complaints account for 5.94% of the total number of complaints received by the Protector of Citizens in 2015. The number of complaints in 2015 was 12.46% higher than in the previous year.

Chart 9 - Rights of persons deprived of liberty - Number of complaints received in 2015 . compared to 2014



In the reporting period, the Protector of Citizens closed a total of 374 cases, of which 262 were received in 2015, while the remaining ones were carried forward from previous years.

Table 30 - Rights of persons deprived of liberty - outcome of cases handled in 2015 and in earlier years

	Number	Percentage
Dismissed complaints	239	63.90%
Unfounded complaints	81	21.66%
Cases covered by recommendations issued in expedited oversight procedure	39	10.43%
Cases covered by recommendations issued in oversight procedure	9	2.41%
Complaint dropped by complainant	5	1.34%
Death of complainant	1	0.27%
Total	374	100%

Complaints are dismissed on the grounds of lack of jurisdiction, belatedness, prematurity, anonymity of complainant or formal deficiencies.

Table 31 - Rights of persons deprived of liberty - reasons for dismissal of complaints in 2015

	Number	Percentage
Premature complaint - complainant advised on available remedies	94	39.33%
Declined jurisdiction - complainant referred to competent authority	87	36.40%
Formally deficient complaints	36	15.06%
Anonymous complaints	11	4.60%
Belated complaints	10	4.18%
Complaints submitted by unauthorised persons	1	0.42%
Total	239	100%

Assistance in the form of legal advice accounts for a significant share of the actions taken by the Protector of Citizens pursuant to complaints; he provides this type of assistance even in the cases where he declines jurisdiction or dismisses a complaint as premature. In such cases, the Protector of Citizens refers the complainant to the competent authority or provides advice on available remedies.

As can be seen in the table below, in 75.73% of dismissed complaints the Protector of Citizens gave the citizens legal assistance in the exercise of their rights before the competent authorities.

Table 32 - Rights of persons deprived of liberty - assistance provided in the form of legal advice in 2015

	Number	Percentage
Dismissed complaints	239	100%
Premature complaint - complainant advised on available remedies	94	39.33%
Declined jurisdiction - complainant referred to competent authority	87	36.40%
Total: assistance provided in the form of legal advice	181	75.73%

In this field, 603 different violations of rights have been identified pursuant to 370 complaints. The largest number of complaints pointed to violations of civil and political rights, special rights of persons deprived of liberty and economic and social rights. However, some of the complainants also complained against violations of the right to good governance.

Table 33 - Rights of persons deprived of liberty - violations of rights reported by complainants in 2015

	Number	Percentage
Right to good governance	200	33.17%
Civil and political rights	190	31.51%
Special rights of persons deprived of liberty	177	29.35%
Economic, social and cultural rights	36	5.97%
Total	603	100%

The most frequently violated civil and political rights of persons deprived of liberty were the right to a fair trial and the right to a trial within a reasonable time, the right to protection against torture and inhuman and degrading treatment and the right to inviolability of physical and mental integrity.

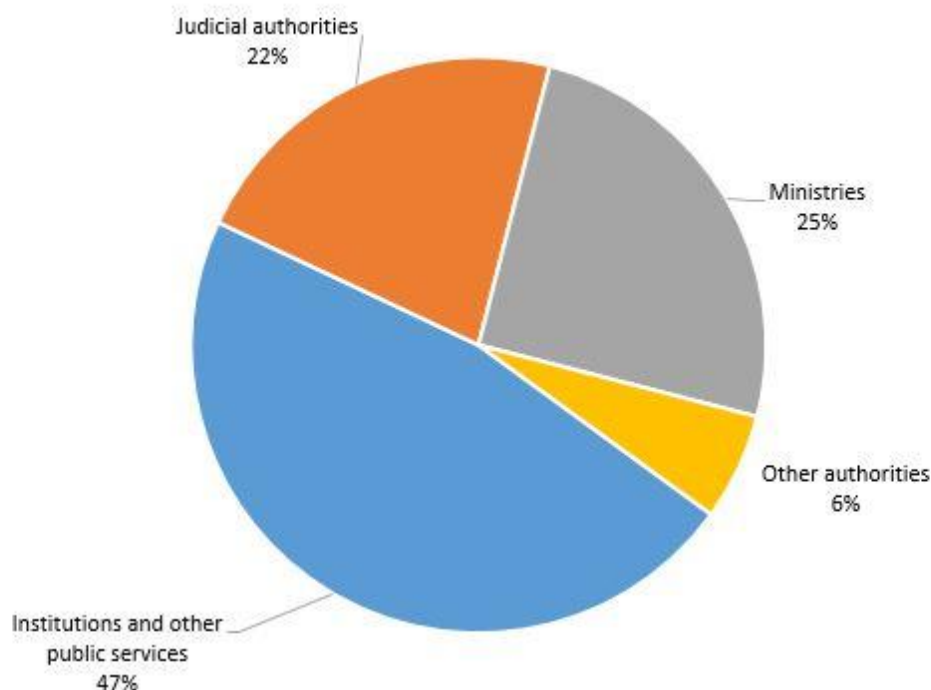
As regards economic and social rights, complainants most frequently complained against violations of the right to health care.

Table 34 - Special rights of persons deprived of liberty, their number and percentage in 2015

Type of right violated	Number	%	Type of right violated	Number	%
Right to health care of PDLs	54	30.51	Right to clothes, underwear, footwear	3	1.69
Right to shelter	24	13.56	Right to submission, complaint and appeal by a convicted person	3	1.69
Correctional work	13	7.34	Right to phone calls	3	1.69
Right to human treatment	11	6.21	Right to visits	3	1.69
Transfer	9	5.08	Probation and temporary leave	2	1.13
Disciplinary procedure	8	4.52	Solitary confinement	2	1.13
Right to hygiene	6	3.39	Right to stay in a separate room	2	1.13
Right to work and rights raising from employment of PDLs	6	3.39	Right to receive parcels and money transfers	1	0.56
Extended rights of convicted persons	5	2.82	Right to education of PDLs	1	0.56
Right to send and receive communications	5	2.82	Religious rights of PDLs	1	0.56
Right to free time outside of enclosed spaces	4	2.26	Right to legal assistance of PDLs	1	0.56
Right to nourishment	4	2.26	Right to legal assistance of PDLs	1	0.56
Categorisation	4	2.26	Right to legal assistance of PDLs	1	0.56

Most of the complaints pointed to violations of rights by institutions in charge of enforcing penal sanctions. As many persons deprived of liberty complain against the actions of judicial authorities, including in particular cases of violation of the right to a fair trial, judicial authorities account for a large number of their complaints. As regards ministries, the largest numbers of complaints related to the Ministry of Internal Affairs and the Ministry of Justice.

Chart 10 - Authorities and organisations most frequently complained against by the citizens in the field of rights of persons deprived of liberty in 2015



III NATIONAL PREVENTIVE MECHANISM (NPM)

In 2015, the NPM made 116 visits to places of detention. 55 reports were prepared and 265 recommendations were issued in the reports to the competent authorities and visited institutions.

Acting in the capacity of the NPM, the Protector of Citizens has continued his cooperation with the Provincial Ombudsman and associations and also with international organisations, especially with regard to monitoring of the status of refugees and migrants.

A total of 40 visits were made to police administrations and police stations attached to them, with 129 recommendations issued in 11 reports. This total number of visits includes 3 follow-up visits to police administrations and police stations attached to them (the Police Administration of Bor, the Police Administration of Zaječar and the Police Administration of Niš) for the purpose of overseeing compliance with previously issued recommendations. Visits were made to 10 penal institutions in total and issued 80 recommendations for remedying the identified shortcomings were issued in those reports. the Juvenile Penal and Correctional Institution in Valjevo, the District Prison in Kraljevo and the District Prison in Novi Sad were visited in 2015 to follow up on compliance with previously issued recommendations. The NPM team visited two special psychiatric hospitals and two mental health institutions. It also visited three residential social security institutions, which were issued with 20 recommendations for remedying the identified shortcomings.

In 2015, the NPM made seven visits for the specific purpose of investigating torture allegations. These included four visits to penal institutions (the Penal and Correctional Institution in Niš, the Penal and Correctional Institution "Zabela" in Požarevac, the District Prison in Leskovac and the detention unit at the District Prison in Belgrade) and three visits to headquarters of police administrations (the Police Administration of Niš, the Police Administration of Leskovac and the Police Administration of Požarevac). The visits were

unannounced and took place in the evening. A total of 210 persons deprived of liberty were interviewed without the presence of authorities and none of them made any allegations of torture.

The NPM focused in particular on monitoring compliance with the recommendations made by the European Committee for the Prevention of Torture in its previous reports of visits to the Republic of Serbia. In this context, four visits were made: to the Special Prison Hospital, to the Penal and Correctional Institution in Požarevac, to Clinic for Psychiatric Diseases "Dr. Laza Lazarević" and to Special Hospital for Psychiatric Diseases "Gornja Toponica".

In 2015, the NPM began monitoring the forced repatriation of Serbian nationals whose asylum applications had been denied in European Union countries. Acting in the capacity of the National Preventive Mechanism, a representative of the Protector of Citizens monitored the treatment by the police of persons who had returned to Serbia on a special flight from Dusseldorf. This forced repatriation was a joint action of German, Dutch, Belgian and Serbian police forces, organised by the European Agency for the Management of Operational Cooperation at the External Borders of the EU (FRONTEX). Monitoring forced repatriation of persons whose asylum applications were denied is an important preventive element in the protection from torture and other forms of cruel, inhuman and degrading treatment. No irregularities were identified in the treatment of repatriated persons during the visit.

With support from the UNHCR, the NPM and the Belgrade Centre for Human Rights made 59 joint visits to institutions responsible for asylum seekers and refugees. A total of 30 reports were made of those visits, with a total of 36 recommendations for remedying the identified shortcomings.

Cooperation within the Southeast Europe NPM Network has continued. A representative of the NPM took part in a meeting of the NPM Network in Tirana dedicated to the development of a special monitoring methodology in the context of the refugee crisis and migrations, which was supported by a conference titled "Asylum Seekers, Migrants: Treatment in Southeast Europe." The representative of the Serbian NPM presented the work carried out by this institution to date with regard to monitoring the treatment of refugees/migrants by competent authorities.

As the NPM visited all police administrations in the Republic of Serbia in the past four years of its work, a dialogue was held with representatives of all Serbian police administrations. In addition to discussions on further implementation of the NPM's recommendations, the dialogue also focused on compliance with the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in the reports of its past visits. A Deputy Protector of Citizens and a representative of NPM presented the key findings made by the NPM during visits to police stations in Serbia. The dialogue was organised in cooperation with the Ministry of Internal Affairs and the OSCE Mission to Serbia.

In the course of 2015, representatives of the NPM had two study visits, which were intended to improve their work and advance their skills. Under the auspices of the Youth Initiative for Human Rights and Montenegrin and Albanian partners, representatives of the NPM made a study visit to Albania, where they visited prisons. Also, the Helsinki Committee for Human Rights arranged for a study visit of NPM's representatives to the Netherlands, where they visited the Probation Service, the Ministry of Security and Justice and the Amsterdam-based forensic institution INFORSA.

The National Assembly passed the Decision to approve the Bylaw on Internal Organisation and Job Classification at the Secretariat of the Protector of Citizens, which provides for the formation of a NPM Secretariat as a designated unit in charge of NPM duties. In accordance with the Bylaw, the NPM Secretariat is detached from the Secretariat of the Protector of Citizens and reports directly to the Protector of Citizens and the Deputy Protector who assists

the Protector of Citizens in NPM duties. However, the envisaged number of employees (one senior advisor, one independent advisor and two advisors) is not sufficient, taking into account the mandate of the Secretariat and the need for efficient performance of all duties. It is therefore necessary to form a dedicated department within the institution of the Protector of Citizens, managed by the NPM Secretary, who would rank at the same level as the Secretary General of the Secretariat of the Protector of Citizens. The NPM Secretary would be assisted by two assistants (one in charge of monitoring and one in charge of cooperation, reporting and legislative improvements), with a much higher number of employees. Furthermore, taking into account the nature of their duties, the assistant and employees in charge of monitoring should be vested with all rights that are normally granted to the employees of inspectorates, police officers and the employees of the Administration for Enforcement of Penal Sanctions who have direct contact with convicts. To achieve the NPM's mandate, it will be necessary to allocate a dedicated budget line within the budget of the Protector of Citizens. In order to facilitate effective work of the NPM, a Law on NPM should be passed without delay to regulate the organisation of the NPM and the exercise of its mandate.

IV OTHER ACTIVITIES

With the aim of promoting and protecting the rights of persons deprived of liberty and prevention of torture, in 2015 representatives of the Protector of Citizens took part in numerous conferences and roundtables. A Deputy Protector of Citizens participated in the 25th session of the European Committee for the Prevention of Torture held in Strasbourg. The objective of this session was to present experiences with the work of the Committee and outline future challenges that await all states parties to the European Convention against Torture and Other Inhuman and Degrading Treatment.

The Protector of Citizens held an international conference titled "Human Rights Challenges in Refugee/Migrant Crisis", which was attended by representatives of Ombudsmen and national human rights institutions of 26 countries, as well as representatives of the diplomatic core and the non-governmental sector. The two-day conference was closed with the adoption of the Ombudsmen/National Human Rights Institutions Declaration on the Protection and Promotion of the Rights of Refugees and Migrants.

In 2015, the Protector of Citizens established cooperative relations with the parliamentary Committee on Labour, Social Issues, Social Inclusion and Poverty Reduction aimed at exchanging information on the current situation and issues in providing assistance to refugees and migrants, with focus on vulnerable categories, e.g. women, children, persons with disabilities, the elderly etc. In this context, a Deputy Protector of Citizens and representatives of the NPM attended the Committee's session titled "Providing Assistance to Asylum Seekers in Serbia", which was convened to address the increased influx of refugees from war-torn regions.

During the fourth periodic visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to the Republic of Serbia (from 26 May to 5 June 2015), members of the Committee's delegation met with representatives of the NPM before their visit in order to familiarise themselves with the NPM's key findings, the current situation in the field and the status of persons deprived of liberty in the Republic of Serbia. Representatives of the NPM also participated in the final meetings between the Committee and the relevant administrative authorities, in which preliminary results of the visit were presented. At the end of the visit, a separate meeting was held in the offices of the Protector of Citizens between members of the Committee and representatives of the NPM, which focused on the powers and competences of the NPM, cooperation with competent authorities and problems and challenges faced by the NPM in its work. Committee members praised the

NPM's work and underscored the importance of the duties it performs, even though it is understaffed. Once the report of the visit to the Republic of Serbia has been presented, the NPM will follow up on compliance with the recommendations made in that report.

To improve health care in prisons and to reaffirm his role in torture prevention, the Protector of Citizens, acting in the capacity of the NPM, held an expert meeting titled "The Role of Physicians in Serbia's Prison System", which gathered for the first time physicians and other medical staff employed at all penal institutions. The meeting addressed the issues of training prison medical staff on the standards of human rights protection and prevention of torture in prisons and also provided a unique opportunity for physicians who work at different penal institutions to exchange their opinions, experiences and dilemmas in their work with the prison population.

A representative of the Protector of Citizens participated in the training of corrections officers at the Juvenile Penal and Correctional Institution in Valjevo and the Correctional Institution in Kruševac. The training also provided an opportunity for assessing compliance with the recommendations issued to the Juvenile Penal and Correctional Institution and the Correctional Institution in the reports of the visits made by the NPM.

A representative of the Protector of Citizens made an address at the conference titled "Living in the Community: a Basic Human Right" organised by the Helsinki Committee for Human Rights. He talked about the conditions of placement at residential institutions, the treatment and occupational therapy provided to patients, the shortage of medical staff, the stigma attached to psychiatric patients outside of psychiatric hospitals and the use of physical restraints and noted as the fundamental problem the fact that patients generally spend many years (sometimes even their whole lives) institutionalised, which over time renders them virtually incapable of living outside of those institutions and robs them of the basic life skills.

In addition, in 2015 representatives of the Protector of Citizens participated in numerous seminars and trainings. With support from the Group 484, they attended several trainings in the fields of asylum, migrations, discrimination and international law of human rights.

3.6. PUBLIC ADMINISTRATION SECTOR

I BACKGROUND

1. Key Government's achievements

- 1.1. The Law on inspection has been enacted and some of its provisions have taken effect.
- 1.2. The Decree on Professional Advancement of Civil Servants³⁰³ has been passed.
- 1.3. The Action Plan on implementation of the Public Strategy Reform Strategy for the period 2015-2017³⁰⁴ has been passed.
- 1.4. The Special Collective Agreement for Public Authorities³⁰⁵ has been signed.
- 1.5. The Directive on the Handling by the Administrative Inspectorate of Complaints against the Work of Civil Servants at the Administrative Directorate has been passed.

2. Key results achieved by the Protector of Citizens

- 2.1. Acting in compliance with the motions for constitutional review filed by the Protector of Citizens and the Equality Commissioner in connection with Article 20 of the Law on Determining the Maximum Number of Employees in the Public Sector, the Constitutional Court passed a decision by which it suspended all individual instruments passed or actions undertaken pursuant to the said provision that would have the effect of terminating the employment of superannuated female employees in the public sector by operation of the law at a younger age than their male counterparts.
- 2.2. In compliance with the recommendation of the Protector of Citizens, the Administrative Inspectorate of the Ministry of Public Administration and Local Self-Government passed the Directive on the Handling by the Administrative Inspectorate of Complaints against the Work of Civil Servants at the Administrative Directorate.³⁰⁶
- 2.3. In compliance with the recommendation of the Protector of Citizens, the National Employment Service has remedied the omission which had harmed citizens and has undertaken measures to ensure its information system supports the generation of official documents in the Serbian language and in the Cyrillic script.
- 2.4. Upon learning that the Protector of Citizens had initiated an investigation, the Tax Administration undertook measures to ensure the new operating system which it implemented supported the official use of the Serbian language and the Cyrillic script.

3. Shortcomings at the national level

- 3.1. The Ministry of Public Administration and Local Self-Government lacks the capacity to implement the Public Administration Reform in the manner and within the timeframe it itself specified, which results in poor planning of the public administration reform process.
- 3.2. Ministries do not draft legislation in accordance with the principles set out in the National Assembly Resolution on Legislative Policy or in accordance with the Legislation Drafting Methodology adopted by the National Assembly in 2010.
- 3.3. Amendments to the Law on Budget System³⁰⁷ and amendments to the Decree on the Procedure for obtaining Approval for New Employment and Additional Staff Engagement by

³⁰³ Official Gazette of RS, No. 25/15.

³⁰⁴ Official Gazette of RS, No. 31/15.

³⁰⁵ Official Gazette of RS, No. 25/15 and 50/15.

³⁰⁶ Recommendation of the Protector of Citizens, available at: <http://www.ombudsman.rs/index.php/lang-sr/2012-02-07-14-03-33/4486-2015-12-14-11-32-09>.

³⁰⁷ Official Gazette of RS, No. 54/09, 73/10, 101/10, 101/11, 93/12, 62/13, 63/13 – corrigendum, 108/13, 142/14, 68/15 – other law and 103/15.

Public Spending Units³⁰⁸ have not succeeded in rectifying all identified problems in the practical implementation of the existing arrangements and have thus failed to improve in particular the efficiency of the employment process.

3.4. Public authorities and public office holders do not cooperate and exchange information to a sufficient extent and in an efficient fashion, which prejudices the application of laws and the exercise of citizens' powers in the manner and to the extent guaranteed by the Constitution and the relevant laws.

3.5. No law has been enacted to systemically regulate the labour law status of persons employed at the bodies of Autonomous Provinces and local self-government units.

3.6. Public authorities still frequently violate or deny citizens' rights and tend to repeat identical or similar problems; in addition to poor organisation, unreformed public administration and frequent legislative amendments, this can also be attributed to the lack of accountability of employees and officials, which often results in illegal and irregular actions or omissions which harm citizens.

3.7. Certain authorities and organisations have not complied with the recommendations of the Protector of Citizens and the decisions of the Administrative Court (specifically the Ministry of Trade, Tourism and Telecommunications) and the recommendation of the Protector of Citizens and the decision of the Commissioner for Information of Public Importance and Personal Data Protection (specifically the Commission for Accreditation and Quality Assurance in Education).

3.8. The Ministry of Public Administration and Local Self-Government has still not prepared the Draft Law amending the Law on the Protector of Citizens and submitted it to the Government for endorsement of a Bill and its submission to the National Assembly for enactment.

3.9. The Republic of Serbia does not undertake appropriate measures against those employers who do not perform their duty to pay salary and calculate and pay social insurance contributions, which leaves employees without their entitlement to salary and without the rights arising from compulsory pension, disability and health insurance which are guaranteed by the Constitution of the Republic of Serbia.

3.10. National administration has still not ensured that citizens are issued with all administrative documents and official certificates in the Serbian language and the Cyrillic script.

3.11. In a significant number of cases, the information system and technical support used by public administration supports only the Latin script.

3.12. The Code of Good Governance has not been enacted, although the Protector of Citizens submitted his draft of this instrument, following the model set by the European Ombudsman and in cooperation with that body, as early as in 2010.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- that **the Government**, in cooperation with other competent authorities, should make a clear decision whether amendments should be made to the Law on Official Use

³⁰⁸ Official Gazette of RS, No. 113/13, 21/14, 66/14, 118/14, 22/15 and 59/15.

of Languages and Scripts to improve the existing situation with regard to official use of the Serbian language and the Cyrillic script.

4.2. Recommendations³⁰⁹ of the Protector of Citizens in connection with official use of the Serbian language and the Cyrillic script have not been implemented.

4.3. The National Assembly has still not considered the Code of Good Governance, submitted by the Protector of Citizens as early as in 2010, following the model set by the European Ombudsman and in cooperation with that body.

5. Explanation

In 2015, the Ministry of Public Administration and Local Self-Government worked intensively on drafting new legislation. Enactment of the Law on Inspection was a major step forward in regulating this important area, which provided a comprehensive framework for the actions of inspectorates when performing public administration duties in the field of inspection. The Law was published in the Official Gazette in April 2015³¹⁰; however, the effectiveness of most of its provisions was delayed for one year from the date of its coming into force, i.e. 30 April 2016. One of the provisions which took effect on 30 April 2015 was that governing the actions undertaken by inspectorates with respect to business operations or activities of inspected entities which fall within the remit of a different inspectorate. Namely, pursuant to the said provision³¹¹, if an inspector finds that an inspected entity has violated a law or other regulation the implementation of which is overseen by a different inspectorate, he/she must draw up a report of the situation found, based on his/her knowledge and experience. The inspector must then forward the report without delay to the inspectorate in charge of the business operations or activities performed by the inspected entity, as well as to any other competent authorities and the Coordination Commission, to enable that other inspectorate to undertake measures and actions within its sphere of competence or to cooperate or conduct a joint inspection with such other inspectorate. Immediately upon notifying the competent authority in the manner described above, the inspector must prepare an official note of the situation found and the notifications given.

Furthering the public administration reform process, the most recent amendments to the Law on Civil Servants³¹² of 2014 laid the foundations for implementing a new training system for civil servants, while the Decree on Professional Advancement of Civil Servants elaborated specific arrangements for implementing this system.

More than a year after the passing of the Public Administration Reform Strategy, the Action Plan which operationalises its implementation in the period 2015-2017 has finally been passed. The Action Plan envisages measures and activities aimed at achieving the strategic objectives provided for in the Strategy and sets a timeframe for their achievement. However, the measures and activities undertaken as part of the reform in 2015, which do not match the planned or the specified timeframe, cast a shadow of doubt on the actual ability to achieve these targets. The effects of the measures and activities implemented in this field will not become visible until next year, as 2015 was used mainly to set the legal framework for the reforms.

A positive development from the aspect of regulating and protecting the rights of public administration employees was the signing of the Special Collective Agreement for Public

³⁰⁹ Available at: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/478-preporuka-ministarstvu-za-ljudska-i-manjinska-prava-dravnu-upravu-i-lokalnu-samoupravu-u-vezi-sa-slubenom-upotrebom-srpskog-jezika-i-irilikog-pisma>.

³¹⁰ Official Gazette of RS, No. 36/15.

³¹¹ Article 30, paragraphs 1, 2 and 4 of the Law on Inspection.

³¹² Official Gazette of RS, No. 99/14.

Administration Employees, which granted those employees greater rights and more advantageous working conditions than those required by the law.

Notwithstanding the intensive legislative activity, during the reporting period no significant progress was made in terms of undertaking specific measures and activities aimed at achieving the main principles of the public administration reform: professionalization, depoliticizing and rationalisation. Guided primarily by the need to cut costs, the Ministry proposed a number of Laws intended to regulate and rationalise public administration employment. However, the enacted Law on Determining the Maximum Number of Employees in the Public Sector and the prepared Draft Law amending the Law on Civil Servants and Draft Law on the Salary System in the Public Sector were not mutually harmonised. Although the Ministry is in charge of setting the timeframe for addressing these issues, it has not managed to comply with the timeframe specified in the Action Plan on implementation of the Public Administration Reform Strategy. Due to this, these pieces of legislation were passed on an expedited procedure, which was not conducted in line with the principles set out in the Resolution on Legislative Policy passed by the National Assembly in 2013 or the Uniform Methodological Rules for the Drafting of Regulations, which the National Assembly had passed even before that, in 2010. Namely, one of the key principles provided for in the Resolution is the principle of publicity, which implies that the fundamental elements of drafted legislation in a specific field must be presented to the public, including in particular the stakeholders concerned, and that legislation must be announced, drafted and enacted in the regular legislative procedure, which allows the public affected by such legislation to properly participate in the process. This principle has not been observed both with regard to the preparation and discussion of the fundamental elements and with regard to proper engagement with the public. The fundamental elements were not determined or discussed with the stakeholders, with public debates held as a mere formality at the shortest possible notice, which meant that not even the drafts of systemic laws were publicly debated for longer than a month. Not only was the duration of debates insufficient given the type and importance of the legislation concerned, but there were also no reports from the debates which could list any objections raised and the reasons why most of the objections were rejected. Also, many rules of drafting legislation in accordance with the Methodology were not observed, including in particular those which govern the way in which statements of reasons are written. Indeed, most statements of reasons contained merely interpretations of the relevant Articles, without explaining the new institutes and the reasons for their adoption. Furthermore, there are increasing terminological discrepancies between pieces of legislation which govern the same field. All this leads to ambiguity and imprecision of legislation, with ample scope for misinterpretation, which in turn hampers the implementation of such legislation and creates legal uncertainty. As reform legislation is now mostly enacted in an expedited procedure, individual pieces of such legislation are increasingly non-harmonised and even conflicting and many legislative activities are not conducted in the order and in the manner provided for in the Action Plan on Implementation of the Public Administration Reform Strategy.

Apart from non-harmonised policies and measures within the public administration system, another defining feature of 2015 was the fact that, even as the civil service system was being dismantled further at the central level, proposals were made to introduce civil service systems at provincial and local levels. All this deeply contravenes the public administration reform strategy, which envisages the expansion of the civil service system to the wider public administration. In parallel with this, implementation of a rigorous staff downsizing policy in one segment of public administration due to the need for urgent cuts in public spending have not been coupled with identical public spending cuts elsewhere, as envisaged by the Public Administration Reform Strategy; indeed, instead of reorganisation and trimming down by abolishing any unnecessary organisational forms in the public administration system, new authorities and organisations have been formed and more are soon to follow, without a clear explanation. Such policies conflict with one another and any activities undertaken to trim down public administration become an exercise in futility when new staff is hired by these

newly-formed authorities and organisations. The most striking examples of this include the announced introduction of a children's ombudsman and the formation of an agency in charge of dispute resolution in privatisation procedures.

The reporting period was also marked by a public debate on the Draft Law on the Salary System in the Public Sector, which was a textbook example of maladministration in terms of the way it was organised and conducted. The public debate on this Draft Law effectively began only after it had been formally closed. Met with the occasional protest by employees in certain segments of public administration, the debate was finally resolved when the Prime Minister held a meeting with representatives of independent administrative authorities and public administration trade unions, ahead of the session of the Social and Economic Council of the Republic of Serbia which reviewed the text of the Draft Law that had already been formally reviewed by and agreed with the competent administrative authorities.

Namely, as soon as the first version of the Draft Law on the Salary System in the Public Sector was presented, the Protector of Citizens and other independent administrative authorities and members of the professional community raised serious objections to it. The Protector of Citizens provided the Ministry with written objections to the text of the Draft Law that had been reviewed in the public debate. The public debate was formally closed without a report and the participants were not informed whether their objections were upheld and, if so, which ones, nor were they informed why some, or indeed most, of their objections were not upheld. This was followed by several rounds of harmonisation of the Draft Law on the Salary System in the Public Sector with the competent administrative authorities, during which the Protector of Citizens repeatedly raised his objections. In his opinions sent to the line Ministry, the Protector of Citizens explained that the arrangements contained in the Draft Law opened a host of issues which, if not addressed and properly resolved, threatened to undermine the concept of public administration reform, as defined and planned in the Public Administration Reform Strategy. One of the key opinions of the Protector of Citizens was that the introduction of a uniform salary system in the public sector should be preceded by a uniform system of employment, in order to achieve true effects of the reform in this field and to ensure this piece of legislation can be applied. The Protector of Citizens also stated his opinion that any attempt to regulate the salary system in the public sector must also include public enterprises and the National Bank of Serbia, as they are also part of the public sector. He also noted that public enterprises were in fact the key generators of non-transparent public spending, primarily due to their non-transparent employment practices and unregulated salary system.

In 2015, in this sector citizens complained against the work of administrative authorities and local self-administrative authorities in connection with the exercise of the right to work and employment rights, as well as against the work of the Administrative Inspectorate of the Ministry of Public Administration and Local Self-Government in connection with the handling of their submissions relating to the work of those authorities in the field of employment relations. Employees in public administration and local self-government units complained against illegalities, discrimination and abuse of authority in employment, public calls for applications, job transfers, salary cuts and spending years in fixed-terms employment.

The Protector of Citizens and the Equality Commissioner filed with the Constitutional Court a motion for constitutional review of Article 20 of the Law on Determining the Maximum Number of Employees in the Public Sector. It was also proposed that the enforcement of any individual instruments passed and any actions taken pursuant to that Article be suspended pending a final decision.³¹³ The Constitutional Court acted pursuant to the motion and passed a decision to suspend the enforcement of any individual instruments passed and any actions taken pursuant to the said Article pending a final decision on constitutionality of the contested

³¹³ Motion for constitutional review available at: <http://www.zastitnik.rs/index.php/lang-sr/zakonske-i-drugje-inicijative/4347-2015-09-30-11-11-12>.

Article.³¹⁴ The reason for this motion was the fact that the said Article changed the status and rights of citizens guaranteed by the legislation of the Republic of Serbia, as it provided for mandatory retirement upon reaching the retirement age threshold, which was contrary to the conditions set by other laws. Although the said Article did not specifically refer to different rights of men and women, essentially it applied only to women of a certain age employed in the public sector. There is no objective and reasonable justification for this distinction. While the underlying goal to put a cap on public sector employment and to set the requirements for terminating the employment of public sector employees, the means of achieving that goal must be appropriate and necessary and the undertaken measure must be proportionate to its intended outcome.

The slow and insufficiently regulated procedure for obtaining approval for new employment and additional engagement in the public sector had caused problems in the work of some authorities, with citizens ultimately bearing the brunt. An illustrative example is the case of Loznica, where local self-administrative authorities were unable to hire anti-hail rocket shooters for some time, although funding had been allocated in the budget for that purpose. Furthermore, the slow and imprecisely regulated procedure for obtaining approval for new employment has threatened the survival and functioning of social security institutions, for example in the case of Centre for the Development of Social Security Services “Kneginja Ljubica” in Kragujevac. The activities of social security providers are essential for the exercise of rights of vulnerable groups of citizens and thus also for compliance with statutory duties in the field of social security and rights of persons with disabilities.

The Ministry of Public Administration and Local Self-Government also prepared the Draft Law amending the Law on Civil Servants, which is systemic in nature and contains provisions that substantially change the legal regime pertaining to the civil service system in the Republic of Serbia. Apart from the fact that the drafting had not been done in accordance with the statutory procedure and the periods for giving the solicited opinions were once again unacceptably short, the text of the Draft Law also included provisions which were not compliant with the legal system of the Republic of Serbia. In his opinion sent to the line Ministry³¹⁵, the Protector of Citizens noted that the proposed amendments would not contribute to promoting the principles of merit, transparency and competitiveness within the existing civil service system. Instead of expanding these principles to other segments of public administration, the proposed legislative provisions have the effect of undermining them at the level of national administration. On the other hand, in parallel with this undermining of the civil service system at the level of central public administration, the National Assembly is currently debating a bill which would introduce for the first time the civil service system at local and provincial levels.

The Ministry of Public Administration and Local Self-Government insisted on receiving the opinion of Citizens and the opinions of other administrative authorities on these legislative documents within short periods, apparently completely oblivious to the fact that these legislative documents govern systemic matters and it was therefore not possible to identify their shortcomings or address any issues within such short periods.

All this goes to show that the process of drafting legislation is inadequate and is not compliant with the National Assembly Resolution on Legislative Policy or the Uniform Legislation Drafting Methodology. This leads to non-harmonised public policies, which is one of the key

³¹⁴ Official Gazette of RS, No. 85/15.

³¹⁵ Opinion available at: <http://www.ombudsman.rs/index.php/lang-sr/2011-12-11-11-34-45/4538-2016-01-14-11-06-20>.

issues identified in the Public Administration Reform Strategy and the responsibility for it rests with the Ministry of Public Administration and Local Self-Government.

The number of complaints and communications filed with this institution by citizens who demand protection for and exercise of their right to official use of the Serbian language and the Cyrillic script remained high and was actually increased during the reporting period.

Although the inspected administrative authorities are well aware of their duty to produce all official documents in the Serbian language and the Cyrillic script, they still use operating systems which support only the Latin script. For this reason, official documents can be obtained in the Cyrillic script only if citizens explicitly so demand, in which case each individual decision or official certificate must be typed manually.

The single information system used by the National Employment Service, which uniformly processes and generates decisions for the entire territory of the Republic of Serbia, supports only the Latin script. Upon implementation of the Recommendations issued by the Protector of Citizens, a complainant was able to obtain official documents in the Cyrillic script only after they were typed manually and the Directorate initiated the procedure for replacement of the information system.

Acting pursuant to a complaint filed by a member of a national minority due to a violation of the right to use personal name in the language and script of that national minority, it was found that the software used for generating certain decisions printed at the Tax Administration Head Office was legacy software that was programmed to use only the Latin script. For this reason, decisions were printed in the Latin script and taxpayers' names were transcribed from the Latin script to the Cyrillic script. During the investigation, the Tax Administration notified the Protector of Citizens it had undertaken measures to procure a new operating system.

While it is undeniable that administrative authorities have undertaken measures to remedy omissions concerning the official use of the Cyrillic script, either during investigations or by complying with the recommendations issued by the Protector of Citizens, it is unacceptable that, nine years after the enactment of the Constitution, the government has still not ensured that the Cyrillic script is used in all official documents in accordance with the law. As systemic solutions are non-existent and financial resources are lacking, complaints are still filed against the same administrative authorities as in previous years covered by the Annual Reports of the Protector of Citizens.

Unfortunately, the Recommendations³¹⁶ of the Protector of Citizens concerning the official use of the Serbian language and the Cyrillic script have not been implemented, while the competent authorities, as well as the National Assembly and the Government, although fully aware of the Annual Reports of the Protector of Citizens for 2012³¹⁷ and 2013³¹⁸ and the proposals made in order to improve the position of citizens in relation to administrative authorities, have not undertaken any measures.

As noted in the 2014 Annual Report³¹⁹, there is no national authority responsible for overseeing compliance with the Law on Official Use of Languages and Scripts and for proposing and undertaking the necessary measures to improve the situation in this area. For this reason,

³¹⁶ Available at: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/478-preporuka-ministarstvu-za-ljudska-i-manjinska-prava-dravnu-upravu-i-lokalnu-samoupravu-u-vezi-sa-slubenom-upotrebom-srpskog-jezika-i-irilikog-pisma>.

³¹⁷ Available at: <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji>

³¹⁸ Available at: <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji>

³¹⁹ Available at: <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji>

citizens turn to the Protector of Citizens as the government authority they perceive as capable of ensuring the official use of the Serbian language and the Cyrillic script in the work of administrative authorities, as evident from the large number of complaints filed every year by citizens who seek protection for their right to use their language and script, as well as the large number of citizens who have concerns about the prevalence of the Latin script in official documents.

In view of the fact that administrative authorities tend to remedy omissions once citizens have contacted this institution, the Protector of Citizens would like to underscore once again that the issue of official use of the Serbian language and the Cyrillic script, as well as the languages and scripts of national minorities, can be addressed and the situation can be improved only if there is a national authority responsible for overseeing implementation of relevant laws and proposing and undertaking the necessary measures to improve the situation regarding the official use of languages and scripts.

II OTHER ACTIVITIES

The Protector of Citizens had a number of meetings with representatives of the competent authorities to address the issue of citizens' exercise of social security rights. The aim of the meetings was to identify, through direct communication with all competent authorities, the key issues which prevent citizens from fully exercising their social security rights and to set out an action plan which would identify relevant implementing agencies and the key activities that will have to be undertaken by competent authorities in the coming months and years to ensure citizens can exercise their social security rights as fully as possible.

The Protector of Citizens also met with representatives of the Belgrade Association for the Preservation of Cyrillic Script, in order to introduce them to the powers and investigation procedure of the Protector of Citizens, as well as the activities undertaken to ensure the official use of the Serbian language and the Cyrillic script.

III TYPICAL CASES

Complaint investigated and reply sent to the complainant by the administrative inspector against whom the complaint had been filed

The Protector of Citizens received a complaint against the actions taken by the Administrative Inspectorate of the Ministry of Public Administration and Local Self-Government pursuant to a submission filed by the complainant. The complainant had complained against irregularities in the work of that authority, as his submission had been examined and replied to by the same administrative inspector against whose work he had complained. Pursuant to this complaint, the Ministry of Public Administration and Local Self-Government and the Administrative Inspectorate were issued with recommendations to examine the submission made by the complainant, investigate the work of the Administrative Inspectorate in this case and send a reply to the complainant; furthermore, the recommendations called on the Administrative Inspectorate to provide a substantiated reply to the complaint and issue an apology to the complainant for the omissions in its work. It was also recommended that any similar submissions by citizens, depending on their stated aim, should be handled in accordance with the Law on Public Administration, which governs the inspection of subordinate bodies and handling of complaints. The Administrative Inspectorate of the Ministry of Public Administration and Local Self-Government complied with all recommendations within the specified period.

Ministry of Finance issues opinion when it is no longer needed

A complainant stated she had filed a request for an opinion of the Ministry of Finance on the applicability of regulations. She had duly paid the applicable administrative fee. After the expiry of applicable statutory time limits³²⁰, she made urgings in writing and by phone, but received no answer. As she no longer had the need for the requested opinion due to changed circumstances, she made a request for a refund of the administrative fee, to which the Ministry of Finance once again gave no reply. Finally, she received an opinion seven months after she had made the request, when such opinion was no longer needed. When the Protector of Citizens initiated an investigation, the Ministry of Finance issued a certificate which stated that the fee had not been used for its intended purpose, which entitled the complainant to a refund. In this and other similar cases, financial compensation often does not provide sufficient satisfaction for the legal uncertainty, the time spend writing urgings and other inconveniences which citizens have to suffer due to belated actions of public administration.

National Employment Service refuses for years to issue complainant with official documents written in the Serbian language and the Cyrillic script

A complainant had been requesting from the Belgrade Branch of the National Employment Service since 2013 to receive all documents, certificates and extracts, i.e. all official documents, in the Serbian Language and the Cyrillic script. His requests were rejected with the justification that the existing information system supported only the use of the Latin script in official documents. In compliance with the recommendations issued by the Protector of Citizens, the complainant received an apology and all requested official documents written in the Serbian language and the Cyrillic script, each of them typed manually, and the Directorate of the National Employment Service initiated migration to a new operating system to ensure the official use of languages and scripts in accordance with the law.

IV PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The National Assembly** should review the Code of Good Governance submitted by the Protector of Citizens in 2010.
2. **The Ministry of Public Administration and Local Self-Government** should implement the public administration rationalisation process in a transparent, clear and unambiguous way, to ensure the public is aware of the anticipated positive effects of the proposed arrangements.
3. **The Ministry of Public Administration and Local Self-Government** should take specific activities and measures to achieve professionalization and depoliticizing of public administration and to substantially implement the Public Administration Reform Strategy.
4. **Ministries** should draft legislation in compliance with the principles set out in the National Assembly Resolution on Legislative Policy and in accordance with the Legislation Drafting Methodology adopted by the National Assembly in 2010.
5. **The Ministry of Public Administration and Local Self-Government** should take specific activities to raise employees' awareness of the good governance principles and to put in place an efficient mechanism which would ensure accountability of public sector employees for any violations of citizens' rights.
6. **The Ministry of Public Administration and Local Self-Government** should provide for a sufficient period in which draft laws and other proposed regulations are to be examined,

³²⁰ Article 80, paragraph 1 of the Law on Public Administration, Official Gazette of RS, No. 79/05, 101/07, 95/10 and 99/14.

so as to enable full identification of any shortcomings in the proposed provisions which would systemically regulate the public sector.

7. **Competent public authorities** should effectively cooperate and exchange information in the procedures of deciding on citizens' rights, responsibilities and interests and should not shift the burden of obtaining information from public authorities to citizens, to enable citizens to timely exercise their rights guaranteed by the Constitution and applicable laws and to protect public interests.

8. **The Government** should finally enable the official use of the Serbian language and the Cyrillic script in operations of public administration;

9. **The Government** should review the need for regulating and the manner in which it would regulate the official use of the Latin script, in accordance with the Constitution.

10. **The Ministry of Public Administration and Local Self-Government** should review the Initiative of the Protector of Citizens for amendments to the Law on the Protector of Citizens and submit the Draft Law to the Government for endorsement of a Bill and its submission to the National Assembly for enactment.

3.7. LOCAL SELF-GOVERNMENT SECTOR

I BACKGROUND

1. Key Government's achievements

1.1. The Protector of Citizens found no significant achievements of the government in this sector in 2015.

2. Key results achieved by the Protector of Citizens

2.1. Through a number of various activities taken so far in his work (meetings, direct contacts with authorities, preventative actions), the Protector of Citizens contributed to a significant improvement in the cooperation with local self-administrative authorities and national authorities in this reporting period.

2.2. To remedy the identified omissions in the work of committees of local self-governments responsible for conducting procedures and passing decisions pursuant to requests for restitution of seized land which became socially-owned through inclusion in agricultural land funds or through confiscation due to failure to comply with mandatory buy-up of agricultural products, the Protector of Citizens issued the Ministry of Agriculture and Environment Protection, as the authority in charge of forming those committees, with recommendations for remedying the identified omissions and thus helped improve the exercise of rights by a significant number of citizens in this field.³²¹

2.3. The Protector of Citizens issued an opinion to the Ministry of Agriculture and Environment Protection in which he noted it was necessary for the Ministry to undertake all required activities within its mandate to prepare amendments to the Law on Water, in order to ensure its more complete and more efficient application.³²²

2.4. The Protector of Citizens issued recommendations for the municipality of Batočina to undertake all available activities in order to comply with its statutory duties under the Law on Water in terms of regulating and maintaining watercourses and providing flood protection.

2.5. In 2015, the Protector of Citizens received 481 complaints in this field, in which complainants alleged 541 violations of rights. In the same period, he completed the investigations in a total of 539 cases received in 2015 and in earlier years. Out of the total of 51 investigations conducted, 21 (41.18%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted oversights and issued 48 recommendations, of which 15 (31.25%) have been accepted, 19 (39.58%) have not been complied with and 14 are still pending. Based on the number of identified (55) and remedied (36) omissions³²³, the rate of efficiency in this sector is 65.45%.

3. Shortcomings at the national level

3.1. Many local self-government units have still not completed the procedures for restitution of seized land which became socially-owned through inclusion in agricultural land funds or through confiscation due to failure to comply with mandatory buy-up of agricultural products.

3.2. The municipalities of Lazarevac, Koceljeva, Ljig and Prokuplje have not had a sufficient level of cooperation with the Protector of Citizens.

³²¹ For more details, see the section of this Report dealing with agriculture and environment protection.

³²² For more details, see the section of this Report dealing with agriculture and environment protection..

³²³ The number of omissions identified is the sum of suspended investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of suspended investigations and implemented recommendations.

- 3.3. Local self-administrative authorities are not sufficiently involved in addressing municipal problems.
- 3.4. Local self-administrative authorities have still not made any major steps forward in terms of more diligent handling of citizens' submissions, accessibility, good service and fair treatment of citizens and introduction of an efficient method of work in order to prevent recurrence of the same or similar issues in their operations.
- 3.5. Local self-administrative authorities still prolong the procedures without justification and fail to exercise their inspection powers.
- 3.6. There are still major issues in connection with failure to implement or failure to implement own decisions of local self-administrative authorities.
- 3.7. Local self-administrative authorities still fail to provide sufficient information to citizens in connection with their rights and legally guaranteed interests, as well as the opportunities at their disposal for the protection of their rights and interests when they have issues with local self-administrative authorities.
- 3.8. Demolition orders issued by building inspectorates of local self-government units for the demolition of buildings constructed illegally are still not enforced.
- 3.9. The level of cooperation and coordination both between inspectorate services at the local level and between them and other authorities and organisations is poor.
- 3.10. Local self-governments are not undertaking all available activities to provide protection from natural disasters and are not becoming more efficiently and more actively involved in recovery from natural disasters, shifting the burden instead to the local population.
- 3.11. The municipality of Batočina and the municipality of Bačka Palanka have displayed an astounding lack of interest in addressing local issues and providing for their local populations.
- 3.12. Local self-governments do not assume responsibility for poor and inefficient exercise of their own and delegated powers and do not undertake measures and actions to apportion individual responsibility to their employees and responsible officers for the identified omissions in their work.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

- 4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:
- That **local self-governments** should focus on acting more efficiently pursuant to citizens' requests;
 - That **local self-governments** should become more involved in addressing municipal problems faced by the citizens in their territories;
 - That **local self-governments** should take all necessary measures and actions to eliminate obstacles and create assumptions for lawful, timely, efficient and economical enforcement of their own decisions;
 - That **local self-governments** should inform citizens of their rights and ways of exercising those rights and keep them updated on the possibilities of filing complaints if they have any grievances in connection with the work of employees of local self-administrative authorities;
 - That **local self-governments** should undertake all necessary measures and actions to organise their work in such a way as to avoid repeating identical or similar

omissions over and over and to eliminate any such omissions which result in breaches or denial of citizens' rights in due time.

4.2. The Municipal Administration of the City Municipality of Obrenovac has not complied with the recommendations which the Protector of Citizens issued to it in connection with the failure to act pursuant to a request filed by a citizen and the excessive duration of the procedure of more than twenty years.

4.3. Even after repeated urgings, the Municipal Administration of the City Municipality of Lazarevac has not notified the Protector of Citizens whether the recommendations issued to it have been implemented and the investigation of that authority was hampered by its belated compliance with the requests made by o the Protector of Citizens.

4.4. The Municipality of Bela Palanka has not complied with the recommendation to remove a road sign it had placed without commissioning a transport study, which prohibits vehicles with high payload from passing through a street.

4.5. The Municipality of Prokuplje has not complied with the recommendations of the Protector of Citizens to act pursuant to submissions and send replies to complainants and to comply with its legal duty to cooperate with the Protector of Citizens.

5. Explanation

The Protector of Citizens found no significant achievements of the government in this sector in 2015. The citizens most often pointed to omissions in work of competent local self-administrative authorities in terms of insufficient involvement in addressing municipal problems. Citizens frequently complained against utility service providers for those utilities that fall within the original sphere of competence of local self-governments, including issues with: heating, water supply, sewage system, communal waste removal, parking, public transport and maintenance of graveyards and grave plots. Specifically, the grievances in this period again included utility bills, collection and calculation of prices of utility services provided, the quality of utility services, construction or non-existence of water supply and sewerage systems, towing of illegally parked vehicles and lack of an efficient oversight system for operations of public authorities.

As the Protector of Citizens does not have the power to oversee the work of local self-governments in those activities that fall within their original sphere of competence, in such cases the citizens were instructed in detail which public authorities they can contact to protect their rights or, alternatively, such complaints were forwarded to local ombudsmen in their local communities, where such authorities exist. In certain cases, taking into account the seriousness of the allegations, the Protector of Citizens used his mediation powers and the right to act preventively by provision of good services and advice with the aim of improving the work of administrative authorities and protection of human rights and sent submissions to competent local self-administrative authorities, pointing to the importance and urgency of addressing the issues within their spheres of competence.

In 2015, citizens also complained against the work of local self-government units due to failure to act pursuant to reports and requests, belated acting pursuant to submissions and failure to enforce decisions that were passed. Citizens also complained about corruption in the work of local self-administrative authorities, time-consuming procedures before competent authorities and unlawful charging of fees and raised grievances concerning the work of registrars and inspectorates.

Local self-administrative authorities have still not made any major steps forward in terms of introduction of an efficient system, more diligent handling of citizens' submissions, accessibility, good service and provision of information to citizens. Authorities still mostly do

not make sufficient efforts and sometimes even make no effort at all to address issues faced by citizens. Procedures conducted by local self-administrative authorities are still protracted, often without any real reason, and it is thus not uncommon for procedures to last more than twenty years.

It has also been observed that certain local self-administrative authorities do not exercise their control powers. In addition, there are still issues in connection with efficient implementation of own decisions of local self-administrative authorities. In 2015, the Protector of Citizens once again received a large number of complaints from citizens for failure to enforce demolition orders issued by building inspectorates of local self-government units for the demolition of buildings constructed illegally, although all local self-governments in Serbia were issued a recommendation in 2014 which advised them of their duty to enforce such orders.³²⁴ Procedures for the enforcement of such orders, which local self-administrative authorities are required to conduct *ex officio* within the specified timeframe, are as a rule initiated only at citizens' requests and are often not fully enforced. Local self-administrative authorities do not provide citizens with clear and accurate information on their rights and interests arising from the law or the recourse options they have at their disposal to protect their rights and interests.

In this reporting period, the Protector of Citizens once again received a number of complaints relating to the work of committees of local self-governments responsible for conducting procedures and passing decisions pursuant to requests for restitution of seized land which became socially-owned through inclusion in agricultural land funds or through confiscation due to failure to comply with mandatory buy-up of agricultural products. For this reason, the Protector of Citizens, upon conducting an investigation into the legality and regularity of work of the Ministry of Agriculture and Environment Protection, issued the said authority with recommendations for remedying the identified omissions and shortcomings in its work.

Overall, cooperation between the Protector of Citizens and local self-administrative authorities has improved, with the latter mostly remedying the identified omissions in their work immediately after investigations of their work were initiated. However, there were also several negative examples in this reporting period. The authorities of the municipalities of Ljig and Prokuplje breached their statutory duty of cooperation with the Protector of Citizens, while the authorities of the Municipality of Lazarevac first acted belatedly during an investigation of their work and then refused to reply to the recommendation issued by the Protector of Citizens even after repeated urgings. Finally, the president of the Municipality of Koceljeva, instead of examining the merits of a complaint, simply forwarded the complaint to the Ombudsman of the Municipality of Koceljeva, which significantly hampered the process of addressing problems faced by a number of citizens.

Some local self-administrative authorities did not comply with the recommendations of the Protector of Citizens in certain cases during this reporting period. As an illustrative example, the Municipal Administration of the City Municipality of Obrenovac did not comply with the recommendations that had been issued to it in connection with its failure to act pursuant to a request filed by a complainant. Namely, the complainant had filed a request for the Municipal Administration of the City Municipality of Obrenovac to void a final and enforceable decision on property expropriation passed by that Municipal Administration in 1986. As the request was filed in 2006, the Municipal Administration of the City Municipality of Obrenovac was issued a recommendation to forthwith undertake all necessary measures in order to decide on the complainant's request in a repeated procedure, while also ensuring full compliance with the mandatory instructions issued by the authority of second instance. The Protector of

³²⁴ For more details, see the section of this Report dealing with the sectors of construction and urban planning.

Citizens also recommended that the document passed in this procedure be submitted to the parties concerned as soon as possible and that the Municipal Administration ensure in all future repeated procedures that it always complies with the mandatory instructions issued by the authority of second instance in decisions which quash decisions passed by bodies of the Municipal Administration of the City Municipality of Obrenovac and observes the statutory time limits for deciding on received requests.

II TYPICAL CASES

Omission remedied after investigation by the Protector of Citizens

A complainant raised a grievance about the work of the Municipal Administration of the Municipality of Krupanj in connection with its handling of his submissions relating to the resurfacing of a road in his community. He had contacted the municipal inspectorate in connection with this issue, but the municipal inspectorate declined jurisdiction over his submission, without forwarding the said submission to the competent authority in accordance with the Law³²⁵, for which reason he also contacted the head of the Municipal Administration. Upon conducting an investigation into the work of the Municipal Administration of the Municipality of Krupanj, the Protector of Citizens issued a recommendation on ways to remedy the identified omissions. Acting in compliance with the said recommendation, the Municipal Administration of the Municipality of Krupanj issued an apology in writing to the complainant and forwarded the complainant's report to the competent inspectorate.

Case handled by an authority without territorial jurisdiction

Acting on own initiative, the Protector of Citizens conducted an investigation into the legality and regularity of work of the City Administration of the City of Belgrade, because the municipal inspectorate of the City Administration of the City of Belgrade, which lacked territorial jurisdiction in the case in question, had conducted an inspection of compliance with the Decision on Advertising in the Territory of the City of Belgrade, without first notifying the municipal inspectorate of the Municipal Administration of the City Municipality of Zvezdara, as the competent authority, of the need to conduct such inspection. Upon finding in the inspection procedure that advertisements had not been placed in accordance with the applicable regulations, a municipal inspector of the City Administration of the City of Belgrade did not order the removal of those advertisements or file misdemeanour charges, as required by applicable regulations; instead, he served the perpetrators of the misdemeanour with a misdemeanour order, although the requirements for doing so in accordance with the Law³²⁶ had not been met. For the purpose of remedying the omission, the Protector of Citizens issued the City Administration of the City of Belgrade with a recommendation, which it implemented by annulling the issued misdemeanour orders and forwarding the case to the competent authority.

Excessively long inspection

Pursuant to a complaint which alleged that an inspection procedure had been ongoing for more than five years because the authority of first instance failed to comply with the mandatory instructions of the Secretariat for Property Law Relations of the City Administration of the City of Belgrade as the authority of second instance, the Protector of Citizens initiated an investigation into the legality and regularity of work of the Municipal Administration of the City Municipality of Vračar. Upon being issued with a recommendation

³²⁵ Article 56, paragraph 4 of the Law on General Administrative Proceedings, Official Gazette of FRY, No. 33/97 and 31/01 and Official Gazette of RS, No. 30/10.

³²⁶ Article 168, paragraph 1 of the Law on Misdemeanours, Official Gazette of RS, No. 65/13.

to comply with the orders and comments of the authority of second instance, the Municipal Administration of the City Municipality of Vračar ruled on the complainant's report and passed a relevant decision, which it then served on the parties in the procedure.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **Local self-governments** should inform citizens of their rights and ways of exercising those rights and keep them updated on the possibilities of filing complaints if they have any grievances in connection with the work of employees of local self-administrative authorities.
2. **Local self-governments** should ensure efficient handling of citizen's requests, petitions, reports and complaints in td should act pursuant to those instruments within the statutory timeframe.
3. **Local self-governments** should enforce their decisions timely, efficiently and economically a.
4. **Local self-governments** should become more involved in addressing municipal problems faced by the citizens in their territories.
5. **Local self-governments** should take all necessary measures and actions to efficiently organize their work in order to ensure fast, easy and full exercise of citizens' rights guaranteed under the Constitution and the law.
6. **Local self-governments** should undertake all available activities to put in place better natural disaster protection mechanisms, including by conducting inspections and harmonising and guiding the work of their bodies and public enterprises or organisations which they founded, and should furthermore provide all necessary conditions to eliminate or mitigate any harmful effects suffered by the local population due to omissions made by local authorities.
7. **Local self-governments** should provide for and undertake specific activities, without any further delays or excuses, to ensure that, in the future, local inspectorates develop a higher level of cooperation in their work, both among themselves and with the competent authorities and organisations.
8. **Local self-governments** should assume responsibility for poor and inefficient exercise of their own and delegated powers, compensate citizens for any damage suffered due to gross negligence of their bodies and undertake appropriate activities to apportion individual responsibility for omissions to their employees and responsible persons.

3.8. SECTORS OF EDUCATION AND SCIENCE, CULTURE AND INFORMATION AND YOUTH AND SPORTS

EDUCATION AND SCIENCE

I BACKGROUND

1. Key Government's achievements

- 1.1. The Law on Textbooks³²⁷ has been enacted.
- 1.2. The Law amending the Law on Higher Education³²⁸ has been enacted.
- 1.3. The Law amending the Law on Basic Elements of Education System³²⁹ has been enacted.
- 1.4. The Bylaw on Detailed Requirements for the Appointment of Principals of Education Institutions³³⁰, the Bylaw on Continual Professional Advancement of Teachers, Trainers and Teaching Assistants³³¹, the Bylaw on Grading of Pupils in Secondary Education³³² and the Bylaw on Basic Elements of the Programme of Upbringing^{333,334} have been passed.
- 1.5. The Bylaw on the List of Vocational, Academic and Scientific Titles³³⁵ has been passed
- 1.6. The Special Collective Agreement for all employees at primary and secondary schools and pupils' dormitories has been signed.
- 1.7. The ENIC/NARIC centre for the recognition of foreign higher education qualifications at the Ministry of Education, Science and Technological Development has become operational.
- 1.8. The Bylaw on the Manner and Procedure of Appointment of Persons on the List of Evaluators, the Training Programme for Evaluators, the Code of Ethics for Persons involved in the Evaluation of Textbooks and the Procedure for Appointment of Members of the Textbook Draft Evaluation Commission³³⁶ has been passed.
- 1.9. The Ministry of Education, Science and Technological Development has continued intensive work on passing and harmonisation of secondary legislation governing the curricula and syllabuses, as well as types of teacher qualifications in vocational schools.
- 1.10. The Ministry of Education, Science and Technological Development has begun posting on its website lists of vacancies for teachers and non-teaching staff at primary and secondary schools in Serbia and lists of school staff in part-time employment.

2. Key Results achieved by the Protector of Citizens

- 2.1. Immediately upon learning that the Protector of Citizens had launched an investigation into their work, the Ministry of Education, Science and Technological Development, education institutions and higher education institutions remedied the identified omissions and ensured more effective exercise of rights for many citizens.
- 2.2. In compliance with recommendations of the Protector of Citizens, the Ministry of Education, Science and Technological Development remedied the omissions identified in its

³²⁷ Official Gazette of RS, No. 68/15.

³²⁸ Official Gazette of RS, No. 68/15.

³²⁹ Official Gazette of RS, No. 68/15.

³³⁰ Official Gazette of RS, No. 108/15.

³³¹ Official Gazette of RS, No. 86/15.

³³² Official Gazette of RS, No. 82/15.

³³³ Official Gazette of RS, No. 03/15.

³³⁴ For more information, see the section of this report dealing with child rights.

³³⁵ Official Gazette of RS, No. 100/15.

³³⁶ Official Gazette of RS, No. 87/15.

work and supervised the work of education inspectors at local self-governments, provided citizens with requested information and undertook measures to apportion personal responsibility for the omissions in its work.

2.3. In compliance with the recommendation of the Protector of Citizens, a higher education institution remedied an omission in its work and ensured that the Selection Council decides on teacher nominations.

2.4. By giving his opinion in the drafting of the Law on Textbooks and by issuing recommendations in the past years, the majority of which the Ministry of Education, Science and Technological Development accepted, the Protector of Citizens contributed to improved quality evaluation and marketing of textbooks.

2.5. In 2015, the Protector of Citizens received 131 complaints in this field, in which complainants alleged 149 violations of rights. In the same period, he completed the investigations in a total of 151 cases received in 2015 and in earlier years. Out of the total of 34 investigations conducted, 21 (61.76%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted oversights and issued nine recommendations, of which one (11.11%) has been accepted, four (44.44%) have not been complied with and four are still pending. Based on the number of identified (26) and remedied (22) omissions³³⁷, the rate of efficiency in this field is 84.62%.

3. Shortcomings at the national level

3.1. The Ministry of Education, Science and Technological Development, education institutions and higher education institutions are still insufficiently efficient in deciding on citizens' requests and replying to them, although some progress has been made compared to previous years.

3.2. Education inspectors of the Ministry of Education, Science and Technological Development do not act timely and efficiently in all cases and do not sufficiently exercise their oversight powers in relation to bodies with delegated inspection powers, although a positive trend is observable in this field.

3.3. Although they are required to do so under the law, local self-governments and the Ministry of Education, Science and Technological Development do not provide financial funds for regular education activities, for which reason the commercial accounts of a number of schools in Serbia have been blocked for years and schools have not been able to provide education normally.

3.4. The Ministry of Education, Science and Technological Development has not established the National Qualifications Framework.

3.5. The situation of educators is difficult and their work is undervalued.³³⁸

3.6. Students cannot fully exercise their right to be informed of their rights and protection mechanisms.

3.7. Inclusive education of children and youth with disabilities and developmental difficulties is not sufficiently developed.³³⁹

3.8. The Ministry of Education, Science and Technological Development and the National Council for Higher Education have not provided impartial, meaningful and authoritative external oversight of higher education institutions in the award of vocational, academic and

³³⁷ The number of omissions identified is the sum of suspended investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of suspended investigations and implemented recommendations.

³³⁸ See more at: <http://www.ombudsman.rs/index.php/lang-sr/2011-12-25-10-17-15/3643-2015-01-14-08-07-45>. The Protector of Citizens also wrote about the situation of educators in his 2014 Annual Report.

³³⁹ For more details, see the sections of this Report dealing with child rights and youth and sports.

scientific titles and vocations and should exercise other public powers and enforce laws and secondary legislation.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to administrative authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **the Minister of Education, Science and Technological Development** should pass a bylaw which would regulate examinations and licencing for directors of education institutions;
- That **the Ministry of Education, Science and Technological Development** should make every effort to improve the status of teachers, the quality of education and the exercise and protection of pupils' rights;
- That **the Ministry of Education, Science and Technological Development** should adopt the single National Qualifications Framework in Serbia.

4.2. The Ministry of Education, Science and Technological Development has not complied with the recommendation of the Protector of Citizens to put in place measures without delay to unblock the commercial accounts of the primary school "Radica Rankovic" in Lozovik and the Technical School in Obrenovac.

4.3. The Commission for Accreditation and Quality Assurance has not complied with the recommendations of the Protector of Citizens to provide the requested information of public importance in one of the manners provided for by the law, in accordance with a ruling of the Commissioner for Information of Public Importance and Personal Data Protection.

4.4. The Ministry of Education, Science and Technological Development and the National Council for Higher Education have not accepted the opinion of the Protector of Citizens to provide impartial, meaningful and authoritative external oversight of higher education institutions in the award of vocational, academic and scientific titles and vocations and should exercise other public powers and enforce laws and secondary legislation.

5. Explanation

In the field of education, the reporting period has been marked by improvements in the regulatory framework through the enactment of a number of laws and implementing regulations. The new Law on Textbooks governs the preparation, approval, selection, publishing, withdrawal and monitoring of textbooks. The Law introduces new textbook categories, provides the legal basis for free textbooks, abolishes licensing of publishers and introduces new categories of publishers, new procedure for selecting textbooks for a four-year period, including a List of Approved Textbooks, and provides for a new way of creating the Catalogue of Approved Textbooks. The Law also provides for the passing of a List of Textbook Manuscript Evaluators, governs the procedure for determining suspected conflict of interest and provides for preventing and penalising corruption in the textbook selection process, sets the maximum retail price of textbooks and introduces promissory notes as security to ensure that textbooks will be available. The Law addresses the issues that have arisen in the implementation of the Law on Textbooks and Other Teaching Materials³⁴⁰ and improves the existing arrangements and introduces new ones, with the aim of ensuring greater transparency in the process of approving and selecting textbooks, reducing the risk of corruption in the textbook selection process, ensuring that textbooks are available to all categories of pupils etc. The Law incorporates most of the proposals made by the Protector of Citizens in his Opinion

³⁴⁰ Official Gazette of RS, No. 72/09.

on the Draft Law on Textbooks, as well as the recommendations which the Protector of Citizens had issued to competent authorities in previous years in connection with the quality evaluation of textbooks before their release for circulation and the process of public procurement of textbooks.³⁴¹

The Ministry of Education, Science and Technological Development has begun adopting implementing regulations pursuant to the Law on Textbooks. It has passed the Bylaw on the Manner and Procedure of Appointment of Persons on the List of Evaluators, the Training Programme for Evaluators, the Code of Ethics for Persons involved in the Evaluation of Textbooks and the Procedure for Appointment of Members of the Textbook Draft Evaluation Commission³⁴². This created conditions for the Law to take effect in respect of the new procedure for the approval of textbooks.

The Law amending the Law on Higher Education amends the provisions which govern the number and schedule of examination terms and the entitlement to receive funding for studies from the national budget after the expiry of the regular duration of studies. Under the amended Article 90 of the Law on Higher Education, which governs examinations and examination terms, independent higher education institutions shall determine by their statutes the number and schedule of examination terms. This arrangement allows every independent higher education institution to regulate this issue in a manner that is best suited to that institution's specificities and needs. Furthermore, the amended provisions governing the entitlement to receive funding for studies from the national budget after the expiry of the regular duration of studies expand the scope of persons eligible for funding from the national budget during maximum one year after the expiry of the regular duration of studies.

The adopted amendments to the Law on Basic Elements of Education System expunged the provision of the Law³⁴³ which provided for a different mechanism for terminating the employment of teachers, educators and teaching assistants compared with other employees at education institutions. The new legislative arrangement introduces identical conditions for the termination of employment for all employees.

The Bylaw on Detailed Requirements for the Appointment of Principals of Education Institutions sets out the requirements for the appointment of principals of education institutions, including preschool facilities and primary and secondary schools. However, the Minister of Education, Science and Technological Development has still not set out a programme for the qualifying examination for principals, the manner and procedure of such examination and the composition and operating mechanism of the committee of the Ministry or the relevant body of an Autonomous Province before which the qualifying examination for principals is to be taken. The Ministry has also not set out the content or layout of the principal licence form, the content and manner of keeping of the register of issued principal licences, the costs of examination, the remuneration of committee members and other issues in connection with the taking of the qualifying examination and acquiring of the principal licence.

The Bylaw on the List of Vocational, Academic and Scientific Titles provides for the List of Titles, with indicated qualification level in relevant science education and art education fields. In addition to the titles included in previous similar Bylaws, the List of Vocational, Academic

³⁴¹ Recommendations available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/2110-2012-01-19-08-58-38>; <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/2595-2012-11-23-12-54-23>; and <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/3300-2014-05-13-13-18-20>.

³⁴² Official Gazette of RS, No. 87/15.

³⁴³ Article 144, paragraph 2 of the Law.

and Scientific Titles also amends the scientific titles determined by the National Council for Higher Education during 2014 and at its session held in May 2015.

The Ministry of Education, Science and Technological Development posts on its website lists of vacancies for teachers and non-teaching staff at primary and secondary schools in Serbia, as well as depersonalised information on teaching and non-teaching staff at primary and secondary schools in part-time employment who must become full-time employees in accordance with the Special Collective Agreement. Such disclosure of information ensures that updated information obtained directly from schools is available at all times; this information is integrated in a single national database and disclosed openly, subject to confidentiality arrangements, to all schools, teachers, education trade union representatives and the general public.

The Ministry of Education, Science and Technological Development has signed with representative trade unions in the field of education the Special Collective Agreement for employees at primary and secondary schools and pupils' dormitories. Educators were on strike immediately before the signing of the Special Collective Agreement and it was signed in February by two of the four representative trade unions. The remaining two representative trade unions refused to sign the Special Collective Agreement and continued their strike until April 2015, when a deal was reached after the Ministry of Education, Science and Technological Development and the two trade unions signed an Agreement mediated by the Republic Agency for Amicable Settlement of Labour Disputes.

In accordance with the Law on Higher Education, recognition of foreign higher education diplomas for the purpose of employment, i.e. professional recognition, is the responsibility of the Ministry of Education, Science and Technological Development through its ENIC/NARIC centre, which began functioning on 1 October 2015. Before this centre became operational, both processes for the recognition of foreign higher education diplomas (academic and professional recognition) were conducted by independent higher education institutions, in accordance with the Law on Higher Education. The ENIC/NARIC has enabled full implementation of the Law on Higher Education as it pertains to recognition of foreign higher education diplomas.

Good cooperation between the Protector of Citizens and of the Ministry of Education, Science and Technological Development has continued in the reporting period. The Ministry timely provides the Protector of Citizens with all requested information, while any contentious issues are often successfully and effectively resolved in joint meetings.

Education authorities and institutions have in many cases been prompted by the oversight procedures of legality and regularity of their work by the Protector of Citizens to remedy any identified omissions. However, in this reporting period there were again cases of authorities and institutions failing to timely, efficiently and within the statutory timeframe reply to citizens' submissions.

While progress has been noted compared with the past two years, education inspectors of the Ministry of Education, Science and Technological Development, when acting pursuant to citizens' reports against authorities with delegated inspection powers, do not always exercise their statutory powers in a timely and efficient fashion.

In the Republic of Serbia there are schools whose commercial accounts are blocked because they have not received transfers of funds that should have been provided to them to cover the various outlays of those schools. In June 2015 there were 115 schools with blocked accounts, including 111 schools with outstanding liabilities which should be covered by local self-

governments in accordance with the Law on Basic Elements of Education System.³⁴⁴ There is no efficient system in place to ensure regular and timely payment of the liabilities of education institutions and of the liabilities of the Republic of Serbia and local self-governments payable to education institutions in accordance with the Law on Basic Elements of Education System. This threatens to undermine normal functioning of education institutions, the work of educators, the exercise of pupils' right to education, the employment rights of employees and the rights of third parties granted by court decisions. The Ministry of Education, Science and Technological Development has not remedied these omissions, although the Protector of Citizens had issued the Ministry with recommendations aimed at remedying them.

Although it has been announced for years and its passing has also been recommended by the Protector of Citizens, the single National Qualifications Framework has not been passed. This document should functionally link education and the labour market.

The situation of educators was difficult in 2015, taking into account that in 2014 it has been additionally worsened with the austerity measures. Their work is undervalued. Under the Law amending the Law on Budget System³⁴⁵, in 2016 the salaries of employees at primary and secondary education institutions and pupils' dormitories and canteens may be increased by 4%, while the salaries of employees at higher and advanced secondary education institutions and students' dormitories and canteens may be increased by 2%.

Employees at education institutions have complained to the Protector of Citizens because of termination of employment, reduction of working hours, inability to complete working hours to full-time hours and substituting, inability to obtain indefinite employment, irregularities in calls for job vacancy applications, disciplinary action and failure to recognise increased salary coefficient in case of subsequent completion of studies. During the reporting period, the Protector of Citizens also received a number of complaints against workplace harassment, as well as complaints in which the complainants demanded protection in accordance with the Law on the Protection of Whistleblowers. Furthermore, the number of complaints against procedures for the appointment of school principals and procedures for the removal of school principals and appointment of temporary managing bodies was higher compared with earlier periods.

In their complaints against the work of higher education institutions, citizens complained against belated handling of submissions and applications of students and staff, violation of the code of professional ethics by staff and problems relating to the issuing of higher education diplomas. The complainants also alleged that higher education institutions employed persons who did not meet the relevant requirements in terms of qualifications and experience. In parallel with this, the number of complaints relating to procedures of appointment of teachers and teaching assistants at higher education institutions increased as well.

In this reporting period, students complained to the Protector of Citizens about the amount of tuition fees and charges they paid to higher education institutions, problems they faced in the enrolment in higher education institutions, as well as in higher study levels and different curricula, and the procedures of allocation of student scholarships and repayment of student loans. Students did not receive timely and complete information from the bodies of higher education institutions and universities and the Ministry of Education, Science and Technological Development about their rights and the available recourse mechanisms and those bodies did not decide in due time on submissions and applications made by students.

³⁴⁴ According to the data of the Treasury Administration of the Ministry of Finance, which were provided to the Protector of Citizens by the Ministry of education, Science and Technological Development on 15 June 2015.

³⁴⁵ Official Gazette of RS, No. 103/15.

II OTHER ACTIVITIES

Conference "Inclusiade International 2015"

Representatives of the Protector of Citizens participated in the final conference of the project "Inclusiade International 2015." The project was informative and educational in nature and was designed to exchange examples of good practice of support to students and young persons with disabilities through different activities. The objective of the conference was to develop practical policies in the field of higher education and to ensure their implementation by decision-makers in order to reduce social barriers in higher education and improve the status of students and young persons with disabilities in the society and in the academic community. The conference was also attended by the Minister of Education, Science and Technological Development and representatives of administrative authorities and civil society organisations.

Workshop "Further Steps in the Implementation of Inclusive Education"

A representative of the Protector of Citizens took part in the workshop "Further Steps in the Implementation of Inclusive Education" organised by the Ministry of Education, Science and Technological Development and the UNICEF, with support from the Swiss Agency for Development and Cooperation. The workshop was attended by representatives of government institutions, civil society organisations and international organisations. The theme of the workshop was setting of priorities for inclusive education in the field of innovation and revision of legislation and institutional arrangements, systemic innovation of teachers' competences and ways and measures to improve school ethos. The key identified priorities for institutional capacity building included the work of an interdepartmental committee, the establishment of an effective system for the provision of information and clear defining of the difference between pedagogical assistants and personal aides.

Conference "Evidence-based Intervention and Inclusion Challenges"

Representatives of the Protector of Citizens took part in a conference on special education challenges titled "Evidence-based Intervention and Inclusion Challenges", which was organised by the British Council, the Society of Speech Therapists of Serbia and the citizens' association "Autism - the Right to Live." The aim of the conference was to draw attention to the importance of inclusive education and appropriate training of all who work with groups with special education needs and to exchange experiences from the United Kingdom and the region and offer advice and solutions that can be applied.

"Policies and Practice of Inclusive Education in Serbia"

The Deputy Protector of Citizens for the Rights of Persons with Disabilities took part in the roundtable "Policies and Practice of Inclusive Education in Serbia", which gave a summary of the current situation, activities and challenges regarding the inclusion of children and youth with developmental disorders and presented good practice examples of inclusive education and the activities of the Inclusive Education Support Network and the Social Inclusion Group within the Ministry of Education.

The Protector of Citizens meets with representative educators' trade unions

In January 2015, the Protector of Citizens had talks with representatives of the Educators' Trade Union Confederation "Nezavisnost" ("Independence") on ways to improve the status of educators in Serbia and advance the education system and pupils' rights. The Protector of Citizens notified the Minister of Education, Science and Technological Development of his talks with the Trade Union Confederation "Nezavisnost", underscoring the importance of social dialogue.

III TYPICAL CASES

Student meets requirements to enrol in University School as a student funded from the national budget, enrolled as self-financing student

The Ministry of Education, Science and Technological Development failed to remedy the omissions due to which a complainant was enrolled in a higher education institution as a self-financing student although he had met the statutory requirements for enrolling as a student funded from the national budget of the Republic of Serbia.

The complainant had taken an admission examination at a higher education institution and ranked above the threshold for enrolment in the quota of students funded from the national budget. However, due to the fact that he had already been enrolled as a student at the same study level at a different higher education institution, the higher education institution in question allowed him to enrol only as a self-financing student. The complainant had not been enrolled in any study programme at the time of enrolment at that institution, i.e. he was not a student at that time and was therefore eligible for enrolment as a student funded from the national budget. In an investigation conducted pursuant to a complaint filed by the complainant, the Ministry failed to remedy the omission made by the higher education institution identified in the complaint.

The Ministry was issued recommendations to cooperate with the higher education institution in question and undertake measures to remedy the consequences of this omission which had harmful effects for the complainant. The Protector of Citizens is currently following up on these recommendations.

Lack of quorum delays decision on proposed appointment of a tenured professor for five months

The Selection Council of a higher education institution did not consider or decide on the proposal of the Reporting Committee to appoint the complainant to a higher scientific position even after five months of the date when the proposal became eligible for consideration. This omission made by the higher education institution violated the complainant's right to work and his right to receive a decision on the proposal for his appointment as a tenured professor according to the statutory procedure and within an appropriate timeframe. After the Protector of Citizens issued a recommendation to the higher education institution in question, the Selection Council decided on the Committee's proposal.

Blocked accounts of an institution caused numerous problems

The Ministry of Education, Science and Technological Development made omissions in its work by failing to timely undertake measures to unblock the commercial accounts of two education institutions which had been blocked in a procedure of forcible execution of final and enforceable judgments of competent courts for the purpose of damage compensation.

The Protector of Citizens found that the accounts of those schools had been blocked since 2013 and 2014 respectively and the schools were therefore unable to ensure normal operations and regular and proper teaching. Although they had contacted the Ministry and relevant local self-governments on multiple occasions, the schools did not receive a concrete answer how they were supposed to eliminate the obstacles which prevented their normal work without access to their own funds. The Ministry and the local self-governments shifted blame onto each other.

The Ministry of Education, Science and Technological Development has not complied with the recommendation of the Protector of Citizens to forthwith undertake measures, in cooperation

with other authorities if necessary, to ensure the commercial accounts of these schools are unblocked.

IV PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Ministry of Education, Science and Technological Development** should ensure timely and efficient replies to all requests sent both to the Ministry and education institutions and higher education institutions within the time limits specified by the law.
2. **The Ministry of Education, Science and Technological Development** should ensure that education inspectors act timely and efficiently.
3. **The Ministry of Education, Science and Technological Development** should provide for and establish an efficient system for regular and timely compliance with the obligations of education institutions and the obligations with the Republic of Serbia and local self-governments have in relation to education institutions, in order to avoid any blocking of their commercial accounts and to swiftly and efficiently unblock any accounts that may be blocked.
4. **The Ministry of Education, Science and Technological Development** should adopt the National Qualifications Framework.
5. **The Ministry of Education, Science and Technological Development** should make every effort to improve the status of teachers, the quality of education and the exercise and protection of pupils' rights.
6. **The Ministry of Education, Science and Technological Development and higher education institutions** should put in place measures to inform students of their right protection mechanism for those rights.
7. **The Ministry of Education, Science and Technological Development** should intensify its work on full introduction of inclusive education at all levels of the education process.
8. **The Minister of Education, Science and Technological Development** should pass a bylaw which would regulate training and examinations for directors of education institutions.
9. **The Ministry of Education, Science and Technological Development and the National Council for Higher Education** should provide for impartial, meaningful and authoritative external oversight of higher education institutions in the award of vocational, academic and scientific titles and vocations and should exercise other public powers and enforce laws and secondary legislation.
10. **The National Council for Higher Education** should ensure that the Commission for Accreditation and Quality Assurance complies with recommendations of the Protector of Citizens.

CULTURE AND INFORMATION

I BACKGROUND

1. Key Government's achievements

- 1.1. The Bylaw on the Protection of Minors in the Provision of Media Services³⁴⁶ has been passed.
- 1.2. The Bylaw on the Protection of Human Rights in the Provision of Media Services³⁴⁷ has been passed.

2. Key results achieved by the Protector of Citizens

- 2.1. Acting in compliance with the recommendation of the Protector of Citizens, the Regulatory Authority for Electronic Media has improved its oversight of broadcasters in specific cases.
- 2.2. In his media appearances in 2015, the Protector of Citizens has again raised awareness of the harmfulness of "tabloidization" of the media, the state and the society and has supported independent and unbiased investigative work of journalists and editorial boards.
- 2.3. In 2015, public announcements made by the Protector of Citizens continued increasing public awareness of the links between fundamental human and civil rights and media freedoms, pointing to the serious threats to those freedoms resulting from media abuse and the need to give this issue a much greater prominence in the public discourse.
- 2.4. In 2015, the Protector of Citizens received 34 complaints in this field, in which complainants alleged 30 violations of rights. In the same period, he completed the investigations in a total of 22 cases received in 2015 and in earlier years. Of a total of 11 investigations conducted, one investigation (9.09%) was closed by issuing recommendations in an expedited oversight procedure. The Protector of Citizens issued no recommendations after oversights in this field in 2015. Based on the number of identified (1) and remedied (1) omissions³⁴⁸, the rate of efficiency in this field is 100%.

3. Shortcomings at the national level

- 3.1. The Ministry of Culture and Information and the Regulatory Authority for Electronic Media do not adequately control broadcasters and do not impose appropriate measures and penalties in cases of violation of the law, although the Regulatory Authority for Electronic Media has remedied omissions in the specific cases brought to their attention by the Protector of Citizens in his investigations.
- 3.2. The media are still subjected to pressure, and journalists are even assaulted, because of their reporting.

³⁴⁶ Official Gazette of RS, No. 25/15.

³⁴⁷ Official Gazette of RS, No. 55/15.

³⁴⁸ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

4. Key recommendations, opinions and initiatives of the Protector of Citizens that have not been implemented

4.1. The following recommendation for improving the citizens' position set out in the 2014 Annual Report of the Protector of Citizens has not been fully implemented:

- That the **Regulatory Authority for Electronic Media** should enforce the protection of minors and respect for personal dignity in programmes broadcast on radio and television and should take statutory actions against broadcasters that breach the law.³⁴⁹

5. Explanation

The Bylaw on the Protection of Minors in the Provision of Media Services and Bylaw on the Protection of Human Rights in the Provision of Media Services contain provisions which protect human rights and rights of the child in electronic media and set out in detail the duties of broadcasters in terms of observance of human rights and rights of the child. Of particular importance are the provisions which stipulate that broadcasters must bear in mind the child's best interest³⁵⁰; that parents' consent to their child's appearance on a programme does not exempt broadcasters from responsibility for the programming they broadcast³⁵¹; that children appearing on programmes must not be "asked questions about vulnerable family issues or matters which are not appropriate to their age or exposed to situations which are likely to cause them to experience fear, shame, anxiousness or anger"³⁵²; that a child cannot participate in a programme which deals with a family conflict in which the child is directly or indirectly involved³⁵³; that broadcasters must provide the public with information in an accurate, complete, impartial and timely manner³⁵⁴; that tragic events must be reported without sensationalism and with full respect for the right to privacy and dignity³⁵⁵; that it is prohibited to broadcast programmes which offend human dignity³⁵⁶, exploit credulity³⁵⁷ or condone hate speech³⁵⁸; and other provisions.

In the past year, the Protector of Citizens received a number of citizens' complaints against the actions of certain broadcasters which had broadcast programmes full of violence and pornographic depictions. By acting preventatively, cooperating and exercising his control role, the Protector of Citizens contributed to efficiency and legality of actions of the Regulatory Authority for Electronic Media when supervising broadcasters' operations and protecting human rights, including in particular children's rights. Although the Regulatory Authority for Electronic Media has remedied the omissions in its work which the Protector of Citizens brought to its attention, there is no effective mechanism in place for monitoring the application of the law by broadcasters and for imposing appropriate penalties for violations of human rights and rights of the child. The supervisory authorities (the Ministry of Culture and Information and the Regulatory Authority for Electronic Media) do not initiate supervision procedures *ex officio* for violations of citizens' rights and child rights to a sufficient extent and

³⁴⁹ For more details, see the child rights section of this Report.

³⁵⁰ Article 3 of the Bylaw on the Protection of Minors in the Provision of Media Services.

³⁵¹ Article 22 of the Bylaw on the Protection of Minors in the Provision of Media Services.

³⁵² Article 24 of the Bylaw on the Protection of Minors in the Provision of Media Services.

³⁵³ Article 26 of the Bylaw on the Protection of Minors in the Provision of Media Services.

³⁵⁴ Articles 5-7 of the Bylaw on the Protection of Human Rights in the Provision of Media Services.

³⁵⁵ Article 19 of the Bylaw on the Protection of Human Rights in the Provision of Media Services.

³⁵⁶ Article 21 of the Bylaw on the Protection of Human Rights in the Provision of Media Services.

³⁵⁷ Articles 23-25 of the Bylaw on the Protection of Human Rights in the Provision of Media Services.

³⁵⁸ Article 27 of the Bylaw on the Protection of Human Rights in the Provision of Media Services.

any penalties imposed on broadcasters are often too lenient taking into account the gravity of the violations.

II TYPICAL CASES

Regulatory Authority for Electronic Media penalises broadcasters for violations of the law

After the Protector of Citizens initiated an investigation, the Regulatory Authority for Electronic Media undertook measures within its sphere of competence against broadcasters for programming which violated human rights, in particular the dignity of participants, in cases where the broadcasters were in breach of the Law on Public Information and the Media and the bylaws which govern the protection of human rights in the provision of media services and the protection of minors in the provision of media services. The Protector of Citizens focused in particular on programming which can be harmful for the physical, ethical and mental development of minors. After the initiation of investigations by the Protector of Citizens, the broadcasters in question were penalised in accordance with the law.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Ministry of Culture and Information and the Regulatory Authority for Electronic Media** should, immediately upon learning of potential violations of the law by written and electronic media outlets, undertake the measures envisaged by the law to protect citizens' rights and penalise any unlawful actions.

MEDIA AND HUMAN AND CIVIL RIGHTS

In the media sphere, 2015 was marked by difficulties in the implementation of the new media laws³⁵⁹ and continued pressure against journalists, which sometimes even involved assaults. In addition, there has been no closure in the investigations of murders of journalists in the past and several assaults on journalists.

The expectations that sale of all government-owned media outlets to private investors and a shift towards competitive funding of public interest broadcasting from municipal, city, provincial and national budgets, as provided for in the new media laws, would significantly increase the protection of public interest in the media sphere have largely been thwarted by the manner in which those laws have been implemented in practice.

The first experiences with implementation of the new legislation have reaffirmed the observation made in the 2014 Annual Report of the Protector of Citizens that the media in Serbia "are not free to an extent expected from a modern European country and society; also, the situation appears to have taken a turn for the worse compared with the previously existing level of media freedoms".³⁶⁰

This situation inevitably affects the exercise of citizens' rights, including in particular the right to fast, impartial and accurate information. The Protector of Citizens has no direct powers over media outlets and can conduct investigations only in cases where there are reports of unlawful

³⁵⁹ The Law on Public Information and the Media, the Law on Electronic Media and the Law on Public Broadcasting Services, which took effect on 1 July 2015.

³⁶⁰ Available at:

http://www.ombudsman.rs/attachments/3733_Godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202014.pdf.

treatment of journalists by public authorities; however, the Protector of Citizens does have a duty to bring attention to any issues that have been identified.

Implementation of new media laws

Overall, it is clear that the enacted set of media laws has not resulted in the expected progress and that a major improvement cannot be expected without more precise implementing regulations and stronger social pressure.

The Government has succeeded in formally completing the process of divestment of government-owned media outlets, with the exception of two large daily newspapers, "Politika" and "Vecernje novosti", in which it still holds shares. According to the Ministry of Culture and Information, thirty-four of about fifty socially-owned media outlets slated for privatisation have found new owners. Those media outlets that have not been privatised will file for bankruptcy in accordance with the law.

According to the information available to journalists' associations³⁶¹, of the 73 media outlets that were owned by the national government and local self-governments in the final round of privatisation, 34 have been sold. Of those remaining 39 outlets that failed to find a buyer by the end of last year, at least 13 have been wound up. The remaining ones will either be wound up or have their shares distributed to their employees free of charge. Media associations protested sharply when the Privatisation Agency, giving the Law on Privatisation precedence over the Law on Public Information and Media, effectively prevented the employees in the media outlets that had not been privatised from distributing shares free of charge.³⁶² Instead, the Privatisation Agency transferred the shares to the Equity Fund. These protests by media associations fell on deaf ears.

One of the formally closed media outlets is the state-owned press agency Tanjug, which has, however, continued operating normally. It remains unclear how this agency, in whose income at the time of its closing government subsidies accounted for more than 70 percent, continues to survive in spite of its formal closing and what is the basis for its continued operation.

Journalists' associations have also raised serious objections about the way in which certain media outlets were privatised; however, no legal proceedings were initiated in this regard.

The case that generated the greatest stir in the public was the sale of as many as seven local media outlets in different towns and cities to a single businessman. In several cases, he bought the local media outlets for amounts lower than the funding granted by local authorities to those media outlets pursuant to public calls for project financing immediately before those transactions.

The divestment of government-owned media outlets by the state is coupled with the introduction of a new mode of budget spending on public information. These funds will from now on be available only through public calls for proposals announced by local self-governments, the Autonomous Province and the Republic of Serbia based on public interest. As decisions on how to allocate the money are made by independent committees, which include representatives of media outlets, this approach lays sound foundations for a more efficient fight for transparency of the entire process.

When deciding on the allocation of funds, these committees often took into account also the social aspect; thus, they decided to allocate smaller amounts to a greater number of media outlets, to give them at least some chance of surviving. Journalists' associations claim that, in

³⁶¹ Available at: <http://www.nuns.rs/info/activities/26123/privatisacija-tvoje-je-prezime-gasic.html>.

³⁶² For more details, see the section on rights of national minorities of this Report.

several cases, local self-governments simply ignored the decisions made by these independent committees.

According to the information available to the Association of Serbian Journalists (UNS), local authorities have on average allocated one per cent of their local budgets for project financing, which professional associations see as insufficient. The Association of Serbian Journalists has once again demanded that local self-governments be ordered to allocate two per cent of their budgets for these purposes, a proposal which has been backed by other professional associations. However, public authorities have noted there is no legal basis for such a decision.

An encouraging development is the fact that journalists' associations cooperate closely and monitor the execution of public calls for media programming, which has frequently enabled them to timely prevent attempts to thwart the law and the spirit of media reforms. However, strict observance of public interest has still not been ensured.

Tabloidization and hate speech

The media have continued violating citizens' rights and resorting to hate speech, notwithstanding the sharp response to such cases from media associations, the Press Council as the self-regulatory body and journalists' associations. The self-regulation mechanisms in the media sphere remain rather weak and are not influential enough to prevent such cases on a larger scale.

The Regulatory Authority for Electronic Media (REM) has failed to ensure that public interest takes precedence in the programming of key radio and television stations; as a result, Serbia is facing a deluge of so-called reality shows, which fail to measure up to even the barest minimum of ethical and civilizational standards. These shows attract high viewer ratings and in 2015 the REM did not succeed in an attempt to restrict their broadcasting to time slots after 11 PM, which means they are still available to viewers of all ages throughout the day.

Campaigns against persons or organisations, based mostly on semi-truths or downright lies, have received a new boost, while mechanisms that could block them have not been developed. Media associations regularly condemn such actions, but to little avail.

The "leaks" of information on ongoing investigations have become common practice, used by different centres of power to influence the outcome of those investigations. Selective feeding of information and half-truths to the public would not be possible without the support or direct involvement of members of public authorities (including public prosecutor's offices and the police); and yet, to date no one has been held to account.

Assaults and pressure on journalists

Another grave concern is the fact that journalists' associations still complain about hidden pressure on the media (in the form of restricted access to advertising revenue and other ways of influencing the operations of media outlets). The highest-ranking public officials still openly label those media outlets and journalists whose reporting is not to their liking as "subversive elements."

The number of assaults and other forms of pressure against journalists was again on the rise last year. A register posted on the website of the Independent Association of Journalists of Serbia shows there were 38 such attacks in 2015, as opposed to 23 in 2013 and 2014 respectively. According to the same register, last year there were 11 assaults on journalists, three attacks on journalists' property, 21 verbal threats and three cases qualified as pressure on journalists.

Complaints from journalists' associations about the treatment by public authorities of reporters who are simply doing their job are becoming increasingly frequent. A typical case is

that of the reporting team of the “Istinomer” website, who were physically prevented by the Municipal Police from recording a report about construction works on the “Belgrade Waterfront” construction site. The Protector of Citizens conducted an investigation of that event and found that the Municipal Police had made 30 illegalities and irregularities in the way it treated journalists in just ten minutes or so. He therefore issued a public recommendation to remove the head of the Municipal Police of the City of Belgrade from office because of that event.

At the end of last year, the Independent Association of Journalists of Serbia demanded that Defence Minister Bratislav Gašić be removed from office because of his sexist remark about a female journalist of the B92 television channel. The Prime Minister condemned the Defence Minister’s statement in harshest terms and announced he would be replaced, which happened in early February 2016.

HUMAN RIGHTS IN THE EYES OF THE MEDIA

The results of the survey “Public Perception of the Rights of Vulnerable Groups in the Republic of Serbia and Awareness of Powers of the Protector of Citizens and Perception of His Work”³⁶³, which the Protector of Citizens commissioned from the Centre for Free Elections and Democracy (CESID) in March 2015 show that Serbian citizens are not particularly satisfied with the way the government treats human rights and the way in which those rights are protected. Nearly two thirds of the respondents (60%) believed Serbia took little or no care of respect for human rights. One in five female respondents believed their rights had been violated because of their gender and as many as 70% of respondents with disabilities believed their rights had been violated because they belonged to an “invisible” group. The survey shows that citizens attach the least importance to the rights of the LGBTI population and detainees.

Women in the eyes of the media

Some media outlets have gone so far as to report jovially about violence against women, which has left many women severely injured or dead. Thus, articles about a TV host who had allegedly acted violently towards his partner could be found under such headings as “Entertainment” or “Celebrities”, with “witty” comments about the event (“I maintain that A.M. deserved to be hit”³⁶⁴; “People support me for beating up A.M.”³⁶⁵; “H.D. beats up J, says: ‘She deserved to have the living Jesus beaten out of her!’”³⁶⁶; “Bully ballet dancer strangles actress, screams: ‘Whore, I’ll kill you and your lover!’”³⁶⁷).

Some articles about women who were beaten up overflow with descriptions of love, references to fate and details of the most intimate facts about partners’ lives, and yet the authors are apparently unwilling to explain how the community could have prevented the tragedy, how women should act if they find themselves in a similar situation or which government institutions are responsible for preventing such tragedies.

Women, identified by their full name and surname, also feature prominently in articles which mock their degrading social status or openly discuss prostitution (“T. A.: ‘Politicians pay the

³⁶³ Available at: <http://zastitnik.rs/index.php/lang-sr/izdavacka-delatnost/4174--2015>.

³⁶⁴ Words spoken by a politician in an entertainment show on TV Pink on 11 April, as reported by the *Alo* daily on 18 April 2015.

³⁶⁵ Website of the *Svet* magazine, 21 February 2015: “People approach me in the street and offer words of support. I go about my business normally and, as you can see, I go out of my house, and not once did I experience any problems”, S. said in a statement for the *Alo* daily at the opening event for a bar he promotes.

³⁶⁶ Website of the *Svet* magazine, 13 April 2015.

³⁶⁷ *Kurir*, 5 August 2015.

most"³⁶⁸). The names of politicians and other male public figures who are potential customers of prostitutes are still kept confidential, which is indicative of deeply rooted prejudice and lack of understanding of these phenomena in the minds of those who write such articles.

Children in the eyes of the media

This year, the media again reported about peer violence among children and violence against children, the situation of juvenile delinquents, inability of the poorest children to attend education, with taboo topics such as paedophilia and incest also becoming increasingly common. The media still often publish photographs of child victims with their full name and surname, without any respect for the right to identity protection, which should be of highest consideration in cases where the victims are children.

A hunger for sensationalism and a lack of knowledge of developmental processes in children result in tabloid headings which give distorted and inaccurate views of children ("Devastating: Serbian children think rape is acceptable!"³⁶⁹). In their battle for readership, papers publish information that can have grave consequences for children's proper development and constitutes direct violations of their rights. Positive examples of top achievers or pupils decorated in international competitions fail to garner much media attention beyond passing praise and fleeting promises. The overall impression is that all credit for their success goes to their personal abilities and huge support from their families, while the role of many education institutions in their development and success remains invisible.

Roma population in the eyes of the media

The media report on the Roma population in the form of brief, neutral statements issued by official sources. The reports focus mainly on their difficult financial situation and social status. Some articles depict the Roma population as a seething source of constant trouble and as welfare recipients from potentially criminal backgrounds ("Horror in Smederevo: Roma man forces himself onto a girl"³⁷⁰).

User comments in electronic media frequently decry the Roma as unjustifiably privileged in comparison with other citizens. Editorial boards still do nothing to ban such comments. Unfortunately, in 2015 regulatory bodies once again did not sufficiently respond to programmes which ridiculed the Roma population.

Persons with mental disorders in the eyes of the media

Articles about persons with mental disorders are still filled to the brim with prejudice and ignorance ("Who is responsible for the fact that dangerous psychiatric patients roam around freely?"³⁷¹). Details from patients' medical records are published, which is inadmissible, while health care professionals who work in this field and should explain the true nature of mental illness are rarely given prominence in the media. As far as the media are concerned, prevention of mental disorders comes second to their curiosity for any information that can be dug up from medical records, the disclosure of which constitutes the gravest violation of human rights.

Refugees/migrants in the eyes of the media

In 2015, most media outlets reported in a positive light about the efforts of Serbian authorities to help the refugees/migrants who passed through our country, with the Commissariat for

³⁶⁸ *Blic*, 1 December 2015.

³⁶⁹ *Kurir*, 26 March 2015.

³⁷⁰ *Vecernje novosti*, 16 March 2015.

³⁷¹ Radio Television of Serbia, 30 June 2015.

Refugees and the Ministry of Internal Affairs garnering special praise. The images of a police officer hugging a Syrian boy (“Kind-hearted policeman: Who is the man whose kindness amazed the world?”³⁷²) and of mothers with children in a convoy of refugees have been seen by the entire world. The media have focused much of their attention on the refugees’ fears for their lives and future. The humanity shown in the admission of refugees has somewhat obscured the fact that administrative authorities made omissions in providing them with support.

LGBTI population in the eyes of the media

Most media outlets reported that the 2015 Pride Parade was held without an incident, with heavy police presence. Articles about the discharge of Helena, a transgendered major, from the Serbian Armed Forces and the beating up of a former member of the neo-Nazi organisation “National Front” Dejana Pospis, also a transgendered person, and their respective public appearances, have caused a public stir. The issue of transgendered persons has become more visible compared with other members of the LGBTI population, which once again reaffirmed the importance of the media in shedding light on the status of marginalised and vulnerable groups.

YOUTH AND SPORTS

I BACKGROUND

1. Key Government’s achievements

- 1.1. The Law on Sports³⁷³ has been enacted.
- 1.2. The National Youth Strategy³⁷⁴ has been passed.
- 1.3. The Action Plan on implementation of the National Youth Strategy for the period 2015-2017³⁷⁵ has been passed.

2. Key results achieved by the Protector of Citizens

- 2.1. By issuing an opinion in the procedure of drafting of the Law on Sports, which has been mainly accepted by the Ministry, the Protector of Citizens contributed to the improvement of sports management and the improvement of the status of athletes.³⁷⁶
- 2.2. By submitting the Initiative for amendments to the Law on Sports, the Protector of Citizens has improved the field of contracting between sport clubs/organisations and underage athletes.³⁷⁷
- 2.3. In 2015, the Protector of Citizens received eight complaints in this field, in which complainants alleged seven violations of rights. In the same period, he completed the investigations in a total of 10 cases received in 2015 and in earlier years. Of a total of three investigations conducted, one investigation (33.33%) investigation was closed by

³⁷² *Blic*, 10 September 2015.

³⁷³ Official Gazette of RS, No. 10/16.

³⁷⁴ Official Gazette of RS, No. 22/15.

³⁷⁵ Official Gazette of RS, No. 70/15.

³⁷⁶ Opinion of the Protector of Citizens, available at: <http://www.zastitnik.rs/index.php/lang-sr/2011-12-11-11-34-45/4326-2015-09-23-12-09-50>.

³⁷⁷ Initiative available at: <http://www.zastitnik.rs/index.php/lang-sr/zakonske-i-drugie-inicijative/3064-2013-10-29-13-04-54>.

issuing recommendations in an expedited procedure. The Protector of Citizens issued no recommendations after oversight procedures in this field in 2015. Based on the number of identified (1) and remedied (1) omissions³⁷⁸, the rate of efficiency in this field is 100%.

3. Shortcomings at the national level

- 3.1. Although the youth account for one quarter of unemployed persons in the Republic of Serbia, the state has not enacted a comprehensive program for employment, education and professional advancement of the youth.³⁷⁹
- 3.2. Appropriate mechanisms to inform the youth and an appropriate and efficient prevention, support and assistance system for youth in the fight against addiction and all forms of violence and protection of mental and reproductive health have not been established.
- 3.3. The state has not provided health insurance to young people, as a particularly vulnerable population group, from the budget of the Republic of Serbia when they are not entitled to insurance by any other basis.
- 3.4. The youth participation rate in higher education is low.³⁸⁰
- 3.5. Secondary and higher education is less available to young people in vulnerable social groups.³⁸¹
- 3.6. Inclusive education of children and the youth with developmental disorders is insufficiently developed.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

- 4.1. The following proposal for improvement of citizens' position with regard to administrative authorities from the Annual Report of the Protector of Citizens for 2014 has not been implemented:
 - That the competent authorities should pass comprehensive programs for employment, education and professional skills upgrading of youth;
 - That the Ministry of Health should consider a possibility to provide health insurance to young persons, as a particularly vulnerable population group, as members of families of insured persons, i.e. from the budget of the Republic of Serbia, when they are not entitled to insurance by any other basis.
- 4.2. The Bill on Sports does not incorporate the proposals included in the opinion of the Protector of Citizens concerning the coverage of costs of physical fitness evaluation by compulsory social insurance for children under 18 years of age or provisions pertaining to the duties of registrars when sports organisations are registered.

³⁷⁸ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

³⁷⁹ Available at: <http://www.mos.gov.rs/vesti/aktivnosti/predstavljjen-novi-projekat-ministarstva-omladine-i-sporta-inicijativa-za-zaposljavanje-mladih-u-srbiji/?lang=lat>.

³⁸⁰ Fewer than 23% of citizens aged between 30 and 34 have higher education qualifications, according to the Education Development Strategy of Serbia until 2020 (Official Gazette of RS, No. 107/12).

³⁸¹ The National Youth Strategy for the period 2015-2025.

5. Explanation

The Law on Sports brings significant improvements to the existing legislative arrangements and promotes the development of sports in the Republic of Serbia, affirms sport activities, provides greater protection for the rights and interests of athletes, especially underage athletes, and lays the foundations for improving sports management, especially with regard to children and the youth in sports. The text of the Law incorporates most of the proposals contained in the Opinion of the Protector of Citizens, including in particular those relating to the protection of athletes, protection of children, non-discrimination, improving women's sports and the status of women in sports and infringement penalties. Based on the Opinion of the Protector of Citizens, the Law also incorporates provisions which guarantee the right to a decision and recourse in the process of deciding on the award of national recognitions and financial awards, which further promotes the principles of lawfulness and legal certainty.

The Law does not incorporate the suggestions the opinion of the Protector of Citizens concerning the coverage of costs of physical fitness evaluation by compulsory social insurance for children under 18 years of age. The Protector of Citizens noted that every child under 18 years of age must be covered by compulsory health insurance, recalling that the Serbian legal system defined a child as every person younger than 18 years, and every child was entitled to the highest possible standard of health and medical care, so it was a breach of law to treat children differently in terms of the rights to which they were entitled on the basis of their age. The law also does not contain provisions pertaining to the duties of registrars when sports organisations are registered, which the Protector of Citizens proposed in order to afford greater protection to sports organisations in the process of their registration.

On the basis of the Initiative for amendments to the Law on Sports, submitted by the Protector of Citizens to the Ministry of Youth and Sports as early as in 2013, the provisions providing for the manner and procedure of contracting between sport clubs/organisations and underage athletes have been introduced in the Law on Sports with the aim of protecting best interest of children and protection of children from exploitation.

The government passed the National Youth Strategy for the period 2015-2025 (hereinafter referred to as the "NYS"), which aims to increase youth employability and employment rate. The NYS sets out the main principles and expected outcomes for all stakeholders in youth policy with the aim of improving the social status of the youth and facilitating the exercise of their rights and interests in all areas. The NYS aims to create conditions which would enable young persons to fully achieve their potential and actively participate in the society. The NYS is implemented by young people, the Ministry of Youth and Sport, the relevant Ministries in charge of special areas pertaining to the youth sector and all other relevant stakeholders, with the Ministry directing and monitoring the implementation of NYS activities at the local level.

Young persons aged between 20-29 account for one quarter of unemployed persons in Serbia; among them, only 14.7% have higher education and 50.8% completed secondary school.³⁸²

Appropriate services and measures for support in education are not available for youth with disabilities and developmental disorders. Support services in pre-university and university education, based on the principle of inclusive education and social inclusion, which contribute to the improvement of education of young people with disabilities and developmental disorders, increase the extent of inclusion of young people in secondary and higher education

³⁸² National Youth Strategy for the period 2015-2025.

and provide equal opportunities for them to study and become involved in social activities, are not sufficiently developed.

Preventative services for addiction and risky behaviour of young people, assistance and support services for young people in particularly vulnerable situations and services for prevention and protection of mental and reproductive health are insufficiently developed. Many young people are exposed to numerous risk factors for their physical and mental health, including: exposure to violence in various environments (school, community, family) and stress (more than one half of high school pupils have been exposed to at least one stressful event³⁸³); high consumption of alcohol and tobacco; poor health choices (especially with regard to reproductive health); gambling addiction; etc.³⁸⁴

II TYPICAL CASES

No decision pursuant to an application for national award

Acting pursuant to a complaint filed by a female athlete against the work of the Ministry of Youth and Sport due to the latter's failure to decide on her application for a national award, the Protector of Citizens found that the procedure of deciding on national awards was not regulated by statute, because there were no provisions that would govern the application and decision-making procedures or the recourse against decisions, which left ample scope for abuse. For this reason, the Protector of Citizens issued an opinion to the Ministry, in which he noted, among other things, that it was necessary to supplement the provisions of the Draft Law on Sports pertaining to national sports awards, rewards and scholarships by regulating the decision-making procedure and providing for the right to receive a decision and the right of recourse. The Ministry accepted the Opinion and incorporated these provisions in the text of the Law on Sports.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Ministry of Youth and Sports, the Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Health and the Ministry of Education, Science and Technological Development** should introduce appropriate mechanisms to inform the youth prevention and support services for young people in the fight against addiction and all forms of violence and services for protection of mental and reproductive health.

2. **The Ministry of Health** should provide health insurance to young persons, as a particularly vulnerable population group, as members of families of insured persons, i.e. from the budget of the Republic of Serbia, when they are not entitled to insurance on any other basis.

3. **The Ministry of Education, Science and Technological Development** should intensify activities to ensure access to higher education to as many young people as possible.

³⁸³ National Youth Strategy for the period 2015-2025.

³⁸⁴ National Youth Strategy for the period 2015-2025.

4. **The Ministry of Education, Science and Technological Development** should intensify activities to ensure access to secondary and higher education to young people from vulnerable social groups.

5. **The Ministry of Education, Science and Technological Development** should intensify activities on application of the inclusive education principle at all levels of the education process, including higher education.

6. **The Ministry of Labour, Employment, Veteran and Social Affairs and the Ministry of Education, Science and Technological Development** should take all necessary measures to improve the situation and enhance the studying and living conditions for students with disabilities.

7. **The Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Education, Science and Technological Development, the Ministry of Youth and Sports and the National Employment Service** should pass comprehensive programs for employment and professional skills upgrading of youth.

8. **The Ministry of Youth and Sports** should prepare amendments to the Law on Sports to ensure the full scope of health services for underage athletes, in accordance with the opinion of the Protector of Citizens.

9. **The Ministry of Youth and Sports** should prepare amendments to the Law on Sports which would govern the duties of registrars when sports organisations are registered, in accordance with the opinion of the Protector of Citizens.

3.9. HEALTH SECTOR

I BACKGROUND

1. Key Government's achievements

- 1.1. The Law amending the Law on Health Insurance³⁸⁵ has been enacted.
- 1.2. The Law amending the Law on Health Care³⁸⁶ has been enacted.
- 1.3. The Law amending the Law on Protection of Population against Infectious Diseases³⁸⁷ has been enacted.
- 1.4. The Republic Health Insurance Fund has enabled beneficiaries to check the status of their application for sick leave allowance on its website.³⁸⁸
- 1.5. The Special Collective Agreement for health care institutions founded by the Republic of Serbia, Autonomous Provinces and local self-government units³⁸⁹ has been signed.

³⁸⁵ Official Gazette of RS, No. 96/15.

³⁸⁶ Official Gazette of RS, No. 106/15.

³⁸⁷ Official Gazette of RS, No. 36/15.

³⁸⁸ Available at: <http://www.rfzo.rs/index.php/osiguranalica/pregled-naknada-zarade>.

³⁸⁹ Official Gazette of RS, No. 1/15.

- 1.6. The Budget Fund for Treatment of Diseases, Conditions or Injuries that cannot be successfully treated in the Republic of Serbia began operating.
- 1.7. Serbian health care system has progressed six places from being dead last at the Euro Health Consumer Index.³⁹⁰

2. Key results achieved by the Protector of Citizens

- 2.1. In compliance with the opinion of the Protector of Citizens, the enacted Law amending the Law on Health Insurance changes the arrangements for the payment of salary compensation in case of temporary incapacity due to illness or pregnancy complications provided from the national budget.³⁹¹
- 2.2. In compliance with the recommendation of the Protector of Citizens³⁹², the Republic Health Insurance Fund posts on its official website data on payment of salary compensation to pregnant women and all other insured persons during temporary incapacity due to illness, starting from the 31st day of such temporary incapacitation.³⁹³
- 2.3. In compliance with the recommendations of the Protector of Citizens, the Ministry of Health launched an initiative to amend the applicable regulations in order to allocate portion of the fee paid by the parents of new-born children to the national budget for the approval of umbilical cord blood export towards the completion and commissioning of a public cord blood bank in Serbia, at the Mother and Child Institute "Dr. Vukan Čupić."³⁹⁴
- 2.4. The Protector of Citizens issued an opinion to the Ministry of Health in which he called for amendments to the Law on Health Insurance which would ensure that insurance beneficiaries who undergo chemotherapy, radiotherapy or haemodialysis are entitled to reimbursement of travel expenses regardless of the distance they have to travel to the health care institution.³⁹⁵
- 2.5. The Protector of Citizens issued an opinion to the Republic Health Insurance Fund and the Tax Administration in which he called on these authorities to make arrangements for renewal of the entitlement of pregnant women to salary compensation during temporary incapacity in cases where their employers are granted an extension of due dates for the payment of outstanding health insurance contributions.³⁹⁶
- 2.6. In compliance with the recommendation of the Protector of Citizens, the Chamber of Nurses and Paramedics has improved its handling of applications for registration in the Directory of Chamber Members and issuing of licences to health care professionals.³⁹⁷
- 2.7. The Protector of Citizens contributed to public awareness raising and dissemination of knowledge on patients' rights, with particular emphasis on health care for Roma and other children, through trainings of paediatricians and visiting nurses in primary health care and development counselling services in 10 municipalities with a high share of Roma children.

³⁹⁰ See 2013 Annual Report of the Protector of Citizens 2013.

³⁹¹ For more details, see the section on gender equality and LGBTI of this Report.

³⁹² Available at: <http://zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/3796-2015-04-16-08-39-50>.

³⁹³ Available at: <http://www.rfzo.rs/index.php/osiguranalica/57-bolovanja>.

³⁹⁴ Available at: <http://www.zastitnik.gov.rs/index.php/lang-sr/2011-12-25-10-17-15/4589-2016-02-05-12-05-43>.

³⁹⁵ Available at: <http://www.zastitnik.gov.rs/index.php/lang-sr/2011-12-11-11-34-45/4171-2015-06-12-10-47-01>, accessed on 25 January 2016.

³⁹⁶ Available at: <http://www.zastitnik.gov.rs/index.php/lang-sr/2011-12-11-11-34-45/4445-2015-12-01-10-48-52>. For more details, see the section on gender equality and LGBTI of this Report.

³⁹⁷ Available at: <http://www.zastitnik.gov.rs/index.php/lang-sr/2012-02-07-14-03-33/3783-2015-04-09-08-49-20>.

2.8. In 2015, the Protector of Citizens received 171 complaints in this field, in which complainants alleged 165 violations of rights. In the same period, he completed the investigations in a total of 171 cases received in 2015 and in earlier years. Out of the total of 23 investigations conducted, nine (39.13%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted oversights and issued nine recommendations, of which nine (100%) have been accepted. Based on the number of identified (18) and remedied (18) omissions³⁹⁸, the rate of efficiency in this field is 100%.

3. Shortcomings at the national level

3.1. Due to late payment of contributions by employers and lack of efficient mechanism for cooperation and exchange of information between the competent authorities, a number of employees and their families are still not able to exercise the guaranteed rights to health insurance and health care.

3.2. Instead of providing preconditions for implementation of the Law on Medical Documentation and Records in the field of Health Care³⁹⁹, the Ministry of Health initiated extension of the time limit for enactment of necessary regulations, as well as delay of the effective date of the Law amending the Law on Medical Documentation and Records in the field of Health Care.⁴⁰⁰

3.3. Six years after enactment of the Law on Cell and Tissue Transplantation⁴⁰¹, a public cell and tissue bank has not been opened or started operating in Serbia.

3.4. The patient rights protection system established under the Law on Patient Rights⁴⁰² is not fully functional in practice.

3.5. The Law on Health Care has been amended two times in less than a month.⁴⁰³

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **the Ministry of Health** should in cooperation with other authorities take appropriate measures to improve the public procurement procedure in health institutions, in order to ensure the highest possible quality of health care.
- That **the Ministry of Health** and **local self-administrative authorities** should ensure smooth functioning of advisors for the protection of patients' rights and health councils and should take all necessary measures to provide all necessary working conditions for them.

³⁹⁸ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

³⁹⁹ Official Gazette of RS, No. 123/14.

⁴⁰⁰ Official Gazette of RS, No. 106/15.

⁴⁰¹ Official Gazette of RS, No. 72/09.

⁴⁰² Official Gazette of RS, No. 45/13.

⁴⁰³ The Law amending the Law on Health Care enacted by the National Assembly of the Republic of Serbia in the Sixth Session of its Second Regular Sitting in 2015 on 20 November 2015- Official Gazette of RS, No. 96/15 and The Law amending the Law on Health Care enacted by the National Assembly of the Republic of Serbia in the Ninth Session of its Second Regular Sitting in 2015 on 18 December 2015- Official Gazette of RS, No. 106/15.

- That **the Republic Health Insurance Fund** and **the Tax Administration** should cooperate efficiently in the execution of tasks within their respective spheres of competence in the field of compulsory social insurance, in accordance with their existing legal duties.
- That **the Ministry of Health** and **the Republic Health Insurance Fund** should ensure more information to patients on their health insurance and health care rights and duties.

5. Explanation

Enactment of the Law amending the Law on Health Insurance has improved the procedure for exercising the rights arising from compulsory health insurance in cases where beneficiaries receive a financial allowance during temporary incapacity due to illness or pregnancy complications.⁴⁰⁴

In this reporting period, the Law on Health Care was amended two times in less than a month. The first amendment regulated the procedure for obtaining, renewal and revocation of licence and for taking the licensing examination in cases where health care professionals did not acquire enough points through training programmes. The subsequent amendments to the Law on Health Care introduced new legislative arrangements governing additional work in the health care system.⁴⁰⁵

Amendments to the Law on Protection of Population against Infectious Diseases improve the quality of health care and contribute to prevention, containment and eradication of infectious diseases. Furthermore, they also enhance the level of protection of the population from infectious diseases which threaten public health, where the prevention, early detection and eradication of such diseases is a common interest for the Republic of Serbia.

The Republic Health Insurance Fund complied forthwith with the recommendations of the Protector of Citizens pertaining to the exercise of the entitlement to compensation during pregnancy leave by making data relating to this entitlement timely available to the beneficiaries concerned and the general public.⁴⁰⁶ The official website of the Republic Health Insurance Fund now also features a new heading with information on employers who filed documentation for the granting of salary compensation to pregnant women, as well as information relating to other insurance beneficiaries, which allows them to monitor the status of their applications.

After enactment of the Law on Cell and Tissue Transplantation, citizens reasonably expected a public cell and tissue bank would be opened. However, six years after enactment of this Law, a public cell and tissue bank has not been opened or started operating in Serbia.⁴⁰⁷

Under the Law on Medical Documentation and Records in the field of Health Care, implementing regulations pursuant to it should have been passed within 12 months of the date when that Law came into force, i.e. by 18 November 2015. However, the requisite preconditions for this were not provided in this reporting period and on 18 December 2015 it was decided to extend the period for the passing of implementing regulations and to push back the effective date of the Law amending the Law on Medical Documentation.⁴⁰⁸

⁴⁰⁴ For more details, see the section on gender equality and LGBTI of this Report.

⁴⁰⁵ Since 2010, the Protector of Citizens has been calling for legislative amendments in his Annual Reports because of the potential for abuse of additional work in health institutions. As the Law amending the Law on Health Care, which amended the provisions which govern additional work at health care institutions, took effect on 29 December 2015, the Protector of Citizens has not been able to evaluate the effects of these amendments. In his future work, the Protector of Citizens will focus in particular on the manner in which additional work at health care institutions is organised and managed.

⁴⁰⁶ The Protector of Citizens has been highlighting this issue in his Annual Reports since 2010.

⁴⁰⁷ For more details, see Typical Cases.

⁴⁰⁸ Official Gazette of RS, No. 106/15.

The Protector of Citizens issued an opinion to the Ministry of Health in which he noted it would be justified and reasonable to reimburse travel expenses to those insurance beneficiaries who are referred to haemodialysis, chemotherapy and radiotherapy at a health care institution outside the territory served by the branch which normally provides them with health care, regardless of the distance they have to travel, because the reason for such referral is the fact that there are no medical institutions capable of providing them with the type of health care services they need in the territory served by the branch which normally provides them with health care. Although the Ministry of Health accepted the opinion of the Protector of Citizens, implementation of this activity depends to a large extent on the ever-changing availability of allocated budget funds.

Due to the lack of efficient cooperation and exchange of information between the competent authorities, citizens are still not able to exercise the guaranteed rights to health insurance and health care. In 2015, the Protector of Citizens received a significant number of complaints in which citizens alleged that they and/or their family members had not been able to renew their health insurance cards because their employers had not fulfilled their statutory obligation to pay compulsory social insurance contributions. In his previous Annual Report (2014), the Protector of Citizens issued a recommendation in connection with this issue. Consequently, more efficient cooperation in the exercise of their powers in the field of compulsory health insurance in accordance with their existing statutory obligations will be one of the priorities for the Republic Health Insurance Fund and the Tax Administration in the coming months.

Upon finding that the Chamber of Nurses and Paramedics had not acted timely and passed a decision in writing, the Protector of Citizens issued a recommendation by which he advised this authority to always act lawfully, timely, efficiently, correctly and diligently in its future work when handling requests for registration with the Directory of Members of the Chamber and when licensing health care professionals.

In 2015, the Protector of Citizens continued organising trainings for and work meetings with patient rights advisors, monitored actions of competent authorities (patient rights advisors, health councils, local self-administrative authorities and the Ministry of Health) and analysed reports submitted by health councils. The Protector of Citizens found that the competent local self-administrative authorities and the Ministry of Health had not taken measures from their spheres of competence in the manner and within the time limit set by the Law on Patient Rights and for this reason the system of newly-established mechanisms for the protection of patients' rights had not been implemented in practice. This resulted in omissions which may cause legal uncertainty and worsening of the legal position of patients, as well as violation of their rights.⁴⁰⁹

Citizens' problems relating to the exercise of rights arising from compulsory health insurance remained almost unchanged compared with the previous reporting period: citizens suffer consequences when obligors of compulsory social insurance contributions fail to observe their duty to make payments on time. There has been a significant increase in the number of complaints relating to the granting of the entitlement salary compensation during temporary incapacity and the entitlement to reimbursement of travel expenses incurred to access health care services.

In this reporting period, a significant number of citizens' complaints was received relating to violations of the right to services of appropriate quality and the right to respect of patients' time, as well as to technical, medical and diagnostic mistakes made in the course of patients' treatment, often with a lethal outcome.

⁴⁰⁹ The Special Report of the Protector of Citizens on work of the patient rights protection mechanisms, available at: <http://www.ombudsman.rs/index.php/lang-sr/2011-12-25-10-17-15/4607-2016-02-22-12-22-20>.

The Protector of Citizens received a number of complaints from unemployed health care professionals who contested the lawfulness of public job announcements at medical institutions. The complainants suspected selection was made on the basis of criteria different from those provided by the law, based on personal characteristics such as party-political affiliation and/or ethnicity of the chosen candidate. In accordance with the statutory powers of this institution, the complainants were instructed to first make use of other available remedies in the applicable statutory procedures (including raising grievances with the Labour Inspectorate or the Equality Commissioner or filing lawsuits) to protect their rights and to complain to the Protector of Citizens only if all other remedies have been exhausted.

As in the previous years, health care professionals and associates faced numerous problems in connection with their labour law status. In 2015, health care professionals again questioned the lawfulness of selection of candidates for specialisation and of amendments to employment contracts that were offered to them for the purpose of reassignment to different jobs and duties and for the purpose of determining their salaries.⁴¹⁰

Many health care professionals and the Paediatricians' Association contacted the Protector of Citizens claiming that, on the basis of a provision of the Law on Determining the Maximum Number of Employees in the Public Sector⁴¹¹, female employees at medical institutions had to retire earlier than their male counterparts by operation of law. Pursuant to a joint motion for constitutional review filed by the Protector of Citizens and the Equality Commissioner, the Constitutional Court passed a decision by which it suspended all individual instruments passed or actions undertaken pursuant to the said provision that would have the effect of terminating the employment of superannuated female employees.

Based on information received from the Ministry of Health, the Medical Chamber and representatives of trade unions in the health sector, the Protector of Citizens learned about increasingly frequent verbal and even physical assaults on health care professionals in their workplace by patients and their relatives.⁴¹² It is the opinion of the Protector of Citizens that violence in hospitals must be reduced through appropriate security measures and procedures, improved criminal law protection and, most importantly, fostering of better relations between citizens and medical staff, which will depend primarily on the quality of health care.⁴¹³

The Budget Fund for Treatment of Diseases, Conditions or Injuries that cannot be successfully treated in the Republic of Serbia began operating and over 40 persons have been referred for treatment or diagnosing in foreign countries; secondary legislation was enacted on detailed requirements, manner and procedure of allocation of funds from the Fund and several dozens of children have been referred for treatment or diagnosing in foreign countries.

The Serbian health care system has progressed six places from being dead last at the Euro Health Consumer Index.⁴¹⁴ The improvement has been observed in three fields: patient rights,

⁴¹⁰ After the signing of the Special Collective Agreement for health care institutions founded by the Republic of Serbia, Autonomous Provinces and local self-government units, there was an increase in the number of received complaints from health care professionals who alleged that salary coefficients based on years of service had been calculated differently for employees at the same medical institution.

⁴¹¹ Official Gazette of RS, No. 68/15.

⁴¹² the Protector of Citizens, together with the Commissioner for Information of Public Importance and Personal Data Protection, attended a meeting between the Minister of Health and the Director of the Serbian Medical Chamber, Dr. Vesna Jovanovic, and representatives of trade unions in the health sector, held on 21 December 2015, which was held in connection with the increasingly frequent assaults against medical staff on their job.

"In response to the increasingly frequent assaults and threats to the safety of employees at medical institutions, the Ministry of Health has undertaken a number of activities to provide better security and protection for the employees in this field." - Available at: <http://www.zdravlje.gov.rs/showelement.php?id=10274>.

⁴¹³ Available at: <http://www.zastitnik.gov.rs/index.php/lang-sr/2011-12-25-10-17-15/4536-2016-01-13-13-38-52>.

⁴¹⁴ See the 2013 Annual Report of the Protector of Citizens.

availability of health care and treatment outcomes. Serbia made the major improvement in indicators by reduction of mortality rate of newborns.⁴¹⁵

II OTHER ACTIVITIES

Trainings for patient rights advisors and members of local health councils

During the course of this reporting period, the Protector of Citizens continued trainings for patient rights advisors and members of health councils which have been initiated in October 2014 in cooperation with the USAID Judicial Reform and Government Accountability Project (JRGAP).

The Protector of Citizens organised a total of 12 trainings (in Belgrade, Šabac, Požarevac, Zaječar, Kruševac, Niš, Vranje, Kraljevo, Subotica, Čačak and two trainings in Novi Sad), which were attended by 146 representatives of 86 local self-governments (81 patient rights advisors, 51 presidents/members of health councils and 14 others, including assistants, members of municipal councils, representatives of patients' and other associations etc.).

The training programme included several segments: general information on patients' rights from the aspect of powers of the Protector of Citizens, the rights of the child in the health care system, the gender aspect of health care, increasing the availability of health care for the Roma and health care for persons with disabilities.⁴¹⁶

Trainings for paediatricians and visiting nurses

The Protector of Citizens participated in the implementation of the Paediatricians' Association's and UNICEF's project "Support to Children in Early Development and their Parents through Strengthening of Paediatricians' Capacities, with Focus on Developmentally Vulnerable Groups."

As part of the training course "Protection of Children's Rights in the Health Care System, with Focus on Roma and Other Vulnerable Groups of Children", the Protector of Citizens conducted training sessions for 90 paediatricians and visiting nurses in primary health care and development counselling centres in 10 municipalities with high populations of Roma children.⁴¹⁷

The aim of the trainings was to train the paediatricians and visiting nurses on the enjoyment of rights of vulnerable groups, with focus on the enjoyment of rights by the Roma population, and to introduce them to the obstacles faced by the Roma population.

During the reporting period, the Protector of Citizens cooperated with different authorities and institutions, as well as with the civil sector. The Protector of Citizens took part in various roundtables, seminars and other events which addressed the exercise and protection of rights in the fields of health care and health insurance.

⁴¹⁵ For more details, see: http://www.healthpowerhouse.com/files/EHCI_2015/EHCI_2015_report.pdf.

⁴¹⁶ Reports of all trainings are available to the public on the official website of the Protector of Citizens, http://www.ombudsman.pravdeteta.com/index.php?option=com_content&view=article&id=654%3A2014-11-01-18-43-58&catid=38%3A2012-04-09-12-59-17&Itemid=91&lang=sr, where a banner has been posted with information and material from trainings. All reports of the trainings have been forwarded to the Ministry of Health.

⁴¹⁷ The training included health professionals in medical centres in the territories of the following local self-governments: Zemun, Kragujevac, Novi Sad, Zrenjanin, Smederevo, Pozarevac, Nis, Pirot, Leskovac and Vranje.

III TYPICAL CASES

Public bank of stem cells and tissues

The Protector of Citizens received a complaint from a citizen, who drew attention to a problem faced by many future parents who wish to preserve stem cells harvested from the cord blood of their new-borns: namely, the only way they can do this is to use the services of foreign privately-owned blood banks, through their authorised distributors, against the payment of high fees for blood preservation⁴¹⁸ and an additional Republic-level administrative fee in Serbia.⁴¹⁹

In the investigation, the Protector of Citizens found that the Ministry of Health and the Biomedicine Directorate had not provided citizens with complete and transparent information on the possibilities of and need for preserving stem cells harvested from the cord blood of new-born babies, with technical explanations why this cannot be done in Serbia and is only possible in foreign private blood banks.

The Ministry of Health and the Biomedicine Directorate complied with all recommendations issued by the Protector of Citizens. Prompted by the Biomedicine Directorate, the Republic Expert Committee on Cell and Tissue Transplantation took a stand on the benefits of preserving stem cells harvested from the cord blood of new-born babies at national banks, which the Administration presented to the public. The stand was taken on the basis of recommendations given by the European Commission's European Group on Ethics in Science and New Technologies, which are strongly in favour of public (national) banks, with the discretionary right of every individual to opt for other arrangements for the preservation and donation of stem cells.

The Ministry of Health launched an initiative to amend the applicable regulations in order to allocate portion of the fee paid by the parents of new-born children to the national budget for the approval of umbilical cord blood export towards the completion and commissioning of a public cord blood bank in Serbia, at the Mother and Child Institute "Dr. Vukan Čupić."⁴²⁰

Failure to provide requested written information on reasons for change of basis of health insurance

After the branch of the Republic Health Insurance Fund in charge changed the basis of his health insurance, a complainant requested from the Ministry of Health detailed information on the reasons for such action and asked to be exempted from health care co-payment. In the investigation, the Protector of Citizens found that the Ministry of Health had forwarded the request immediately upon receipt to the Republic Health Insurance Fund as the authority in charge. However, the Fund did not the complainant with the requested explanation until a year and a half later, after the Protector of Citizens initiated his investigation.

The Protector of Citizens terminated the investigation because the authority itself remedied the shortcoming against which the complainant had complained.

Increased pay of a nurse based on years of service

A complainant believed the health care institution where she was employed had reduced her salary without proper grounds, because it had not included in her increased pay based on years of service the years she had spent working at the Retirement Home "Bezanijska kosa" of the City Institution for the Protection and Care of the Elderly, although she had been employed as a nurse there as well. As she was not satisfied with the answer she had received from the

⁴¹⁸ The cost of this service at banks which have authorised distributors in Serbia is approximately € 1800.

⁴¹⁹ As of the time of filing of the complaint, the amount of this fee was RSD 10,230.00.

⁴²⁰ Available at: <http://www.zastitnik.gov.rs/index.php/lang-sr/2011-12-25-10-17-15/4589-2016-02-05-12-05-43>.

health institution in question and the line ministry, she filed a complaint with the Protector of Citizens, in which she alleged she had been denied one of the basic labour and employment rights, namely the right to increased pay based on years of service, due to misinterpretation of the law.

The Protector of Citizens dismissed this complaint as unfounded. Namely, the Medical Centre where the complainant is currently employed and the Gerontology Centre of Belgrade (successor to the Retirement Home "Bezanijska kosa" of the City Institution for the Protection and Care of the Elderly) cannot be considered as one and the same employer, which is the fundamental fact for determining the time spent in service based on every full year of service completed while employed by the employer concerned. The health care institutions listed in the Decree on the Health Care Network Plan are deemed to be employers. The fact that the complainant performed identical and/or similar duties in both institutions as a nurse is irrelevant for determining the amount of increased pay based on years of service.

IV PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Ministry of Health** should initiate and, in cooperation with other public authority, expedite the opening and commissioning of a public cell and tissue bank.
2. **The Ministry of Health** should pass necessary regulations and ensure preconditions for implementation of the Law on Medical Documentation and Records in the field of Health Care.
3. **The Ministry of Health** should in cooperation with other authorities take appropriate measures to improve the public procurement procedure in health institutions, in order to ensure the highest possible quality of health care.
4. **The Ministry of Health** should ensure unobstructed inspection in all health institutions included in the Health Institutions Network Plan, as well as in the private practice.
5. **The Ministry of Health** and **the Republic Health Insurance Fund** should ensure more information to patients/insured persons on their health insurance and health care rights.
6. **The Republic Health Insurance Fund** and **the Tax Administration** should act promptly and cooperate efficiently in the execution of tasks from their spheres of competence in the field of compulsory social insurance, in accordance with their existing legal duties.
7. **The Ministry of Health** and **local self-administrative authorities** should ensure smooth functioning of patient rights advisors and health councils and should take all necessary measures to provide all necessary working conditions for them.
8. **The Ministry of Health** should take all actions within its remit and cooperate with other authorities for the purpose of performing tasks under the Law on Patient Rights.
9. **The Ministry of Health** should perform regular periodic analyses of the effects of implementation of the Law on Patient Rights with the aim of ensuring efficient and lawful exercise of patient rights and improving operations of mechanisms for protection of their rights.

3.10. SOCIAL SECURITY AND PENSION AND DISABILITY INSURANCE SECTORS

SOCIAL SECURITY

I BACKGROUND

1. Key Government's achievements

- 1.1. The Republic of Serbia accessed the EU Employment and Social Innovation (EaSI) Programme.⁴²¹
- 1.2. Amendments to the Special Collective Agreement for Social Security in the Republic of Serbia granted equal entitlements to increased pay for years of service to employees at social security institutions which perform identical activities.⁴²²

2. Key results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens issued an opinion to the Government in which he emphasized that the legal framework in the field of social housing policy was deficient as a whole, as it was neither consistent nor systemically harmonised.⁴²³
- 2.2. In compliance with the recommendation of the Protector of Citizens, the Centre for Social Work in Sremska Mitrovica rectified the omission relating to the violations of the administrative procedure rules and good administration principles when deciding on welfare payments to a complainant.⁴²⁴
- 2.3. In 2015, the Protector of Citizens received 77 complaints in this field, in which complainants alleged 69 violations of rights. In the same period, he completed the investigations in a total of 71 cases received in 2015 and in earlier years. Out of the total of 24 investigations conducted, 10 (41.67%) investigations were closed by recommendations issued in an expedited oversight procedure. In the remaining cases, the Protector of Citizens conducted oversight procedures and issued six recommendations, of which four (66.67%) have been accepted, there are no recommendations that have not been implemented and two are still pending. Based on the number of identified (14) and remedied (14) omissions⁴²⁵, the rate of efficiency in this field is 100%.

3. Shortcomings at the national level

- 3.1. No appropriate and effective support and assistance mechanism is in place for parents who care for children with developmental disorders, children with disabilities or severely ill children whose condition requires constant care, attendance and support.⁴²⁶
- 3.2. Children living and working on the streets do not have access to services and measures that would enable them to develop in a family, become included in education and the

⁴²¹ See: <http://www.minrzs.gov.rs/cir/aktuelno/item/4033-program-eu-za-zaposljavanje-i-socijalnu-solidarnost-easi>. For more details, see the labour section of this Report.

⁴²² For more details, see the labour section of this Report.

⁴²³ Available at: <http://www.zastitnik.rs/index.php/lang-sr/2011-12-11-11-34-45/4501-2015-12-23-08-14-14>.

⁴²⁴ Available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/4370-2015-10-14-10-25-14>.

⁴²⁵ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

⁴²⁶ For more details, see the child rights section of this Report.

community, have access to health care and social security services and enjoy full protection from violence, mistreatment and neglect.⁴²⁷

- 3.3. When deciding on social protection rights, competent authorities often do not act in compliance with the rules and principles of the general administrative proceedings.⁴²⁸
- 3.4. The Law on Social Housing does not clearly and precisely regulate the duties and responsibilities of housing policy implementers and does not provide for a permanent system of funding and implementation of social housing policy.
- 3.5. Training and professional advancement of social security staff is uneven and, in some areas, insufficient.⁴²⁹

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

- 4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **the National Assembly** should consider bills of amendments to the Labour Law and of the Law on Financial Support to Families with Children submitted by the Protector of Citizens (7 May 2013).

- That **the Government** should draft and submit to the National Assembly for enactment a Bill of Amendments to the Law on Financial Support to Families with Children, in accordance with the Initiative launched by the Protector of Citizens to eliminate obstacles for entitlement to financial support for families with children when one of parents is a foreign national.

- That **the Government** should draft and submit to the National Assembly for enactment a bill which would clearly and precisely define the duties and responsibilities and mutual relations between the implementing agencies responsible for the housing policy, as well as the funding arrangements for social housing.

- That **the Government** should provide for the re-introduction of social security services terminated as a result of austerity measures and should plan and implement economic policy measures in such a way as to avoid curtailing the existing level of standards in the protection of socially deprived citizens.

- That **the Ministry of Labour, Employment, Veteran and Social Affairs** should ensure that decisions to grant or deny social security rights are clear, fully substantiated and comprehensible to recipients and that they include all elements provided for by the law.

- 4.2. Even after three whole years, public authorities have not implemented the recommendations given by the Protector of Citizens in the Special Report *Child Begging in the Republic of Serbia*.

5. Explanation

The Republic of Serbia accessed the EU Employment and Social Innovation (EaSI) Programme. The aim of the Programme is to reach a higher level of sound and sustainable employment, provide adequate social security, fight against social exclusion and poverty and improve working conditions. The EaSI Programme is the main EU fund in the field of labour,

⁴²⁷ For more details, see the child rights section of this Report.

⁴²⁸ For more details, see: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/4370-2015-10-14-10-25-14>.

⁴²⁹ For more details, see the section on gender equality of this Report.

employment and social policy that is open also to EU candidate countries. The Programme is currently managed by the European Commission. It will support and implement projects which promote employment, working conditions, social security and social inclusion.

The Protector of Citizens issued an opinion to the Government in which he pointed out that the Law on Social Housing did not clearly and precisely regulate the duties and responsibilities of housing policy implementers, nor did it provide for mechanisms for their coordinated and efficient application, which effectively hampered the attainment of the national social housing policy objectives set out in this Law, the National Social Housing Strategy and the Action Plan on its implementation. It was noted that the said Law did not provide for a permanent and stable funding system for the social housing policy at the national and local levels; also, no implementing regulation had been passed to set out detailed criteria for the use of the funds allocated for social housing. Furthermore, the legislative provisions governing the housing system are not mutually harmonised. It is not specifically stated which authority is responsible for overseeing the application of the Law and penalties are provided for breaches of the Law, which prevents its full implementation and application in practice. This effectively undermines legal security, social justice and equality in the exercise of the right to social housing by vulnerable population groups in the Republic of Serbia. It was noted that the Government should undertake all necessary activities as soon as possible to enable full and effective exercise of the right to social housing by vulnerable groups of citizens.

Acting pursuant to a complaint against the work of the Centre for Social Work in Sremska Mitrovica, the Protector of Citizens found an omission in the work of that institution: namely, due to an oversight of the Centre for Social Work, two different decisions had been passed and were effective pursuant to a single application made by the same person. This omission violated the rules of administrative procedure and the principles of good administration, which created legal uncertainty for the complainant and caused to have legally justified expectations of a greater scope and a longer duration of her entitlement. Upon receiving a recommendation, the Centre for Social Work cooperated with the Provincial Secretariat for Health, Social Policy and Demographics to address the contested legal situation within the specified timeframe and remedy the identified omission.

Decisions to grant or deny social security rights are passed on standard, ready-made forms and do not contain a clear and substantiated statement of reasons. Citizens often do not understand the decisions and do not know the reasons why their applications were rejected or why they were granted on an entitlement with a specific scope or for a specific duration. Although they formally do contain statements of reasons, they do not provide sufficient information on the facts found, how the facts were weighed and how substantive and procedural law was applied to them.

II OTHER ACTIVITIES

Representatives of the Protector of Citizens meet with the Director of the Social Protection Chamber

Representatives of the Protector of Citizens had a meeting with the Director of the Social Protection Chamber. The parties addressed the need for professional advancement of the staff of social security institutions through trainings, meetings, debates or roundtables, in order to improve their professional capacities and ensure legal and regular exercise of social security entitlements.

III TYPICAL CASES

Municipal Council of the Municipal Assembly of Aranđelovac fails to decide on an application for one-off assistance for more than two years

Instead of acting pursuant to a complainant's application for one-off assistance within the statutory timeframe, the Municipal Council of the Municipality Aranđelovac forwarded the application to the Centre for Social Work only after two years. The Protector of Citizens found that the Centre for Social Work had in the meantime become responsible for deciding on such applications.

The Protector of Citizens issued a recommendation to the Municipal Council in which he advised it to cooperate with the Municipal Administration of the Municipality of Aranđelovac in an appropriate procedure in order to identify the persons responsible for this omission and to decide on any disciplinary action if appropriate in accordance with the law and based on the facts found; the Municipal Council was also advised to act timely and within the statutory timeframes in the future.⁴³⁰ The Municipal Council replied it had initiated the implementation of this recommendation, which will be followed up by the Protector of Citizens in the future.

IV PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The National Assembly** should consider bills of amendments to the Labour Law and of the Law on Financial Support to Families with Children submitted by the Protector of Citizens.
2. **The Government** should draft and submit to the National Assembly for enactment Bill of Amendments to the Law on Financial Support to Families with Children, in accordance with the Initiative launched by the Protector of Citizens.
3. **The Government** should draft and submit to the National Assembly for enactment a bill which would clearly and precisely define the duties and responsibilities and mutual relations between the implementing agencies responsible for the housing policy, as well as the funding arrangements for social housing.
4. **The Government** should provide for the (re)introduction and development of social security services.
5. **The Ministry of Labour, Employment, Veteran and Social Affairs** should ensure that decisions to grant or deny social security rights are clear, fully substantiated and comprehensible to recipients and that they include all elements provided for by the law.
6. The Ministry of Labour, Employment, Veteran and Social Affairs and the republic Social Security Institute should provide various forms of trainings and professional advancement for employees.

⁴³⁰ Recommendation available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/4507-2015-12-28-08-42-47>.

PENSION AND DISABILITY INSURANCE

I BACKGROUND

1. Key Government's achievements

- 1.1. The Government passed the Resolution which ensured addressing of the issue of adjustment of pensions of military pension beneficiaries which persisted for many years.

2. Key results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens has continued monitoring compliance of the Pension and Disability Insurance Fund with his recommendations issued to the latter in 2011 and 2013. In this context, it has been found that a number of complaints about tardiness in the work of the Pension and Disability Insurance Fund.
- 2.2. In 2015, the Protector of Citizens received 271 complaints in this field, in which complainants alleged 318 violations of rights. In the same period, he completed the investigations in a total of 335 cases received in 2015 and in earlier years. Out of the total of 132 investigations conducted, 60 (45.45%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted oversights and issued 19 recommendations, of which nine (47.37%) have been accepted, five (26.32%) have not been implemented and five are still pending. Based on the number of identified (74) and remedied (69) omissions⁴³¹, the rate of efficiency in this field is 93.24%.

3. Shortcomings at the national level

- 3.1. In 2015, the Pension and Disability Insurance Fund and the Tax Administration once again failed to address the issue of inadequate and belated control of payment of contributions and registration for compulsory social insurance, which left citizens unable to exercise their entitlement to pension.
- 3.2. The Pension and Disability Insurance Fund and the Tax Administration still insufficiently cooperate in exchange of taxpayer information, calculation and payment of contributions, amounts of assessed and collected contributions and other official data relating to these contributions.
- 3.3. The Government has not fully addressed the issue of the so-called "Kosovo pensions".
- 3.4. The issue of retroactive establishing of the duty to pay farmers' pension and disability insurance contributions, without serving a decision on registration and without passing and duly serving an appropriate administrative instrument to grant the status of an farmers' pension and disability insurance beneficiary, emerged to the fore in 2015.
- 3.5. When applying the Law on Provisional Arrangements for the Disbursement of Pensions, the Pension and Disability Insurance Fund did not pass a separate decision in each individual case of pension reduction, as it was required to do under the Law on General Administrative Procedure, thus denying citizens one of the fundamental rights

⁴³¹ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

guaranteed by the Constitution, namely the right to legal remedy, i.e. the right to lodge a complaint against decisions of administrative authorities.

- 3.6. The Pension and Disability Insurance Fund and its organisational units do not implement consistently their internal instruments (instructions and guidelines).
- 3.7. The Ministry of Labour, Employment, Veteran and Social Affairs does not supervise the legality of operations and enactments of the Pension and Disability Insurance Fund in connection with the recommendations issued by the Protector of Citizens to the Pension and Disability Insurance Fund.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **the Ministry of Labour, Employment, Veteran and Social Affairs** should, **in cooperation with the Pension and Disability Insurance Fund**, amend the applicable regulatory framework with the aim to introduce an efficient mechanism to address the issue of overpaid pension amounts, as well as with the aim to regulate the procedure of passing decisions on definite pension amounts that would replace temporary decisions;
- That **the Ministry of Labour, Employment, Veteran and Social Affairs** should supervise the legality of operations and enactments of the Fund, in connection with the recommendations the Protector of Citizens issued to the Pension and Disability Insurance Fund.

4.2. **The Pension and Disability Insurance Fund** has not implemented the recommendation of the Protector of Citizens to determine *ex officio* new amounts of pensions, as from the date of qualifying for retirement, for all former employees of the company "Robne kuce Beograd".

4.3. **The Pension and Disability Insurance Fund** has not implemented the opinion and recommendations of the Protector of Citizens to pass an individual decision *ex officio* in each specific case to determine the new mode of pension disbursement when applying the Law on Provisional Arrangements for the Disbursement of Pensions.

5. Explanation

The Protector of Citizens has continued monitoring compliance of the Pension and Disability Insurance Fund with his recommendations. In 2015, the number of complaints against omissions addressed in the recommendations was much lower than in earlier years. Complaints relating to recovery of wrongly calculated and disbursed amounts of pensions without the passing of a specific decision which would specify the exact overpaid amount accounted for the highest share of the received complaints, which shows that the problem associated with overpaid amounts of pensions and allowances remains prevalent.

It is also evident that the Pension and Disability Insurance Fund still acts and remedies the identified omissions pointed out in the recommendations only when notified by the Protector of Citizens of lodged complaints, although the aim of those recommendations is to avoid repeating such omissions that have already been identified and pointed out in the recommendations in the future work of the Pension and Disability Insurance Fund.

In connection with the issue of adjustment of military pensions, the Government passed a Resolution by which it agreed for the Pension and Disability Insurance Fund to adjust the military pensions accrued by 31 December 2007 by 11.06% and to make a one-off payment of the difference between the adjusted amount of pensions and the amount actually disbursed to beneficiaries of military pensions, starting from the pension for January 2008 to the pension for October 2015, inclusive. In compliance with the Resolution, the Pension and Disability Insurance Fund notified all military pension beneficiaries or their surviving family members how the Resolution would be implemented. The beneficiaries were invited to report to their respective branch of the Pension and Disability Insurance Fund in order to file an application to receive the difference in pensions amounts arising from the extraordinary adjustment of pensions, pursuant to which an appointment would be made for them to enter into and sign an out-of-court settlement agreement. The notice also stated that those beneficiaries who had filed a damage compensation lawsuit on this basis must provide evidence of termination of the civil proceedings, i.e. a submission by which the claimant dropped the lawsuit and waived the claim, bearing the receipt stamp of the relevant court. The Protector of Citizens considers the said Resolution to be the first step made by the Government to address a years-long issue by offering military insurance beneficiaries a sort of settlement with the Pension and Disability Insurance Fund. The full effects of this course of action will only be visible in the future months, once it is established how many military pensioners accepted the state's offer and agreed to out-of-court settlement, which would ultimately show whether this pressing issue has been resolved.

After the National Assembly enacted the Law on Provisional Arrangements for the Disbursement of Pensions⁴³², the Pension and Disability Insurance Fund began paying reduced pension to those beneficiaries whose pensions exceeded RSD 25,000.00, starting from the pensions paid in respect of November 2014. Many pensioners complained to the Protector of Citizens against the unconstitutional and unlawful cuts in their pensions, to which they were lawfully entitled, without a relevant administrative instrument. The Protector of Citizens issued an opinion to the Pension and Disability Insurance Fund, which contained a recommendation to pass without delay an individual decision for each beneficiary whose pension was to be disbursed according to a provisionally changed arrangement, which decision should specify the exact amount of such provisionally reduced pension, the manner in which such amount was calculated and the available recourse for the beneficiary if he/she considered the decision to be unlawful. The Pension and Disability Insurance Fund did not comply with the said opinion with explanations, claiming that the subject matter governed by the said Law was not an individual administrative matter and the provisions of that Law applied directly, because its purpose was not to determine the amounts of pensions. Also, the Ministry of Labour, Employment, Veteran and Social Affairs noted that compliance with that opinion would be contrary to the principle of economy and efficiency of procedures, as the Pension and Disability Insurance Fund would have to pass 600,000 decisions and conducting 600,000 administrative procedures pursuant to those decisions would not be cost-effective.

During the course of 2015, complaints about issues relating to farmers' pension and disability insurance became increasingly frequent. The complainants claimed they found out they had been registered for compulsory insurance based on their agricultural activity only after they had filed applications to exercise their entitlement to pension. In addition, the amounts the Fund claimed from them as unpaid contributions for pension and disability insurance on that basis were not negligible, since they also include interest. Some of the complainants stated they had been aware they were insured as farmers, but, even though they had duly applied to

⁴³²Official Gazette of RS, No. 116/14.

be deregistered for farmers' pension and disability insurance, the Pension and Disability Insurance Fund continued treating them as insured farmers in its records. However, the Pension and Disability Insurance Fund replied it believed the beneficiaries had been notified of this by the authority in charge of registering farmers for farmers' pension and disability insurance (municipality/local community) and it was not the Fund's duty to do so. The Fund claimed every farmer registered for farmers' pension and disability insurance had been notified of that fact and a relevant administrative instrument had been passed in each individual case. The Pension and Disability Insurance Fund is of the opinion that the existing legislative provisions should be amended, including in particular by adopting a uniform definition of the term "farmers' pension and disability insurance beneficiary."

The Pension and Disability Insurance Fund does not consistently apply its own internal instruments in its work. It was observed that the Fund's Directorate does not act in accordance with the Instructions on Acting of the Second-Instance Body of the Pension and Disability Insurance Fund in Individual Cases when responding to a Claim filed with the Administrative Court. Such actions result in exceeded statutory time limits for deciding on complainant's appeals in situations when the Administrative Court is hearing a case pursuant to a claim of the same complainant in a different legal matter. In connection with this omission and based on a number of complaints filed by citizens, the Protector of Citizens issued a recommendation to the Pension and Disability Insurance Fund.⁴³³ In addition, it was also observed that the first-instance and second-instance bodies of the Pension and Disability Insurance Fund did not act in compliance with the Opinion of the Ministry of Labour, Employment, Veteran and Social Affairs concerning the application of the provisions on the statute of limitations set out in the Law on Tax Procedure and Tax Administration. The said Opinion stated that neither the Tax Administration nor the Pension and Disability Insurance Fund could forcibly collect debt for outstanding pension and disability insurance contributions that is older than 10 years during the period when the said Law contained those provisions on the statute of limitations.

The Pension and Disability Insurance Fund did not assume responsibility for the issue of unpaid contributions dating back to the period when it had been in charge of controlling the payment of those contributions. Quite the contrary: the Pension and Disability Insurance Fund shifts the burden of paying pension and disability insurance contributions which employers failed to pay squarely on the shoulders of citizens. Allowing citizens to settle the debt for unpaid contributions in order to be eligible for the entitlement to pension is presented as a favour from the Pension and Disability Insurance Fund to citizens, while in fact the responsibility for and consequences of the negligence rest with the Pension and Disability Insurance Fund, which failed to undertake appropriate control measures. There have been no major improvements in this regard compared with 2014, even though the compulsory social insurance authorities had stated their willingness to overcome this issue.

Better cooperation is needed between the Pension and Disability Insurance Fund and the Tax Administration when exchanging taxpayer information and other official data relating to pension and disability insurance contributions. This would contribute significantly to addressing the issue of unpaid contributions and the unavailability of pension and disability insurance entitlements to citizens.

In October 2012, the Protector of Citizens issued an opinion to the Government concerning the need to address the issue of arrangements for disbursing pensions to the citizens in Kosovo and Metohia. The Government adopted the Action Plan of the Government of the Republic of

⁴³³ Recommendation available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/4526-2016-01-08-10-55-58>.

Serbia Concerning the Payment of Pensions Accomplished in the Territory of AP Kosovo and Metohia, which was later also adopted by the Committee of Ministers of the Council of Europe in early January 2013. Certain difficulties have emerged during the implementation of the Action Plan, which prompted complainants to contact the Protector of Citizens in 2015. These included in particular inability to obtain the evidence (documents) required by the Pension and Disability Insurance fund from applicants in order to pass a decision. Usually the purpose of such evidence was to show whether the applicant was a beneficiary of a pension paid by the United Nations Interim Administration Mission in Kosovo and Metohia (UNMIK), to demonstrate the applicant's status as an insurance beneficiary, as well as evidence of school attendance for children who are beneficiaries of family pensions.

II OTHER ACTIVITIES

Improving the position of citizens in the field of compulsory social insurance

To improve citizens' rights in the field of social security by creating conditions to improve the work of the Pension and Disability Insurance Fund, the Republic Health Insurance Fund and the Tax Administration with regard to efficient enforcement of payment of statutory health, pension and disability insurance for beneficiaries, the Protector of Citizens held a number of meetings with representatives of those authorities, and other authorities responsible for improving the situation in this field. The meetings identified the key issues in the exercise of citizens' arising from compulsory social insurance and gave recommendations on ways to address them. Improved cooperation between all authorities and organisations included in the compulsory social insurance system and more efficient exchange of information were identified as key preconditions for a more efficient and complete control of compliance with the statutory duty to pay compulsory social insurance contributions, which in turn would enable citizens to exercise the full extent of their rights in this field. To attain these preconditions, it will be necessary to define a number of activities which should be undertaken by the competent authorities in the coming months and years, as well as the responsible implementing agencies for those activities. For this reason, the Protector of Citizens intends to continue with similar meetings throughout 2016.

III TYPICAL CASES

Pension and Disability Insurance Fund fails to apply provisions on statutes of limitation included in the Law on Tax Procedure and Tax Administration

The Pension and Disability Insurance Fund had ordered a complainant to pay pension insurance contributions for the years 1990 and 1991 and for the period 1995–2006 to be eligible for old-age pension. In an investigation it was found that the Pension and Disability Insurance Fund had not applied the provision governing statutes of limitation in the Law on Tax Procedure and Tax Administration⁴³⁴, under which debt for unpaid pension and disability insurance older than 10 years cannot be forcibly collected. In connection with the application of the statute of limitation provisions, the Ministry of Labour, Employment, Veteran and Social Affairs stated in an opinion that neither the Tax Administration nor the Pension and Disability Insurance Fund could forcibly collect debt for outstanding pension and disability insurance contributions that was older than 10 years. As the said opinion dated back to July 2015 and the Pension and Disability Insurance Fund passed the decision on the complainant's appeal in

⁴³⁴ Article 114 of the Law on Tax Procedure and Tax Administration, Official Gazette of RS, No. 80/02, 84/02 - corrigendum, 23/03 - corrigendum, 70/03, 55/04, 61/05, 85/05 - new law, 62/06 - new law, 63/06 - corrigendum of the new law, 61/07, 20/09, 72/09 - new law, 53/10, 101/11, 2/12 - corrigendum, 93/12, 47/13, 108/13, 68/14, 105/14 and 91/15 - authentic interpretation.

which it referred to the statute of limitation provisions in September 2015, that authority ought to have been familiar with the opinion of its line Ministry and that opinion should have been applied when deciding on the complainant's appeal against the decision of the Pension and Disability Insurance Fund which ordered the complainant to pay the contributions for the said periods.

For this reason, the Protector of Citizens issued a recommendation⁴³⁵ to the Pension and Disability Insurance Fund to repeat the procedure in which it decided on the complainant's application, taking into account the statute of limitation provisions contained in the Law on Tax Procedure and Tax Administration and to ensure that employees at organisational units of the Pension and Disability Insurance Fund, when acting *ex officio*, take due consideration to properly apply the statute of limitation provisions contained in the Law on Tax Procedure and Tax Administration which applied at the time when decisions on complainants' entitlements were made. The Fund did not comply with this recommendation, claiming that the case file had been forwarded to the Administrative Court due to a claim filed by the complainant.

Pension and Disability Insurance Fund fails to decide on an appeal within the statutory time limit

The Directorate of the Pension and Disability Insurance Fund failed to decide within the statutory time limit on a complainant's appeal against a first-instance decision of the Pension and Disability Insurance Fund. In addition, after receiving a communication from the Administrative Court which demanded of the Fund's Directorate to provide the complainant's case files for the purpose of deciding on a claim filed in a different legal matter, rather than first deciding on the complainant's appeal, the Directorate of the Pension and Disability Insurance Fund forwarded the entire case file to the Administrative Court. In doing so, it also acted contrary to the Instructions on Acting of the Second-Instance Body of the Pension and Disability Insurance Fund in Individual Cases when responding to a Claim filed with the Administrative Court.

The Directorate of the Pension and Disability Insurance Fund was issued with a recommendation⁴³⁶ to act in accordance with the Law on General Administrative Procedure and its internal instruments. The Fund complied with the recommendation.

IV PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Pension and Disability Insurance Fund** should assume responsibility for unpaid pension and disability insurance contributions dating back to the period when it was responsible for controlling the payment of those contributions in cases where beneficiaries' employers filed for bankruptcy.
2. **The Pension and Disability Insurance Fund and the Ministry of Labour, Employment, Veteran and Social Affairs** should jointly prepare a proposal for amendments to the Law on Pension and Disability Insurance to address the issue of inability or limited ability of citizens to exercise their rights in the field of pension and disability insurance due to inefficient organisation and functioning of the system put in place to control employers' compliance with their duty to pay social security contributions.

⁴³⁵ Recommendation available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/4482-2015-12-11-14-03-00>.

⁴³⁶ Recommendation available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/4514-2015-12-31-08-44-19>.

3. **The Pension and Disability Insurance Fund** should establish effective and efficient cooperation with other compulsory social insurance organisations and **the Tax Administration** with the aim of exchanging information on paid contributions.
4. The Ministry of Labour, Employment, Veteran and Social Affairs, should, in cooperation with the Pension and Disability Insurance Fund prepare amendments to the applicable regulatory framework to establish an efficient mechanism to address the issue which arose because citizens were ordered to pay contributions for farmers' pension and disability insurance.
5. **The Pension and Disability Insurance Fund** should transparently, clearly and unambiguously explain to military pensioners the effects of the Government's Resolution on Adjustment of Pensions paid to Military Pension Beneficiaries, i.e. it should clarify whether it is fully compliant with the ruling of the Administrative Court that military pensions need to be adjusted and converted.
6. **The Pension and Disability Insurance Fund** should continue to undertake activities with the aim to improve its operations, to regularly update its registers, to ensure efficient acting on citizens' requests for the exercise of pension and disability insurance rights, to ensure it acts timely pursuant to filed complaints and should improve cooperation between branch offices and more efficient cooperation with foreign funds.
7. **The Pension and Disability Insurance Fund** should ensure all its organisational units act consistently in accordance with the law and internal instruments of the Pension and Disability Insurance Fund (instructions, guides...).
8. **The Ministry of Labour, Employment, Veteran and Social Affairs** should supervise the legality of operations and enactments of the Pension and Disability Insurance Fund, in connection with the recommendations the Protector of Citizens issued to the Fund.

3.11. LABOUR SECTOR

I BACKGROUND

1. Key Government's achievements

- 1.1. The Law on Requirements for Secondment of Employees to Temporary Work Abroad and Their Protection⁴³⁷ has been enacted.
- 1.2. The Law amending the Law on Employment and Unemployment Insurance⁴³⁸ has been enacted.
- 1.3. The Republic of Serbia accessed the EU Employment and Social Innovation (EaSI) Programme.⁴³⁹
- 1.4. The Special Collective Agreement for Social Security in the Republic of Serbia has been signed.⁴⁴⁰
- 1.5. The National Employment Action Plan for 2016⁴⁴¹ has been passed.
- 1.6. The Constitutional Court of Serbia upheld the motion filed by the Protector of Citizens and the Commissioner for Protection of Equality and passed a decision by which it suspended all individual instruments passed pursuant to the contested provisions of Article 20 of the Law on Determining the Maximum Number of Employees in the Public Sector.⁴⁴²
- 1.7. The Government partially addressed the issue of irregular, unfair and wasteful collection of the "solidarity tax"⁴⁴³ and established a mechanism to indemnify the citizens.⁴⁴⁴
- 1.8. The Tax Administration of the Ministry of Finance ordered all its organisational units to timely and efficiently control the calculation and payment of contributions in the future whenever they learn of potential negligence on behalf of employers, since this would be both in the interest of citizens and in the public interest.⁴⁴⁵
- 1.9. The Administrative Inspectorate of the Ministry of Public Administration and Local Self-Government passed the Directive on Handling by the Administrative Inspectorate pursuant to Complaints against the Work of Civil Servants at the Administrative Inspectorate.⁴⁴⁶
- 1.10. The National Employment Service passed the Instructions on the Course of Action for Disbursement of Benefits and Registration and Deregistration of Benefit Recipients and undertook measures to pay and outstanding and overdue amounts of temporary benefits.

⁴³⁷ Official Gazette of RS, No. 91/15.

⁴³⁸ Official Gazette of RS, No. 38/15.

⁴³⁹ Available at: <http://www.minrzs.gov.rs/lat/component/k2/item/4034-program-eu-za-zaposljavanje-i-socijalnu-solidarnost-easi?highlight=WyJw>.

⁴⁴⁰ Official Gazette of RS, No. 11/15.

⁴⁴¹ Available at: <http://www.minrzs.gov.rs/lat/dokumenti/zaposljavanje/plan-zaposljavanja>.

⁴⁴² For more details, see the section on gender equality of this Report.

⁴⁴³ "Solidarity tax" was calculated on the basis of the Law on Net Income Reduction for Public Sector Employees, Official Gazette of RS, No. 108/13.

⁴⁴⁴ For more details, see the section on the finance sector of this Report.

⁴⁴⁵ Available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/3691-2015-02-09-10-37-19>.

⁴⁴⁶ Available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/4486-2015-12-14-11-32-09>.

2. Key results achieved by the Protector of Citizens

- 2.1. In compliance with the recommendation of the Protector of Citizens, the Tax Administration of the Ministry of Finance controlled the payment of social security contributions by employers and instructed all its organisational units to timely and efficiently control the calculation and payment of contributions in the future whenever they learn of potential negligence on behalf of employers.⁴⁴⁷
- 2.2. In compliance with the recommendation of the Protector of Citizens, the Administrative Inspectorate of the Ministry of Public Administration and Local Self-Government passed the Directive on Handling by the Administrative Inspectorate pursuant to Complaints against the Work of Civil Servants at the Administrative Inspectorate.⁴⁴⁸
- 2.3. In compliance with the recommendation of the Protector of Citizens, the National Employment Service undertook measures to ensure its databases, records and lists of recipients of temporary benefits are updated by passing the Instructions on the Course of Action for Disbursement of Benefits and Registration and Deregistration of Benefit Recipients and measures to disburse any outstanding and overdue amounts of temporary benefits to recipients.⁴⁴⁹
- 2.4. In compliance with the recommendation of the Protector of Citizens, the National Employment Service compensated the applicants for self-employment grants who had not received such grants due to its omission, even though the payment of those grants had been approved.⁴⁵⁰
- 2.5. The Ministry of Labour, Employment, Veteran and Social Affairs remedied omissions in its work immediately upon learning that the Protector of Citizens had initiated an investigation, thus granting employees in social security institutions who perform the same duties the entitlement to identical increased pay for years of service with social security institutions.
- 2.6. In accordance with the opinion of the Protector of Citizens which called for changes in the arrangements for payment of the portion of the salary compensation paid in case of temporary incapacity during illness of pregnancy complications which is covered from the national budget, amendments have been made to the Law on Health Insurance.⁴⁵¹
- 2.7. In compliance with the recommendation of the Protector of Citizens⁴⁵², the Republic Health Insurance Fund posts on its official website data on payment of salary compensation to pregnant women and all other insured persons during temporary incapacity because of diseases, starting from the 31st day of temporary incapacity.⁴⁵³

⁴⁴⁷ Available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/3691-2015-02-09-10-37-19>.

⁴⁴⁸ Available at: <http://www.ombudsman.rs/index.php/lang-sr/2012-02-07-14-03-33/4486-2015-12-14-11-32-09>.

⁴⁴⁹ Available at: <http://www.ombudsman.rs/index.php/lang-sr/2012-02-07-14-03-33/4316-2015-09-17-14-07-25>.

⁴⁵⁰ Available at: <http://www.ombudsman.rs/index.php/lang-sr/2012-02-07-14-03-33/3698-2015-02-12-12-35-25>.

⁴⁵¹ Available at:

http://www.ombudsman.rodnaravnopravnost.rs/index.php?option=com_content&view=article&id=170%3A2015-07-29-13-44-40&catid=14%3A2012-12-12-13-45-14&Itemid=27&lang=sr.

For more details, see the section on gender equality of this Report.

⁴⁵² Available at: <http://zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/3796-2015-04-16-08-39-50>. For more details, see the section on gender equality of this Report.

⁴⁵³ Available at: <http://www.rfzo.rs/index.php/osiguranalica/57-bolovanja>. For more details, see the section on gender equality of this Report.

- 2.8. To ensure exercise of compulsory health insurance rights of pregnant women, as a particularly vulnerable category, the Protector of Citizens issued a relevant opinion to the Republic Health Insurance Fund and the Tax Administration.⁴⁵⁴
- 2.9. Acting pursuant to the motion for constitutional review of Article 20 of the Law on Determining the Maximum Number of Employees in the Public Sector filed by the Protector of Citizens and the Equality Commissioner, the Constitutional Court passed a decision by which it suspended all individual instruments passed or actions undertaken pursuant to the said provision that would have the effect of terminating the employment of superannuated female employees in the public sector by operation of the law at a younger age than their male counterparts.
- 2.10. After the Labour Inspectorate and the Tax Administration remedied omissions in their work immediately upon learning that the Protector of Citizens had initiated investigations of their work, many citizens have been able to exercise their labour and employment rights more efficiently.
- 2.11. In 2015, the Protector of Citizens received 708 complaints in this field, in which complainants alleged 812 violations of rights. In the same period, he completed the investigations in a total of 643 cases received in 2015 and in earlier years. Out of the total of 147 investigations conducted, 47 (31.97%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted oversights and issued 34 recommendations, of which 17 (50%) have been accepted, 16 (47.06%) have not been implemented and one is still pending. Based on the number of identified (80) and remedied (64) omissions⁴⁵⁵, the rate of efficiency in this field is 80%.

3. Shortcomings at the national level

- 3.1. The Republic of Serbia does not take necessary measures against employers that fail to comply with their duties to pay salaries and calculate and pay social insurance contributions, so their employees cannot exercise the right to salary and the compulsory pension, disability and health insurance rights guaranteed by the Constitution of the Republic of Serbia.⁴⁵⁶
- 3.2. Cooperation between the Tax Administration, the Republic Pension and Disability Insurance Fund, the Republic Health Insurance Fund and labour inspectorates is not effective and efficient, while the exchange of information between them is insufficient and not frequent enough, which decreases the efficiency of their work and the level of the exercise of taxpayers' rights.
- 3.3. When deciding on employees' rights, labour inspectors do not always act in full compliance with the rules and principles of general administrative procedure, especially when weighing evidence and properly finding full decisive facts.⁴⁵⁷

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Available

at:

http://www.ombudsman.rodnaravnopravnost.rs/index.php?option=com_content&view=article&id=192%3A2015-12-24-10-54-39&catid=14%3A2012-12-12-13-45-14&Itemid=27&lang=sr.

⁴⁵⁵ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

⁴⁵⁶ For more details, see the sections on the finance and pension and disability sectors of this Report.

⁴⁵⁷ Available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/4560-2016-01-29-08-15-03>.

- 3.4. There is no uniform method of calculating accumulated years of service for employees in public institutions because of unclear provisions of the Labour Law and a vague legal opinion of the Ministry of Labour, Employment, Veteran and Social Affairs.
- 3.5. The National Employment Service has not passed documents that would regulate in detail the procedure of public calls for job applicants.⁴⁵⁸
- 3.6. There has been no constant social dialogue with employees' and employers' representatives in order to ensure conditions for decent work.
- 3.7. The state has not undertaken measures to address the issue of beneficiaries who are entitled to unemployment benefits for a period of 24 months and are unable to exercise the entitlement to pension due to amendments to the Law on Pension and Disability Insurance.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **the National Assembly and the Government** should pass regulations which would ensure efficient and available mechanisms for the protection of employees' rights; timely and efficient supervision of implementation of the regulations providing for the fields of labour and employment relations; prompt, effective and consistent investigation of employers' responsibility and sanctioning in cases of violation of the law to the detriment of employees; and efficient mechanism of responsibility of control authorities for failure to act or untimely acting in cases of violation of employees' rights.
- That **the Ministry of Labour, Employment, Veteran and Social Affairs** should prepare amendments to the Law on Employment and Unemployment Insurance that would make the existing arrangements more flexible and give unemployed persons more time to comply with their duty to report to the National Employment Service.
- That **the Ministry of Labour, Employment, Veteran and Social Affairs** should ensure efficiency of the existing oversight authorities.
- that **the Ministry of Labour, Employment, Veteran and Social Affairs** should engage in constant social dialogue with representatives of employees and employers with the aim of providing conditions for decent work.
- That **the Tax Administration, the Republic Pension and Disability Insurance Fund, the Republic Health Insurance Fund and the Labour Inspectorate** should establish effective, timely and efficient cooperation and diligently exchange information on the employees' labour rights.
- That **the Ministry of Labour, Employment, Veteran and Social Affairs** should increase the number of inspectors, expand the powers of the labour inspectorate, improve technical capacities and propose legislative amendments to improve the efficiency of labour inspectors.

⁴⁵⁸ Recommendation of the Protector of Citizens, available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/4485-2015-12-14-10-29-01>.

- That the labour inspectorate of the Ministry of Labour, Employment, Veteran and Social Affairs should increase the share of procedures initiated *ex officio* in cases where the available evidence is sufficient to warrant inspections.

4.2. The Ministry of Trade, Tourism and Telecommunications refused to comply with recommendations of the Protector of Citizens to act in accordance with the comments made by the Administrative Court in eight of its judgments when deciding on the labour law status of citizens.

5. Explanation

The Law on Requirements for Secondment of Employees to Temporary Work Abroad and Their Protection governs the right of employees who are seconded to work abroad, sets out the conditions, procedure and duties of employers in connection with the secondment of employees to temporary work abroad, provides for cooperation between public authorities and organisations in connection with the protection of the rights of employees during temporary work abroad and governs the oversight of compliance with that Law. As the previously applicable Law in this area dated back to 1998, it was important to enact a new Law that would acknowledge the changed social and economic circumstances and govern the procedure for notification of compliance with the statutory requirements for secondment of workers, oversight and cooperation between the competent institutions and special forms of temporary secondment of workers abroad which were not recognised by the former Law.

The Law amending the Law on Employment and Unemployment Insurance clarifies what constitutes the base for the calculation of unemployment benefits. The previously applicable provision did not clarify whether this included the amount of salary actually paid or only the amount of calculated salary, which left room for different interpretations of what constituted the base for the calculation of unemployment benefits. Furthermore, the amendments provide protection for those insurance beneficiaries who did not receive salary and whose employers did not calculate and register them for unemployment insurance contributions. Namely, under the new provisions, in cases where salary was not paid or was paid in an amount lower than that registered for the purpose of compulsory unemployment insurance contributions, the relevant base is that on the basis of which the compulsory unemployment insurance contributions were calculated and which was stated on an individual tax return filed with the competent authority, in accordance with the law. This arrangement will prevent abuse in practice.

In addition, this Law provides for greater accountability of agencies to the citizens on whose behalf they broker job placements abroad. The Law enables more flexible development and decentralisation of active employment policy measures and improves the quality of services, both for employers and for unemployed persons. This has been achieved by providing that the Employment Action Plan – as a strategic document in the field of employment passed annually by the Government – can propose new active employment policy measures in accordance with the demand in the local labour market and based on an analysis of outcomes of earlier measures.

The most recent amendments to the Law on Employment and Unemployment Insurance governs the course of action taken by the National Employment Service in cases where former employees did not receive salary and were not registered for unemployment insurance contributions. Nevertheless, the National Employment Service did not remedy the omission

and rectify the consequences of using different methods when calculating benefits in such cases, although this had been recommended by the Protector of Citizens.⁴⁵⁹

Under the Law on Employment and Unemployment Insurance, the director of the National Employment Service appoints branch managers pursuant to a public call for job applications. The Decision on amendments to the Statutes of the National Employment Service, which has been in effect since 7 November 2015, introduced new provisions which stipulate that, in the process of appointing branch managers, the director may form a selection committee, which would evaluate the proposed branch development programmes and assess the qualifications and other criteria specified in the relevant public call for job applications. Branch managers are appointed for a four-year term. However, the National Employment Service has not passed regulations that would regulate in detail the criteria, method and procedure of selection of branch managers, which was one of the recommendations of the Protector of Citizens.⁴⁶⁰

The Law amending the Law on Employment and Unemployment Insurance does not provide for an extension of unemployment benefits because the old-age retirement threshold has been pushed back. The beneficiaries who are entitled to unemployment benefits for 24 months and who, due to the amendments to the Law on Pension and Disability Insurance, are not able to exercise their entitlement to pension according to the previously applicable timeframe, are left both without benefits and without a pension.

The 2015 National Employment Action Plan was passed pursuant to the Law on Employment and Unemployment Insurance, as the main instrument of active employment policy. It defines the objectives and priorities and sets out the programmes and measures of active employment policy which will be implemented in 2016. The main objectives include support for the achievement of an effective, stable and sustainable employment growth trend by the end of 2020, with harmonisation of the employment policy and the labour market institutions with *acquis communautaire*, improving the conditions in the labour market and its institutions, promotion of employment and social inclusion of persons who are not readily employable, support for regional and local employment policies and improved quality of the workforce.

To attain a high level of sound and sustainable employment and improve working conditions, the Republic of Serbia acceded to the EU Employment and Social Innovation Programme (EaSI). The Programme will support and implement projects which promote employment, working conditions, social security and social inclusion.

In connection with the method of calculating accumulated years of service for employees in social security institutions, the Protector of Citizens initiated an investigation into the legality and regularity of operations of the Ministry of Public Administration and Local Self-Government and the Ministry of Labour, Employment, Veteran and Social Affairs. During the investigation, it was explained to the Ministries that all social security institutions formed to provide social security in accordance with the law could be considered the same employer and the Law amending the Law on Salaries in Public Authorities and the Special Collective Agreement for Social Security in the Republic of Serbia should be applied accordingly with this in mind. In this way, employees at social security institutions which perform identical activities have been granted equal entitlements to increased pay for years of service.

Due to unclear provisions of the law and a vague legal opinion of the competent authority, there is no uniform method of calculating accumulated years of service for employees in public

⁴⁵⁹ Recommendation of the Protector of Citizens, available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/4383-2015-10-26-10-13-58>

⁴⁶⁰ Recommendation of the Protector of Citizens, available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/4383-2015-10-26-10-13-58>

institutions. Relevant Special Collective Agreements address this issue separately for each area (education, health care, culture etc.).

Acting in compliance with recommendations of the Protector of Citizens, the Tax Administration remedied an omission that had harmed an applicant by controlling the payment of pension and disability insurance contributions by the complainant's former employer. Acknowledging the recommendations and the opinion of the Protector of Citizens that failure to pay or irregular payment of social insurance contributions violates not only individual interests (of a citizen who is denied or has limited access to other rights as result), but also public interest, the Tax Administration ordered all its organisational units to timely and efficiently control the calculation and payment of contributions in the future whenever they receive reports of potential negligence on behalf of employers, since this is both in the interest of citizens and in the public interest.

In the reporting period, the Protector of Citizens initiated thorough controls of lawfulness and regularity of operations of several administrative authorities, in connection with the exercise of the employees' labour rights - regular payment of social insurance contributions by employers. Taking into account that there is a significant number of employees whose social insurance contributions were not paid due to an omission of their employer and who are therefore unable to exercise their rights guaranteed by the Constitution and relevant laws (the right to pension, the right to health insurance and health care and the right to unemployment benefits), the aim of these control procedures is to find solutions that would ensure employees are not put in such situations in the future and to devise ways to enable employees to exercise their rights in cases where they have not been able to exercise those rights due to negligence of their employers and inefficient responses from administrative authorities.⁴⁶¹ Further activities aimed at addressing this systemic issue have been planned for 2016.

The Labour Inspectorate does not sufficiently act *ex officio*, i.e. it does not initiate procedures in cases where the available evidence is sufficient to warrant inspections. However, after the Protector of Citizens initiates control procedures, the Labour Inspectorate is prompt to impose statutory measures on employers and rectify any identified omissions, which leads to termination of the investigations by the Protector of Citizens.

It is not common for labour inspectors to demand of medical institutions to supplement their expert findings and opinions in cases where those are vague, contradictory, incomprehensible or otherwise deficient in ways which render it impossible to ascertain decisive facts. Quite the contrary: inspectors tend to base their decisions on those opinions regardless of any deficiencies those may have, which is not in line with the principles of general administrative procedure.

Cooperation between the Tax Administration, the Republic Pension and Disability Insurance Fund, the Republic Health Insurance Fund and labour inspectorates is still not sufficiently developed, which hampers the exercise of workers' rights. By issuing a Recommendation to the Republic Health Insurance Fund to establish the level of cooperation with other public authorities required under the law, including in particular cooperation with the Labour Inspectorate as the authority in charge of inspection in the field of labour and employment relations, which cooperation should focus primarily on periodic provision of information on employers who do not submit on time their calculations of salary compensation during temporary incapacity or pregnancy complications, the Protector of Citizens drew attention to this issue and contributed to improved cooperation between those authorities.⁴⁶²

⁴⁶¹ For more details, see the sections on the finance and pension and disability sectors in this Report.

⁴⁶² For more details, see the section on gender equality in this Report.

Citizens often complain to the Protector of Citizens about workplace harassment, as well as about arbitrary and unlawful termination of employment. Also, employees evidently do not make sufficient use of the existing avenues of recourse (raising grievances with the Equality Commissioner, the Republic Agency for Peaceful Resolution of Labour Disputes or labour inspectorates or applying for court-mandated protection). Because of their difficult financial situation and fear of losing their job, employees usually raise grievances only after they have lost the job, as bad as it was for them, at which point they can seek recourse only in court proceedings, which tend to be time-consuming and imply financial outlays.

II OTHER ACTIVITIES

Representatives of the Protector of Citizens meet with bodies and employees of the National Employment Service

Representatives of the Protector of Citizens had a meeting with management of the National Employment Service. The two parties addressed the issues faced by citizens when seeking employment and the measures and activities undertaken by the National Employment Service to prepare as many citizens as possible for appropriate work. The National Employment Service presented its programmes, trainings and active employment policy measures. The parties also focused on particularly vulnerable population categories, such as Roma and persons with disabilities, as well as measures and programmes undertaken by the government to provide these categories with opportunities to find gainful employment and become active members of the society.

Representatives of the Protector of Citizens meet with trade unions

Representatives of the Protector of Citizens had meetings with representatives of trade unions, with whom they discussed the status of workers and ways of achieving and protecting their rights.

III TYPICAL CASES

After investigation, public enterprise complies with court decision and reinstates employee

Acting pursuant to a complaint against the work of a public enterprise due to its failure to comply with a court decision which reinstated the complainant to his job at that enterprise, the Protector of Citizens initiated an investigation of legality and regularity of work of that enterprise.

After this institution initiated the investigation, the public enterprise in question passed a decision to reinstate the complainant and register him for compulsory social insurance. The investigation by the Protector of Citizens was terminated.

National Employment Service passes decision on payment of past-due temporary benefits to persons who have since forfeited the entitlement to those benefits and regulates issues concerning the payment of those benefits

A number of citizens claimed in their complaints that the National Employment Service (NES) had not paid them past-due temporary benefits in cases where they had since forfeited the entitlement to those benefits (by becoming entitled to a pension) due to a six-month backlog in the payment of those benefits. Upon conducting an investigation of legality and regularity of work of the NES, the Protector of Citizens issued a recommendation⁴⁶³ to this compulsory

⁴⁶³ Recommendation available at: <http://www.ombudsman.rs/index.php/lang-sr/2012-02-07-14-03-33/4316-2015-09-17-14-07-25>.

social insurance institution in order to remedy the omissions in its work which harmed citizens' rights and to regulate these matters in more detail.

Acting upon the recommendations, NES has re-included in the records the persons who have not been paid all fees, determined the amount of money that have to be paid to be secured for that purpose and launched proceedings for securing these funds.

Furthermore, the NES also undertook measures to ensure its records are regularly updated by passing the Instructions on the Course of Action for Disbursement of Benefits and Registration and Deregistration of Benefit Recipients⁴⁶⁴, thus improving its work and preventing similar omissions from occurring in the future.

IV PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Ministry of Labour, Employment, Veteran and Social Affairs** should prepare a law that would make the existing arrangements more flexible and give unemployed persons more time to comply with their duty to report to the National Employment Service.

2. **The Ministry of Labour, Employment, Veteran and Social Affairs** should engage in constant social dialogue with representatives of employees and employers with the aim of providing conditions for decent work.

3. **The Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Education, Science and Technological Development, the Ministry of Youth and Sports and the National Employment Service** should pass holistic programmes for the employment, education and professional advancement of the unemployed.

4. **The Tax Administration, the Republic Pension and Disability Insurance Fund, the Republic Health Insurance Fund and the Labour Inspectorate** should establish effective, timely and efficient cooperation and diligently exchange information on the employees' labour rights.

5. **The National Employment Service** should pass documents which would govern the procedure of public calls for the selection of branch managers.

6. **The Labour Inspectorate of the Ministry of Labour, Employment, Veteran and Social Affairs** should pass decisions on rights and obligations on the basis of all relevant facts, after a diligent and careful weighing of evidence and with consistent application of the Law on General Administrative Proceedings.

7. **The Ministry of Labour, Employment, Veteran and Social Affairs** should, in cooperation with the **National Employment Service and the Republic Pension and Disability Insurance** find an arrangement for those citizens who have been left without any income because they have forfeited the entitlement to benefits, but are not eligible for the entitlement to a pension due to amendments to the Law on Pension and Disability Insurance.

⁴⁶⁴ No.0030-104-18/15 of 30 September 2015.

3.12. INTERNAL AFFAIRS SECTOR

I BACKGROUND

1. Key Government's achievements

1.1. Numerous regulatory activities have been undertaken – the Law on Police⁴⁶⁵, the Law on Public Order⁴⁶⁶, the Law on Weapons and Munition⁴⁶⁷ and the Law on Public Assembly⁴⁶⁸ have been enacted.

2. Key results achieved by the Protector of Citizens

2.1. By issuing an opinion⁴⁶⁹ in the process of drafting of the Law on Police, which was partially accepted by the Ministry, the Protector of Citizens contributed to the establishment of a legal basis for intensified cooperation between the Internal Control Department and the Protector of Citizens in order to prevent torture and improve the fight against impunity for torture, as well as better protection of the rights of police officers and other employees at the Ministry in disciplinary proceedings.

2.2. By issuing an opinion in the process of drafting of the Law on Public Order⁴⁷⁰, which was partially accepted by the Ministry, the Protector of Citizens helped reduce the fines for certain infringement and include a specific provision allowing charities and other similar organisations to resume receiving donations after the term of their penalty has expired.

2.3. The Protector of Citizens issued an opinion to the Ministry of Internal Affairs in connection with the manner in which the announced lay-offs at the Ministry of Internal Affairs⁴⁷¹ were being made, which put an end to the ongoing thwarting of employment termination regulations for more than 1,000 police officers.

2.4. The Protector of Citizens submitted an initiative to the Government to harmonise the provisions of the Criminal Code⁴⁷² and the Law on Road Traffic Safety⁴⁷³ which govern the imposition and enforcement of driving bans as a traffic safety measure.

2.5. Immediately upon learning that the Protector of Citizens had initiated an investigation of the Ministry of Internal Affairs, the Ministry enforced its decision to ban the use of a storage tank for flammable liquids at a fuelling station which did not comply with the applicable technical requirements.

2.6. In 2015, the Protector of Citizens received 188 complaints in the field of police affairs, in which complainants alleged 274 violations of rights. In the same period, he completed the investigations in a total of 185 cases received in 2015 and in earlier years. Out of the total of 18 investigations conducted, four (22.22%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of

⁴⁶⁵ Official Gazette of RS, No. 6/16.

⁴⁶⁶ Official Gazette of RS, No. 6/16.

⁴⁶⁷ Official Gazette of RS, No. 20/15.

⁴⁶⁸ Official Gazette of RS, No. 6/16.

⁴⁶⁹ The opinion on the Draft Law on Police available at: <http://www.ombudsman.rs/index.php/lang-sr/2011-12-11-11-34-45/4287-2015-08-19-08-56-03>; the Opinion on the Bill on Police available at: <http://www.ombudsman.rs/index.php/lang-sr/2011-12-11-11-34-45/4545-2016-01-18-10-55-26>.

⁴⁷⁰ Available at: www.ombudsman.rs/index.php/lang-sr/2011-12-11-11-34-45/4551-2016-01-22-10-38-52.

⁴⁷¹ Available at: www.ombudsman.rs/index.php/lang-sr/2011-12-11-11-34-45/4533-2016-01-12-09-38-43.

⁴⁷² Official Gazette of RS, No. 85/05, 88/05 - corrigendum, 107/05 - corrigendum, 72/09, 111/09, 121/12, 104/13 and 108/14.

⁴⁷³ Official Gazette of RS, No. 41/09, 53/10, 101/11, 32/13 – decision of the Constitutional Court, 55/14, 96/15 – new law and 9/16 – decision of the Constitutional Court.

Citizens conducted oversights and issued 25 recommendations, of which five (20%) have been accepted and 20 (80%) have not been implemented. Based on the number of identified (29) and remedied (9) omissions⁴⁷⁴, the rate of efficiency in this field is 31.03%. In 2015, the Protector of Citizens received 113 complaints in the field of administrative tasks of the Ministry of Internal Affairs, in which complainants alleged 154 violations of rights. In the same period, he completed the investigations in a total of 102 cases received in 2015 and in earlier years. Out of the total of 22 investigations conducted, 11 (50%) investigations were closed by issuing recommendations in an expedited procedure. The Protector of Citizens issued no recommendations after oversight procedures in this field in 2015. Based on the number of identified (11) and remedied (11) omissions⁴⁷⁵, the rate of efficiency in this field is 100%.

3. Shortcomings at the national level

- 3.1. The text of the Law on Police does not incorporate a number of objections made by of the Protector of Citizens, including those relating to termination of employment in violation of the right to the presumption of innocence, as a result of filing of criminal charges for criminal offences prosecuted *ex officio*; liability for breach of duty in cases of public disclosure of information from investigations and information which violates citizens' rights; certain inappropriate powers vested in the executive government; and the need for greater operational independence of the police and the Internal Control Department.
- 3.2. Notwithstanding the provisions of the Constitution which explicitly state that that personal data processing must be governed by statute, the Ministry of Internal Affairs passed an implementing regulation⁴⁷⁶ which sets out the content of the identification questionnaire used in in the security clearance procedure, while the arrangements provided for by the Law on Police and still allow arbitrariness in security clearance checks.
- 3.3. Contrary to the objections made by the Protector of Citizens, the Law on Public Order provides too severe penalties for most public order offences.

In 2015 there was a legal vacuum with regard to the enjoyment of citizens' freedom of assembly, as the enactment of the new Law was delayed after the Constitutional Court o declared the previously applicable Law on Assembly of Citizens⁴⁷⁷ unconstitutional; also, the Law on Public Assembly⁴⁷⁸ enacted in October 2015 still contains certain deficiencies which are not in accordance with the Constitution.

- 3.4. The Criminal Code and the Road Traffic Safety contain contradictory provisions which determine the moment from which a driving ban is in effect.
- 3.5. In its communications set to complainants and petitioners, the Internal Control Department often failed to state the facts found which were decisive for rejecting the complaints or petitions as unfounded.

⁴⁷⁴ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

⁴⁷⁵ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

⁴⁷⁶ The Rulebook on the Security Check Procedure and the Content of the Questionnaire, Official Gazette of RS, No. 97/15.

⁴⁷⁷ Official Gazette of RS, No. 51/92, 53/93, 67/93, 17/99 and 33/99, Official Gazette of FRY, No. 21/01 and Official Gazette of RS, No. 29/01 and 101/05.

⁴⁷⁸ Official Gazette of RS, No. 6/16.

3.6. In this period, the Ministry of Internal Affairs again did not reply timely to citizens' job applications for posts within that authority, especially where age of the applicant is a condition for employment.

3.7. The Ministry of Internal Affairs has still not enabled the reinstatement of a significant number of police officers whose employment had been terminated because of criminal charges brought against them, but who were exonerated in subsequent proceedings.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **the Ministry of Internal Affairs** should develop and strengthen its control mechanisms, actions of its complaints commissions pursuant to citizens' complaints and actions of the Internal Control Department of the police;
- That **the Ministry of Internal Affairs** should improve its work by presenting decisive facts in the statements of reasons for its decisions and other documents;
- That **the Ministry of Internal Affairs** should improve its work in order to ensure that it responds timely and without delay to citizens' job applications for posts within that authority, especially where age of the applicant is a condition for employment.

4.2. In the statements of reasons for its decisions passed in administrative proceedings at its discretion, the Ministry of Internal Affairs does not act in compliance with the recommendations of the Protector of Citizens and does not state the reasons and facts which substantiate their decisions.

5. Explanation

Four laws relevant for the exercise of citizens' rights were passed in this field in the reporting period. In the process of their drafting, the Protector of Citizens, taking into account issues relevant for the protection of citizens' rights, issued opinions on the Draft Law and the Bill on Police, as well as the opinion on the Bill on Public Assembly and the Bill on Public Order.

An objection made by the Protector of Citizens has been acknowledged and the provisions of the Law on Police which govern the actions of the Internal Control Department now impose a duty on that the Department to report to the Protector of Citizens as well, in addition to the Minister of Internal Affairs and the Public Prosecutor, any cases of overstepping of authority by police officers which violate the rights protected by the Protector of Citizens. This provision lays the foundations for more intensive cooperation between the Internal Control Department and the Protector of Citizens towards preventing torture, improving the work of the Ministry and fighting against impunity for torture, which in turn will increase the protection of citizens' freedoms and rights.

In compliance with the objections made the Protector of Citizens, the Law on Police now stipulates the statute of limitations for disciplinary action in cases of gross breach of duty is calculated from the date when the breach was actually committed, rather than from the date when knowledge of such breach was acquired, i.e. the Law sets out an objectively-based period in which disciplinary action can be taken for a gross breach of duty, rather than a subjectively-based one. This will prevent dismissals of employees after indeterminably long periods and without sufficient reliable evidence.

Although the Protector of Citizens had warned it was necessary to put in place more adequate legislative arrangements pertaining to security clearance checks, the enactment of the Law on

Police was a missed opportunity to reduce the scope for arbitrariness in their application, to the detriment of citizens' rights guaranteed by the Constitution, including in particular the rights to work, education, property and personal data protection. The concept of security threat is not clearly defined or linked to the purpose of security clearance checks. A citizen subjected to a security clearance check has no legal recourse to protect his/her rights regarding the outcome of such security clearance check or access to a mechanism that would remedy the effects of any processing of data that were not obtained from credible sources. The Law also does not specify what is meant by "other information on persons who live in the same household as the person subjected to checks", which would give household members an opportunity to give consent for the processing of the data collected about them, nor does it specify what "other information relevant for employment at the Ministry" should be collected.

The issue of police officers whose employment had been terminated in accordance with the previously applicable regulations due to security threats or criminal charges against them, but who were not convicted by final and enforceable judgments of the offences with which they were charged, i.e. who were exonerated, has still not been addressed, although the Protector of Citizens had insisted that this issue should be regulated by statute.

Although the Protector of Citizens had pointed out during the drafting process that the misdemeanour penalties for public order offences were too severe and the fines were too high taking into account the social and economic status of the majority of citizens and would thus further aggravate their position, the final version of the Law on Public Order included lower fines for only to misdemeanours: beggary and arguing, shouting and commotion in public in a group of three or more persons.

Although the decision of the Constitutional Court of 9 April 2015⁴⁷⁹ had declared the Law on Assembly of Citizens unconstitutional, by the date of publication of that decision in the Official Gazette, which had been delayed by six months, the Ministry of Internal Affairs had not timely prepared a new draft law that would govern the exercise of citizens' freedom of assembly, which is guaranteed by the Constitution. Due to this omission, after 23 October 2015 the legal order of the Republic of Serbia did not provide for the exercise of citizens' constitutionally guaranteed freedom of assembly; furthermore, it was also impossible to achieve the public interest in restricting the freedom of assembly in cases where this is necessary for the reasons set out in the Constitution, namely to protect public health, morality, rights of other persons or security of the Republic of Serbia.

The Law on Public Assembly has not eliminated certain shortcomings due to which the Law on Assembly of Citizens was repealed because of its unconstitutionality, which concern the grounds for restricting the guaranteed freedom of assembly and the effectiveness of the available remedies to protect the freedom of assembly. In addition, the Protector of Citizens noted in his Opinion⁴⁸⁰ that the excessively high fines constituted a disproportionate response and might deter citizens from assembling in public.

The Protector of Citizens filed an initiated with the National Assembly to harmonise certain provisions of the Criminal Code and the Law on Road Traffic Safety, in the belief that different ways of determining the moment from which a driving ban is in effect undermine legal certainty and may lead to violations of citizens' rights. Namely, the Criminal Code provides that a court may impose a driving ban lasting between three months and five years on a committer of a criminal offence against public road safety, which ban is effective from the date when the court decision becomes final and enforceable. On the other hand, under the Law on Road Traffic Safety, the duration of a driving ban begins on the date when the organisational

⁴⁷⁹ Decision of the Constitutional Court I Uz 2004/2013, Official Gazette of RS, No. 88/15.

⁴⁸⁰ Available at: www.ombudsman.rs/index.php/lang-sr/2011-12-11-11-34-45/4544-2016-01-18-10-29-54.

unit of the Ministry of Internal Affairs with territorial jurisdiction notifies the driver of this fact in writing and registers it in a relevant record.

In connection with a statement of the Minister of Internal Affairs and the announcement that between 1300 and 1400 employees “who solicited bribes and engaged in corruption” would be dismissed by the end of the year, the Protector of Citizens issued an opinion to the Ministry in which he stated that it was found from the complaints received and the media coverage of the events that the relevant job classification rulebook had recently been amended to provide for “risk analysis” posts that had hitherto not existed and for which the complainants alleged there was no real need. It was also found that many employees had been transferred to those “risk analysis” posts in late 2015; however, the job classification rulebook was slated for an amendment in early 2016 which would see those posts dropped as a cost-cutting measure. “If there are indeed 1400 ‘criminalised’ police officers currently on the force, addressing this matter by reorganisation and staff cuts is incompatible with the rule of law (especially if the measures involved are fictitious). Instead, this issue should and must be tackled exclusively by initiating relevant investigations, meting out punishment and dismissing those found guilty”, reads the Opinion of the Protector of Citizens.

During the reporting period, the Protector of Citizens received a number of complaints against the work of the Internal Control Department of the police, claiming that communication sent to them as complainants or petitioners by that Department stated only that it had been found in relevant control procedures that police officers had acted in accordance with the law. Complainants also drew attention of the Protector of Citizens to the fact that such communications from the Department did not provide any information concerning the grounds for such decision, i.e. about the exact procedure applied when controlling police work pursuant to their complaints or petitions, the exact control actions they involved and the facts found as a result of the actions undertaken in the control procedures. During the reporting period, representatives of the Protector of Citizens had meetings with representatives of the Internal Control Department of the police, in which they underscored the importance of providing communications with proper statements of reasons to complainants and petitioners.

II TYPICAL CASES

Police officer accesses citizens’ personal data without authorisation

The Protector of Citizens received a complaint from a complainant who claimed his personal data and the photograph from his biometric identity card had been posted on a social network without his consent; he also stated he suspected this had been done by an employee at the Ministry of Internal Affairs, as the data in question would have been available only to someone who has access to that Ministry’s electronic database.

The Internal Control Department of the police conducted a control at the Ministry to verify the allegations made in the complaint and found that a police officer had accessed the complainant’s personal data from his official account without proper grounds for doing so. After this, the Protector of Citizens terminated his investigation, in view of the fact that the controlled authority had identified the irregularity in its work using its internal control mechanism, that disciplinary action had been taken against the employee in question for suspected gross breach of duty and that the report of the controls conducted by the Internal Control Department had been sent to the Prosecutor’s Office.

Administrative fee charged to a citizen without proper grounds

A complainant alleged she had been charged an administrative fee that is normally charged in case of a change of address, although her place of residence remained the same, but the name of her street had been changed.

During a control of the work of the Ministry of Internal Affairs, the Administrative Directorate notified the Protector of Citizens that the complainant had been wrongfully charged an administrative fee for registration of residence, because the name of the street had been changed by a decision of the City Administration of the City of Belgrade, and she would be refunded the wrongfully charged amount of the administrative fee.

The Ministry also informed the Protector of Citizens that all police officers of the Police Administration for the City of Belgrade had been briefed of the fact that citizens are exempted from this administrative charge in such cases.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Ministry of Internal Affairs** should continue developing and strengthening its control mechanisms, actions of its complaints commissions pursuant to citizens' complaints and actions of the Internal Control Department.
2. **The Ministry of Internal Affairs** should without any further delay take all necessary measures to enact a law which would regulate the content of the Identification Questionnaire used in security clearance checks.
3. **The Ministry of Internal Affairs** should improve its work by presenting decisive facts in the statements of reasons for its decisions.
4. **The Ministry of Internal Affairs** should improve its work in order to ensure that it responds timely and without delay to citizens' job applications for posts within that authority, especially where age of the applicant is a condition for employment.

3.13. SECTORS OF FINANCE AND ECONOMY

FINANCE

I BACKGROUND

1. Key Government's achievements

1.1. In Serbia's EU membership negotiations, Chapter 32: Financial Control has been opened.⁴⁸¹

1.2. Law amending the Law on Tax Procedure and Tax Administration⁴⁸² has been enacted.

1.3. The Government has partially addressed the issue of irregular, unfair and wasteful collection of the "solidarity tax"⁴⁸³ and has put in place a mechanism to reimburse citizens.

1.4. The Tax Administration Reform Programme⁴⁸⁴ has been adopted in order to modernise the Administration's work, improve its human resource capacities and improve tax collection.

1.5. The Law on Payment Services⁴⁸⁵ has taken effect. It improves e-commerce and enables the use of e-money, while also expanding the supervision powers of the National Bank of Serbia.

2. Key results achieved by the Protector of Citizens

2.1. After two years of application of an arrangement that harmed both private and public interests, at the urging of the Protector of Citizens, the provision according to which compulsory social insurance contributions are not statute-barred has been restored in the legislation⁴⁸⁶, which has improved the situation of many citizens and increased public revenue from this source.

2.2. In his investigations, the Protector of Citizens identified systemic omissions in the work of the Tax Administration and recommended that the Tax Administration refund the "solidarity tax" to citizens and write off their principal debt and interest, refrain from initiating and conducting enforced collection procedures for "solidarity tax" and void *ex officio* all decisions passed after the expiry of relevant statutes of limitation, with notice to the Administrative Court in order to expedite the resolution of administrative disputes and relieve the burden of the Court.

2.3. The Protector of Citizens drew the attention of the Tax Administration to systemic omissions concerning the issuing and service of decisions on citizens under which they are charged a drainage fee.

⁴⁸¹"Second Serbia-EU Intergovernmental Accession Conference held", European Integration Office, 15 December 2015, announcement available at: <http://www.seio.gov.rs/%D0%B2%D0%B5%D1%81%D1%82%D0%B8.39.html?newsid=2102>.

⁴⁸²Official Gazette of RS, No. 112/15.

⁴⁸³ The "solidarity tax" was assessed on the basis of the Law on Reduction of Net Wages for Public Sector Employees, Official Gazette, No. 108/13.

⁴⁸⁴"Director officially announces TA Reform", Tax Administration, 15 June 2015, announcement available at: <http://www.poreskauprava.gov.rs/biro-za-informisanje/novosti/2526/direktorka-i-zvanicno-najavila-reformu-pu-.html>.

⁴⁸⁵Official Gazette of RS, No. 139/14.

⁴⁸⁶ Article 13 of the Law amending the Law on Tax Procedure and Tax Administration, Official Gazette of RS, No. 112/15.

- 2.4. With a view to ensuring more efficient exercise of citizens' rights, the Protector of Citizens issued a recommendation to the Tax Administration in which he pointed to the need for this authority to timely and efficiently control calculation and payment of compulsory social insurance contributions.
- 2.5. The Tax Administration and the Ministry of Finance accepted the recommendation and the related initiative of the Protector of Citizens concerning the proper interpretation of "the principle of official secret in the tax procedure", which, among other things, resulted in amendments to the Law on Tax Procedure and Tax Administration.⁴⁸⁷
- 2.6. Once again this year, by issuing a recommendation to the Ministry of Finance, the Protector of Citizens helped remedy the omissions committed by that Ministry with regard to the so-called "administrative silence" by failing to decide on complaints filed by employees of the Customs Administration relating to the exercise and protection of employment rights.
- 2.7. In compliance with the recommendation of the Protector of Citizens, the Ministry of Finance decided on a request of its employees for recognition of jubilee rewards in the form of an administrative document, thus contributing to fuller exercise of their labour rights.
- 2.8. In compliance with the recommendation of the Protector of Citizens, the Customs Administration found placement for 37 customs officers who had been transferred from the UNMIK Customs Office as early as in 2008 and had not been assigned to any posts for the next seven years, and also paid them a symbolic compensation.
- 2.9. The Protector of Citizens has influenced the work of local tax administrations by recommending that they classify the requests they receive by their actual content and decide on their merits in the manner provided for by the law.
- 2.10. The Protector of Citizens found that the National Bank of Serbia had not acted in compliance with its delegated public powers, as it had not ordered the Postal Savings Bank to remedy the identified irregularities in its work and had not imposed a fine on it.
- 2.11. In 2015, the Protector of Citizens received 421 complaints in this sector, in which complainants alleged 465 violations of rights. In the same period, he completed the investigations in a total of 397 cases received in 2015 and in earlier years. Out of the total of 105 investigations conducted, 54 (51.43%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted oversights and issued 19 recommendations, of which five (26.32%) have been accepted, six (31.58%) have not been implemented and eight are still pending. Based on the number of identified (65) and remedied (59) omissions⁴⁸⁸, the rate of efficiency in this field is 90.77%.

3. Shortcomings at the national level

- 3.1. The Tax Administration continues violating citizens' rights by passing decisions in which it assesses the "solidarity tax", even after the Government has published its Resolution which sets out the conditions under which this tax should be refunded.

⁴⁸⁷ Article 7 of the Law on Tax Procedure and Tax Administration, Official Gazette of RS, No. 80/02, 84/02, 23/03, 70/03, 55/04, 61/05, 85/05, 62/06, 63/06, 61/07, 20/09, 72/09, 53/10, 101/11, 2/12, 93/12, 47/13, 108/13, 68/14, 105/14, 91/15 and 112/15.

⁴⁸⁸ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

- 3.2. Tax assessments of drainage fees for 2013 and 2014 were served by regular mail, without advice about the period in which they may be challenged in an administrative dispute, which constituted a violation of citizens' rights.
- 3.3. The Tax Administration has not managed to enforce efficient control of calculation and payment of compulsory social insurance contributions, in particular those that had accrued before the implementation of the unified collection system.
- 3.4. Individual property tax still creates a disproportionately huge tax burden for citizens, with the delineation of property tax areas by local self-governments and inadequate market value appraisals of properties cited as the most common causes for grievances.
- 3.5. The Law amending the Law on Tax Procedure and Tax Administration⁴⁸⁹ changed the regime of absolute statute of limitations on the right of the Tax Administration to assess and collect taxes, to the detriment of citizens.
- 3.6. The Budget Inspection Unit of the Ministry of Finance does not have sufficient inspectors to efficiently verify citizens' reports.
- 3.7. The Republic of Serbia has still not signed a succession agreement with the countries successors to former SFR Yugoslavia that would regulate the exercise of rights of "depositors with frozen foreign exchange savings" in cases of those depositors who deposited their savings with banks headquartered in a Republic different from the one of their citizenship.⁴⁹⁰
- 3.8. Some citizens are still charged tax on registered firearms without proper grounds, in cases where they received the firearms upon retirement as an award for their service.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **the Republic of Serbia** should provide for a procedure in which the claimants could exercise their rights and set aside the required amounts for compliance with the Judgement of the Grand Chamber of the European Court of Human Rights in the case pursuant to the submission of Ališić and Others, in order to allow all creditors to be paid back their "old" foreign-currency savings under the same conditions as Serbian citizens who had such savings in domestic branches of Serbian banks;
- That **the Ministry of Finance** should improve its written communication with citizens, which implies consistent application of regulations on office management, proper categorisation of received submissions by content and timely provision of replies in writing to the citizens who made the submissions;
- That **the Tax Administration** should improve the system for assessing tax on registered firearms and should engage in a more meaningful cooperation with the Ministry of Internal Affairs, so as to avoid creating an unjustified financial burden for citizens;

⁴⁸⁹ Official Gazette of RS, No. 112/15, Article 14.

⁴⁹⁰ Article 21, paragraph 1 of the Law on Regulation of Public Debt of the Federal Republic of Yugoslavia arising from Citizens' Foreign Exchange Savings, Official Gazette of FRY No. 36/02 and Official Gazette of RS, No. 80/04 and 101/05.

- That **the Tax Administration** should improve the human resources of its regional second-instance bodies in Belgrade, Novi Sad, Kragujevac and Niš, in order to ensure that decisions pursuant to appeals are made within the statutory timeframe;
- That **the Customs Administration** should improve its written communication with citizens, which implies consistent application of the regulations governing public administration, proper categorisation of received submissions by content and timely provision of replies in writing to the citizens who made the submissions;
- That **the Regional Unit of the Tax Administration in Kragujevac** should accept the opinion of the Protector of Citizens relating to unjustified denial of a client's right to reimbursement of costs of hiring legal assistance in the tax procedure.

5. Explanation

The Government passed a Resolution⁴⁹¹ by which it acknowledged the existence of omissions in the work of tax authorities regarding the assessment and collection of the so-called "solidarity tax", which the Protector of Citizens had highlighted already in March 2014.⁴⁹² A mechanism has been put in place to reimburse the citizens who were charged the "solidarity tax" after the expiry of the applicable statutory periods.⁴⁹³ Unfortunately, as is all too common for maladministration, the burden of unlawful and irregular work of administrative authorities has been shifted to citizens, because it is left to them to file refund requests, although the Tax Administration has access to the required data. The belated assessment of the "solidarity tax" has also resulted in a number of administrative disputes before the Administrative Court, which also found the actions of the Tax Administration to be unlawful.⁴⁹⁴ Although a segment of the public mistakenly perceives the issue of the "solidarity tax" as an issue of taxation of pregnant women and nursing mothers, the fact of the matter is that wages have been reduced for all categories of public sector employees in respect of whom the Tax Administration passed tax assessment decisions after the due dates. At the end of 2015, the Protector of Citizens issued recommendations to the Tax Administration⁴⁹⁵, in which he underscored the importance of remedying all consequences of the misapplied "solidarity tax", especially in cases where compliance with the recommendations of the Protector of Citizens would give citizens' greater rights and/or ensure fuller elimination of the harmful consequences than the mechanism established under the Government's Resolution.

In the course of 2015, the Tax Administration passed more than a million assessment decisions⁴⁹⁶ by which it charged citizens for the 2013 and 2014 drainage fees.⁴⁹⁷ All these decisions were printed at the Head Office of the Tax Administration and all have an identical statement of reasons, while the advice on available recourse does not specify the period in which the decisions can be challenged in an administrative dispute, as they are not subject to appeal.⁴⁹⁸ The decisions were served via regular, unregistered mail. While this manner of

⁴⁹¹ 05 No.: 121-13591/2015 of 16 December 2015.

⁴⁹² Preventative recommendations of the Protector of Citizens of 7 March 2014.

⁴⁹³ The applicable periods that were exceeded are provided for in Article 4, paragraphs 2 and 5 of the Law on Reduction of Net Wages for Public Sector Employees, Official Gazette of RS, No. 108/13.

⁴⁹⁴ Judgements of the Administrative Court II-3 U. No. 2363/15 of 9 November 2015 and II-9 U. No. 3273/15 of 24 September 2015.

⁴⁹⁵ Recommendations of the Protector of Citizens of 29 December 2015.

⁴⁹⁶ The total number of these decisions was 1,022,889, according to the data presented in the communication sent by the Tax Administration's Head Office to the Protector of Citizens on 28 May 2015.

⁴⁹⁷ Pursuant to Article 192, paragraph 3 of the Law on Water, Official Gazette of RS, No. 30/10 and 93/12.

⁴⁹⁸ Pursuant to Article 192, paragraph 5 of the Law on Water.

service is not contrary to applicable regulations⁴⁹⁹, the Tax Administration nevertheless opted for it over other, more reliable ways of serving writs, justifying its decision by “the large number of passed decisions.” In their complaints filed with the Protector of Citizens, citizens claimed they had received the decisions belatedly or had accidentally found them next to their mailboxes. Taking into account the number of the decisions, the number of their service and the omissions regarding the advice on available recourse, it is obvious that some of the citizens have not been able to exercise the available remedies, while others still do not know whether they have an outstanding tax liability which is now subject to interest charges. The Tax Administration has not informed the Protector of Citizens of the activities, if any, it has undertaken to timely inform citizens of the service of these decisions and its website includes only a single post relating to the drainage fee, in the “News” section⁵⁰⁰, which the Protector of Citizens considers insufficient for the purpose of implementing a tax activity of such scale in accordance with the principle of protection of citizens’ rights and the principles of good governance.

The control of calculation and payment of compulsory social insurance contributions is still fraught with certain difficulties, especially with regard to unpaid contributions from previous years.⁵⁰¹ In 2015, the Protector of Citizens issued a recommendation in which he drew the attention of the Tax Administration to the need to timely and efficiently control the payment of contributions whenever it is notified of potentially illegal and negligent actions of employers. Another recommendation issued to the same authority concerned the interpretation of “the principle of official secret in the tax procedure.” The Tax Administration used to refer to this principle as justification for denying workers access to data relating to collection of contributions from their employers. In addition to recommending that these data be made available to all persons who demonstrate they have justified legal interest, the Protector of Citizens also filed an initiative with the Ministry of Finance, in which he highlighted the importance of harmonising the tax regulations with the regulations governing data confidentiality. The recommendation was accepted, as was the initiative of the Protector of Citizens to amend the relevant provisions of the Law on Tax Procedure and Tax Administration⁵⁰², which will ensure the applicability of the Law on Data Confidentiality⁵⁰³ and the Law on Personal Data Protection⁵⁰⁴ to the tax procedure.

Towards the end of 2015, the Law on Tax Procedure and Tax Administration was amended and supplemented. Some of the earlier legislative arrangements have been restored, such as the absence of statute of limitations on the right of the Tax Administration to control the payment of compulsory social insurance contributions and the changed order in which tax debt is settled (any amounts received are first used against the principal tax debt, then against interest and finally against debt collection costs). Apart from these positive changes, the Protector of Citizens is of the opinion that some of the arrangements make the exercise of citizens’ rights less certain. The until now applicable regime of absolute statute of limitations on tax debt has been modified in that the occurrence of absolute statute of limitations is made

⁴⁹⁹ Article 36 of the Law on Tax Procedure and Tax Administration.

⁵⁰⁰ “Notice: Drainage Fee”, Tax Administration, 24 April 2015, available at: <http://www.poreskauprava.gov.rs/sr/biro-za-informisanje/novosti/2271/obavestjenje---nagrada-za-odvodnjavanje.html>.

⁵⁰¹ This applies in particular to contributions which were due and payable prior to 1 March 2014, before the introduction of the unified collection system.

⁵⁰² Article 1 of the Law amending the Law on Tax Procedure and Tax Administration, Official Gazette of RS, No. 112/15.

⁵⁰³ Official Gazette of RS, No. 104/09.

⁵⁰⁴ Official Gazette of RS, No. 97/08, 104/09, 68/12 and 107/12.

conditional upon the course and outcome of an administrative dispute and the content of other regulations which prevent the institution and conduct of a tax procedure.⁵⁰⁵ Until now, statute of limitations could be suspended only with regard to relative statutes of limitations, but not with the absolute statute of limitations, which occurred in every case after the expiry of a period set by the law.

The amount of individual property tax is still a major grievance for the citizens, in particular because of the delineation of property tax areas by local self-governments for the purpose of appraising the market values of properties in those areas. Citizens have often petitioned the Protector of Citizens to file motions for constitutional review of the Law on Property Tax⁵⁰⁶, as well as motions for legal review of certain decisions passed by local self-governments. The Protector of Citizens has observed that local tax administrations are not making sufficient efforts to ensure adequate written communication with citizens and to categorise the submissions they receive by their actual content and to decide on their merits in the manner provided for by the law. In other words, local tax administrations wrongly categorise citizens' requests for recognition of a right or for reduction of a tax liability as issues relating to their tax situation and thus do not decide on those requests in the form of an administrative document with an advice on available recourse; instead, they use a free-form letter to notify the applicant that the conditions for complying with his/her request are not met. This restricts applicants' access to remedial mechanisms.

The problems relating to the exercise of the rights of employees at the Ministry of Finance which the Protector of Citizens had highlighted earlier still pertain. In 2015, the Protector of Citizens issued a recommendation to the Ministry of Finance, in which he underscored the importance of deciding timely on the complaints filed by Customs Administration employees, as well as a recommendation relating to deciding on employees' requests for recognition of their entitlement to jubilee rewards. A worrying development was the increased number of complaints concerning the exercise of employment rights at the Tax Administration during the reporting period, which had not been the case in the past; there were also several anonymous complaints by tax officers who were unwilling to reveal their identity. At the initiative of the Protector of Citizens, disciplinary action was taken against the manager of a local Tax Administration office for stating his personal views in official communications. A positive development was the resolution of the status of 37 customs officers transferred from the UNMIK Customs Office in 2008 who had not been assigned new duties. Towards the end of 2015, they were assigned duties appropriate to their qualifications and work experience.

The Protector of Citizens found that the National Bank of Serbia had made an omission by not passing a decision that would order a commercial bank to remedy the identified irregularities in its work and by not imposing the fine provided for by the law. The commercial bank in question unilaterally imposed a current account maintenance fee, which prompted a damaged client to seek protection from the National Bank of Serbia. The Protector of Citizens found that the National Bank of Serbia had not acted pursuant to the said complaint in accordance with its delegated public powers and he consequently issued a recommendation for the National Bank of Serbia to penalise irregularities in the work of commercial banks whenever this is warranted under the law.

Among other things, complaints about the work of commercial banks often relate to complainants' dissatisfaction with the execution of a loan agreement, irregular submission of loan repayment information to the Credit Bureau and invasion of customers' privacy in

⁵⁰⁵ Article 14 of the Law amending the Law on Tax Procedure and Tax Administration, Official Gazette of RS, No. 112/15.

⁵⁰⁶ Official Gazette of RS, No. 26/01, 80/02, 135/04, 61/07, 5/09, 101/10, 24/11, 78/11, 57/12, 47/13 and 68/14.

inappropriate and illegal ways, especially in cases of past-due debt. Borrowers of loans indexed in Swiss francs have also pleaded with the Protector of Citizens to assist them and mediate in the efforts to find a solution to their problems.

The judgement of the Grand Chamber of the European Court of Human Rights in the case of *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia*, which has the nature of a “pilot judgement”, ordered the Republic of Serbia to undertake, within a period of one year, all necessary measures, including legislative amendments, in order to allow Mr Šahdanović and all others in his position to be paid back their “old” foreign-currency savings under the same conditions as Serbian citizens who had such savings in domestic branches of Serbian banks. The said judgement ordered the Republic of Serbia to undertake all necessary measures by mid-2015 to enable this category of creditors to exercise their rights, even though a succession agreement with the countries successors of SFRY that would regulate the exercise of rights of “old foreign exchange depositors” has not yet been signed. The Republic of Serbia has not yet fulfilled the obligations imposed by the “pilot judgement”, a fact that was brought to its attention by the Committee of Ministers of the Council of Europe⁵⁰⁷ in September 2015.

II TYPICAL CASES

Ministry of Finance issues opinion when it is no longer needed

A complainant stated she had filed a request for an opinion of the Ministry of Finance on the applicability of regulations. She had duly paid the applicable administrative fee. After the expiry of applicable statutory time limits⁵⁰⁸, she made urgings in writing and by phone, but received no answer. As she no longer had the need for the requested opinion due to changed circumstances, she made a request for a refund of the administrative fee, to which the Ministry of Finance once again gave no reply. Finally, she received an opinion seven months after she had made the request, when such opinion was no longer needed. When the Protector of Citizens initiated an investigation, the Ministry of Finance issued a certificate which stated that the fee had not been used for its intended purpose, which entitled the complainant to a refund. In this and other similar cases, financial compensation often does not provide sufficient satisfaction for the legal uncertainty, the time spend writing urgings and other inconveniences which citizens have to suffer due to belated actions of public administration.

Tax Administration fails to decide on a request, considering it to be unfounded

A complainant had file a request with the Tax Administration for a debt she considered statute-barred to be written off. The Tax Administration failed to decide on the request within the statutory period, considering it to be unfounded. After initiating an investigation, the Protector of Citizens was informed that a decision was not passed because the tax authority considered that conditions for debt write-off had not been met in that specific case. The Protector of Citizens explained that decisions must be passed pursuant to all citizens’ request within the statutory time limit, especially in situations where an administrative authority considers such request to be unfounded, because this then creates the assumptions for a review of the negative opinion of the first-instance authority in an appellate procedure. After the intervention by the Protector of Citizens, the tax administration decided on the complainant’s request and the investigation by the Protector of Citizens was terminated.

⁵⁰⁷ “CoE warns: give depositors their money back!”, B92, 27 September 2015, available at: http://www.b92.net/biz/vesti/region.php?yyyy=2015&mm=09&dd=27&nav_id=1044431.

⁵⁰⁸ Article 80, paragraph 1 of the Law on Public Administration, Official Gazette of RS, No. 79/05, 101/07, 95/10 and 99/14.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Republic of Serbia** should provide for a procedure in which the claimants could exercise their rights and set aside the required amounts for compliance with the Judgement of the Grand Chamber of the European Court of Human Rights in the case pursuant to the submission of Ališić and Others, relating to the exercise of the rights arising from the so-called "old foreign-currency savings".
2. **The Tax Administration** should ensure that all citizens who were not charged "solidarity tax" within the statutory period should be compensated in accordance with the recommendations of the Protector of Citizens.
3. When deciding on the way in which tax documents would be served on citizens, **the Tax Administration** should act with due care, bearing in mind the justified interest of citizens to learn about the content of those documents.
4. **The Tax Administration** should improve the system for assessing tax on registered firearms and should engage in a more meaningful cooperation with the Ministry of Internal Affairs, so as to avoid creating an unjustified financial burden for citizens.
5. **The Tax Administration** should improve the human resources of its regional second-instance bodies in Belgrade, Novi Sad, Kragujevac and Niš, in order to ensure that decisions pursuant to appeals are made within the statutory timeframe.
6. **The Ministry of Finance**, in particular the **Customs Administration**, as its subordinate body, should improve its written communication with citizens, which inter alia implies consistent application of the regulations governing public administration, office operations, proper categorisation of received submissions by content and timely provision of replies in writing to the citizens who made the submissions.
7. When planning own-source revenues, **local self-government units** should take into consideration the economic status and financial circumstances of taxpayers, while **local tax administrations** should focus more on written communication with citizens and proper deciding on their requests.

ECONOMY

I BACKGROUND

1. Key Government's achievements

- 1.1. The Law amending the Law on Privatisation⁵⁰⁹ has been enacted.
- 1.2. The Law Amending the Law on Bankruptcy Supervision Agency⁵¹⁰ has been enacted.
- 1.3. The Resolution on Recognition of Years of Service without Paid Contributions⁵¹¹ has been passed.
- 1.4. The Decree on the Conditions for and Manner of Attracting Direct Investment⁵¹² has been passed.

⁵⁰⁹ Official Gazette of RS, No. 112/15.

⁵¹⁰ Official Gazette of RS, No. 89/15.

⁵¹¹ Resolution available at:

<http://pio.rs/images/dokumenta/Arhiva/Povezivanjestaza/2015/Zakljucak%20Vlade%20RS-povezivanje%20staza%202015.pdf>.

⁵¹² Official Gazette of RS, No. 28/15.

- 1.5. The Decree on Incentives for Investors to Produce Audio-Visual Works in the Republic of Serbia⁵¹³ has been passed.
- 1.6. The Decree setting the Support Programme for Small Enterprises to purchase Equipment in 2015⁵¹⁴ has been passed.

2. Key results achieved by the Protector of Citizens

- 2.1. In compliance with the recommendation of the Protector of Citizens, which called on them to remedy the omissions in their control of the privatisation process which may hamper the completion of the privatisation process and cause damage and unnecessary expenses for the privatised entities and their employees, the Ministry of Economy and the Privatisation Agency rectified the identified shortcomings in their work, thus enabling more efficient implementation of the privatisation process and better protection of rights of the parties in the process.
- 2.2. The Protector of Citizens issued a recommendation to the Privatisation Agency to undertake all necessary measures and actions to ensure that the employees and former employees of companies undergoing privatisation receive the benefits provided for in their respective social programmes.
- 2.3. In compliance with the recommendation of the Protector of Citizens to act in accordance with the instruction of the authority of second instance and the legislative provisions which govern its work when deciding on cases returned to it on appeal for a new procedure, the Business Registers Agency rectified the shortcomings in its work, thus enabling more efficient exercise of the rights of the parties in those procedures.
- 2.4. In cooperation with the Protector of Citizens, the Deposit Insurance Agency remedied the identified irregularities in the standard employment contracts it had signed with the employees of the banks managed by it during bankruptcy proceedings.
- 2.5. In 2015, the Protector of Citizens received 192 complaints in this field, in which complainants alleged 204 violations of rights. In the same period, he completed the investigations in a total of 208 cases received in 2015 and in earlier years. Out of the total of 20 investigations conducted, seven (35%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted investigations and issued 14 recommendations, of which six (42.86%) have been accepted, seven (50%) have not been implemented and one is still pending. Based on the number of identified (20) and remedied (13) omissions⁵¹⁵, the rate of efficiency in this field is 65%.

3. Shortcomings at the national level

- 3.1. In spite of amendments to the Law on Bankruptcy⁵¹⁶, bankruptcy proceedings against companies before commercial courts still take too long, with a low percentage of successful cashing in and settlement of creditors' claims – even those of the second order.
- 3.2. A new Law on Bankruptcy has not yet been enacted and it is unknown how far its drafting has progressed.

⁵¹³ Official Gazette of RS, No. 72/15.

⁵¹⁴ Official Gazette of RS, No. 80/15 and 113/15.

⁵¹⁵ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

⁵¹⁶ Official Gazette of RS, No. 104/09, 99/11 – new law, 71/12 – decision of the Constitutional Court and 83/14.

- 3.3. In spite of the efforts made to complete the privatisation process by the end of 2015, it is still ongoing at a number of enterprises in privatisation.
- 3.4. Pursuant to the Government's Resolution on Recognition of Years of Service without Paid Contributions, pension and disability insurance will be paid from the budget of the Republic of Serbia only for certain categories of citizens.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

- 4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:
- That **the Government** should continue reforming the bankruptcy legislation, with a view to devising a model best suited to provide the fullest and most effective oversight of bankruptcy administrators in bankruptcy proceedings;
 - That **the Business Registers Agency** should comply with the provisions of the Law on Companies which pertain to the initiation and conduct of forcible liquidation procedures;
 - That **the Government and the Ministry of Economy** should, as soon as possible, devise and implement the best model for settling the claims registered in accordance with the Decree on Registration of Outstanding Debt of Socially-Owned Enterprises under Enforceable Judgements for Employment-Related Claims.⁵¹⁷
- 4.2. The recommendation of the Protector of Citizens that the Government and the Ministry of Economy should, as soon as possible, submit a proposal for settling the claims registered in accordance with the Decree on Registration of Outstanding Debt of Socially-Owned Enterprises under Enforceable Judgements for Employment-Related Claims has not been implemented.
- 4.3. The recommendation of the Protector of Citizens that the Privatisation Agency should undertake all necessary measures and actions to ensure that the employees and former employees of the companies Generalexport DP Beograd and International CG receive the benefits provided for in the social programmes of those two companies from the proceeds of the divestment of their assets has not been implemented.
- 4.4. The recommendation of the Protector of Citizens that the Business Registers Agency should in its future work comply with the provisions of the Law on Companies⁵¹⁸ which contain an exhaustive list of cases in which the forcible liquidation procedure should be initiated and conducted *ex officio* has not been implemented.

5. Explanation

With regard to bankruptcy proceedings, a key novelty in 2015 was the enactment of the Law amending the Law on Bankruptcy Supervision Agency. The Law transfers to the Bankruptcy Supervision Agency all rights and responsibilities, cases, equipment, working assets, archives and the required number of employees from the Privatisation Agency for the duties provided for in that Law. This effectively put an end to the overlapping of duties of bankruptcy administrators and other related duties, which had been under the responsibility of two different authorities before those amendments, namely the Bankruptcy Supervision Agency and the Privatisation Agency. The fact that these duties will now be transferred solely to the Bankruptcy Supervision Agency should facilitate the conduct of bankruptcy proceedings and

⁵¹⁷ Official Gazette of RS, No. 23/12 and 87/12.

⁵¹⁸ Official Gazette of RS, No. 36/11, 99/11, 83/14 - new laws and 5/15.

allow for more efficient supervision of work of bankruptcy administrators by the competent authorities.

With regard to bankruptcy proceedings and complaints against authorities in charge of bankruptcy proceedings, the situation in this field did not change much in 2015 compared with the previous years. As in 2014, by far most of the complaints against bankruptcy judges and bankruptcy administrators were filed by the former creditors of bankrupt companies, whose chief grievance was the inability to collect claims arising from employment (unpaid salaries, severance pays, social insurance contributions etc.). The problems remained identical as in previous years – bankruptcy proceedings often take far too long, the bankrupt's estate is usually small and difficult to cash in and the mode of operation of the authorities in charge of conducting bankruptcy proceedings causes resentment among bankrupt debtors, who quickly lose trust in their professionalism and impartiality. As the Protector of Citizens lacks jurisdiction to oversee the work of courts, his role in these cases is limited to the provision of information and advice to the citizens who bring their grievances against authorities in charge of bankruptcy proceedings before this authority.

The procedure established under the currently applicable Law on Bankruptcy has not proved to be effective enough in practice and the existing shortcomings have not been addressed by the past amendments and supplements, which makes the enactment of a new law in this field a necessity. Unfortunately, the Protector of Citizens is not aware how far the drafting of a new law has progressed.

With regard to the privatisation process, significant progress was made in 2015 towards ensuring it is finally completed within the specified timeframe, i.e. by 31 December 2015. However, notwithstanding all these efforts, a certain number of companies (17 of them, to be exact⁵¹⁹) are still undergoing privatisation and an appropriate solution has not yet been devised for them. According to the Law amending the Law on Privatisation, the Privatisation Agency will be dissolved as of the day when that Law takes effect, while the responsibility for implementing and supervising any remaining privatisation processes will be transferred to the Ministry of Economy. It was considered that there was no longer a need for a separate agency that would be specifically in charge of privatisation issues, as the privatisation process is drawing to an end and the Ministry has the required capacity to complete the remaining processes.

An important novelty is also the fact that the Law amending the Law on Privatisation imposes a duty on the Government to form an Agency for Disputes in the Privatisation Process⁵²⁰, which would assume some of the responsibilities of the Privatisation Agency, namely representation in procedures before courts, arbitrations, administrative authorities and other competent authorities, in cases where the Privatisation Agency had been a party or an intervenor in the procedure and which had been initiated before 1 February 2016. The Agency for Disputes in the Privatisation Process is considered a successor to the Privatisation Agency in court proceedings and other procedures mentioned above. As regards this legislative arrangement, there is undoubtedly a need to resolve the disputed relations which emerged during the privatisation process, especially in its final stage. It is, however, open to debate whether there was a need to form a separate authority that would be in charge of addressing these and other disputes that have arisen in the privatisation process, given that the Republic of Serbia already has a Public Attorney's Office as a government authority responsible for

⁵¹⁹ According to the Ministry of Economy. Available at: <http://www.privreda.gov.rs/sertic-resenja-za-sedam-preduzeca-u-restruktuiranju/>.

⁵²⁰ Decision to form the Agency for Disputes in the Privatisation Process, Official Gazette of RS, No. 5/2016.

exercising and protecting the government's property rights and interests through legal representation and counselling.

In the course of 2015, the Protector of Citizens found that, in certain procedures where they supervised compliance with the duties provided for in the Privatisation Agreements, the competent authorities had not acted with due care and in full compliance with their statutory powers, for which reason they were issued with recommendations to remedy the identified shortcomings in their work. Furthermore, it was also found that the Privatisation Agency had not enabled the employees of certain companies (Generalexport DP Beograd and International CG DP Beograd) to exercise their entitlement to benefits envisaged by the social programmes of those companies, which resulted in many lawsuits against those companies and the Privatisation Agency, most of which are still pending.

It should be noted that irregularities were found in 2015 in the handling by the Business Registers Agency of the cases returned to it by the Ministry of Public Administration and Local Self-Government as the authority of second instance for a new decision. Instead of acting in compliance with the instructions received from the authority of second instance and passing new decisions, the Agency returned the case files to the Ministry with comments on its decisions, for which reason it was issued with a recommendation to remedy the identified shortcomings in its work.

Furthermore, it was found in an investigation of the work of the Deposit Insurance Agency that this Agency had signed standard employment contracts with the former employees of bankrupt's estates whose operations it managed and that some provisions of those employment contracts were not in accordance with the imperative provisions of the Labour Law. After the Deposit Insurance Agency's attention was drawn to these irregularities identified in its work, it remedied them by bringing the existing employment contracts in compliance with the legislative provisions and by correcting the text of the standard employment contract template it offers to such employees to sign.

6. TYPICAL CASES

Ministry of Economy fails to comply with its duty provided for by a Decree

In his complaint filed with the Protector of Citizens, a complainant claimed the Ministry of Economy had made an omission in its work because the Minister of Economy had not complied with his duty under Article 22 of the Decree on the Conditions for and Manner of Attracting Direct Investment⁵²¹ to regulate in detail the scope, manner and procedure of supervising compliance of beneficiaries with their contractual obligations.

After an investigation was initiated, the Ministry of Economy notified the Protector of Citizens that the complaint was founded and that the Minister in charge would remedy the omission within two months. Shortly afterwards, the said Decree was replaced with a new one.⁵²²

Development Fund of the Republic of Serbia fails to provide requested interpretation of the Law on the Development Fund of the Republic of Serbia

In their complaint filed with the Protector of Citizens, complainants alleged that the Development Fund of the Republic of Serbia had not acted pursuant to their request for interpretation of Article 7 paragraph 1 of the Law on the Development Fund of the Republic of Serbia.

⁵²¹ Official Gazette of RS, No. 55/14 and 65/14.

⁵²² Decree on the Conditions for and Manner of Attracting Direct Investment, Official Gazette of RS, No. 28/15.

The Development Fund notified the Protector of Citizens that the requested reply had been sent to the complainant's address after the initiation of the investigation and provided the Protector of Citizens with a copy of the said document. The complainants confirmed in their reply they were satisfied with the reply they received from the Development Fund of the Republic of Serbia, at which point the Protector of Citizens terminated the investigation.

IV PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Government and the Ministry of Economy** should, as soon as possible, devise and implement the best model for settling the claims registered in accordance with the Decree on Registration of Outstanding Debt of Socially-Owned Enterprises under Enforceable Judgements for Employment-Related Claims.
2. **The Ministry of Economy** should continue reforming the bankruptcy legislation, with a view to devising a model best suited to provide the fullest and most effective oversight of bankruptcy administrators in bankruptcy proceedings.
3. **The Ministry of Economy** should undertake adequate measures and activities to complete the privatisation process as soon as possible and as successfully as possible in those companies that are still undergoing privatisation.
4. **The Business Registers Agency** should comply with the provisions of the Law on Companies which pertain to the initiation and conduct of forcible liquidation procedures.

3.14. JUSTICE SECTOR

I BACKGROUND

1. Key Government's achievements

- 1.1. The Law on Enforcement and Security⁵²³ has been enacted.
- 1.2. The Law amending the Law on Notaries Public⁵²⁴ has been enacted.
- 1.3. The Law on Protection of the Right to Trial within a Reasonable Time⁵²⁵ has been enacted.
- 1.4. The Law amending the Law on Court Fees⁵²⁶ has been enacted.
- 1.5. The Bylaw amending the Bylaw on Fee Rates and Cost Reimbursement for the Work of Bailiffs⁵²⁷ has been passed.

2. Key results achieved by the Protector of Citizens

- 2.1. The opinion of the Protector of Citizens submitted to the Ministry of Justice, which drew attention to issues in the supervision of the work of bailiffs and the need to establish a right to an effective remedy, has resulted in new legislative arrangements in the Law on Enforcement and Security.
- 2.2. The Law amending the Law on Court Fees introduces new arrangements for the payment of fees in certain court proceedings, which the Protector of Citizens had identified as necessary in the previous reporting periods.
- 2.3. After the Protector of Citizens highlighted the need to review the remuneration and compensation of bailiffs in an Opinion issued to the Ministry of Justice, the Bylaw amending the Bylaw on Fee Rates and Cost Reimbursement for the Work of Bailiffs was enacted, which provided for lower fees in certain cases.
- 2.4. Acting in compliance with the recommendation of the Protector of Citizens, the Public Attorney's Office prepared a Draft Bylaw on Administration at the Public Attorney's Office and presented it to the Ministry of Justice for approval in accordance with the Law.
- 2.5. The Protector of Citizens has filed a motion for constitutional review of Article 336 of the Law on Misdemeanours.
- 2.6. In 2015, the Protector of Citizens received 649 complaints in this field, in which complainants alleged 699 violations of rights. In the same period, he completed the investigations in a total of 643 cases received in 2015 and in earlier years. Out of the total of 30 investigations conducted, 16 (53.33%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted oversights and issued three recommendations, of which one (33.33%) has been accepted and two (66.67%) have not been implemented. Based on the number of identified (19) and remedied (17) omissions⁵²⁸, the rate of efficiency in this field is 89.47%.

⁵²³ Official Gazette of RS, No. 106/15.

⁵²⁴ Official Gazette of RS, No. 106/15.

⁵²⁵ Official Gazette of RS, No. 40/15.

⁵²⁶ Official Gazette of RS, No. 106/15.

⁵²⁷ Official Gazette of RS, No. 4/16.

⁵²⁸ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

3. Shortcomings at the national level

- 3.1. After a number of attempts at legislating for free legal assistance, the Law on Free Legal Assistance has still not been enacted, even though the timeframe for this under the Action Plan for Chapter 23 has been exceeded (III quarter of 2015), which continues to create a barrier in the way of access to justice, especially for those who are in a difficult financial situation and for vulnerable groups.
- 3.2. Although the new Law on Enforcement and Security was enacted, not all shortcomings highlighted by the Protector of Citizens have been remedied, including in particular the way in which writs are served on judgment debtors and the protection of rights of candidates who take the professional examination for public bailiffs, which the Protector of Citizens attempted to address directly by submitting an amendment to the Bill.
- 3.3. Even after the enactment of the Law amending the Law on Notaries, candidates who take the professional examination for notaries public are not afforded the right to remedy and legal protection guaranteed by the Constitution, as noted by the Protector of Citizens in the Initiative to submit an Amendment to the Bill of that Law presented to the Committee on Justice, Public Administration and Local Self-Government.
- 3.4. The restrictions provided for in Article 336 of the Law on Misdemeanours are not based on the constitutional grounds for restricting citizens' rights and are not proportionate to their intended purpose, insofar as the obtaining of various certificates and permits unrelated to personal status is made conditional upon the payment of imposed fines, legal expenses and other amounts adjudicated in misdemeanour proceedings.
- 3.5. Citizens still face difficulties regarding the exercise and protection of their entitlement to rehabilitation compensation due to the lack of an instrument that would provide for the composition of the Rehabilitation Compensation Committee and govern its work in detail.
- 3.6. Functional supervision of the work of court administrations and efficient handling of citizens' complaints have not been ensured.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

- 4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:
 - That **the Ministry of Justice** should expedite the drafting of the Law on Free Legal Assistance, while at the same time also taking into account the comments and suggestions made during public debates, to enable efficient exercising of the right to Free Legal Assistance and access to justice;
 - That **the Ministry of Justice** should ensure functional supervision of the work of court administrations, in accordance with the applicable legislation, to enable efficient handling of citizens' complaints and to ensure their expectations are met.
- 4.2. The Ministry of Justice has not implemented the recommendation of the Protector of Citizens to pass an instrument that would provide for the composition of the Rehabilitation Compensation Committee and govern its work in detail.
- 4.3. Amendments to the Bill on Execution and Enforcement submitted by the Protector of Citizens have not been accepted.

4.4. An initiative to submit amendments to the Law on Notaries Public which the Protector of Citizens had presented to the relevant parliamentary Committee has not been taken into consideration, although the Committee had a statutory duty to do so.

5. Explanation

In the previous reporting period, the Protector of Citizens underscored the need to strengthen mechanisms for the supervision and responsibilities of bailiffs and to provide for a right to effective remedy. The Law on Execution and Security enacted in December 2015 governs in detail the responsibilities of “public bailiffs” and clarifies the powers of the Ministry of Justice and the Chamber of Bailiffs regarding the procedures for supervision of bailiffs’ work and the manner of conducting such supervision. The availability of an effective remedy has eliminated the shortcoming which led to unequal treatment of judgment debtors in proceedings where motions for execution on the basis of an authentic document are decided by a court and those where such decisions are made by public bailiffs. The Bill of this Law had not addressed the shortcomings relating to the mechanism of serving writs on judgment debtors, which was identified on the basis of citizens’ complaints as one of the most frequent and most significant issues encountered in the execution procedure. For this reason, one of the proposed amendments to the Bill submitted by the Protector of Citizens to the National Assembly aimed to improve the system used for the service of writs, in an effort to provide legal safety and certainty, without undermining the efficiency of execution proceedings. Another proposed amendment submitted by the Protector of Citizens related to the protection of rights of candidates who take the examination for public bailiffs. The aim of that proposed amendment was to legislate for a remedy that would be available to the candidates who take that examination in case they have any objections. However, these amendments were not endorsed.

In view of the fact that the Protector of Citizens had noted in the previous reporting periods that the remuneration and fees paid for the work of bailiffs by citizens were too high, a notable new development has been the passing of the Bylaw amending the Bylaw on Fee Rates and Cost Reimbursement for the Work of Bailiffs, which reduced the amounts of certain fees.

The fact that responsibilities of notaries public and supervision of their work have been regulated more thoroughly, which has been achieved through the enactment of the Law amending the Law on Notaries Public, is an acknowledgement of the views of the Protector of Citizens, who noted it was necessary to legislate for supervision in more detail and to reinforce public trust in the notary public service. However, notwithstanding the progress that has been made, because of the identified shortcomings regarding the lack of a legal remedy which would protect the rights of candidates who take the professional examination to become notaries public, the Protector of Citizens filed an initiative for the competent parliamentary Committee to propose amendments to the Bill of amendments to the Law on Notaries Public. Unfortunately, the competent parliamentary Committee did not take the proposed initiative into consideration, although it had a statutory duty to do so. It remains to be seen whether the new legislative provisions would improve the quality of work of public bailiffs and notaries public.

The effects of failure to pay fines, legal expenses and other adjudicated amounts in accordance with Article 336 of the Law on Misdemeanours constitute a deep invasion of a number of human rights and provides a basis for unconstitutional restrictions on human rights of citizens. The scope of these restrictions is unreasonable and vastly disproportionate to their intended aim. For this reason, the Protector of Citizens filed a Motion for Constitutional Review of Article 336 of the Law on Misdemeanours during the reporting period, on which the Constitutional Court has not yet ruled.

To further advance the protection of citizens' rights and freedoms, with special emphasis on transparency in the work of administrative authorities, the Protector of Citizens issued a recommendation to the Public Attorney's Office during the reporting period in which he reminded that authority of its statutory duty to pass a bylaw that would govern its administration. The said Bylaw should regulate the treatment of citizens and the public by the Public Attorney's Office and set out arrangements for record-keeping, case allocation, case management, treatment of archive materials and other issues of relevance for the work of the Public Attorney's Office. This instrument would improve the work of the Public Attorney's Office by enabling citizens to freely access that authority, which in turn would also improve the transparency of its work.

The Public Attorney's Office notified the Protector of Citizens it had prepared a draft of the said Bylaw, which was submitted to the Ministry of Justice for approval. However, according to the information available to the Protector of Citizens, this approval was not given as of the date of writing of this Report, so the treatment of citizens and the public by the Public Attorney's Office remains unregulated.

In his previous annual reports, the Protector of Citizens noted also that the amounts of court fees were too high. The Law amending the Law on Court Fees has introduced new arrangements for the payment of fees on decisions passed by courts in execution procedures and security procedures, as well as fees charged for actions undertaken in non-litigious procedures delegated to notaries public by courts. It remains to be seen whether the effects of the new regulations would improve the position of citizens in terms of facilitating their access to justice.

In this reporting period, the Protector of Citizens was once again contacted by a large number of citizens who sought legal assistance (writing of submissions, representation before courts and other administrative authorities, interpretation of legal situations and applicable legislation etc.). This problem has been particularly noticeable among those citizens who are in a difficult financial situation and cannot afford the services of law firms, but usually find it virtually impossible to meet the requirements to qualify for the services of free legal assistance provided by local self-governments. It should be noted that many local self-governments do not even provide the services of free legal assistance. The same problem is faced by citizens who are not socially vulnerable, but who have not been advised which authorities, procedures and time limits are relevant for the exercise and protection of their rights even after contacting multiple authorities and institutions. All this goes to show it is necessary to expedite the drafting of the Law on Free Legal Assistance, which had had many working drafts in the past periods, none of which were ever debated in the parliamentary.

It should be noted that, apart from the exception provided for in the Law on the Protector of Citizens, the Protector of Citizens is not authorized to act pursuant to citizens' complaints if they were lodged before all remedies have been exhausted. In accordance with the law, the Protector of Citizens must instruct complainants to initiate the appropriate legal procedure if such procedure is available and, in this context, must provide citizens with information about the relevant authorities before which they should seek to exercise their rights. By advising citizens of the available remedies for the protection of their rights before they file a complaint with the Protector of Citizens, this institution has managed to alleviate this problem to a certain extent.

The Protector of Citizens had previously drawn attention to the issues faced by citizens in the exercise of the entitlement to rehabilitation compensation. The problem stems in part from the legislative framework which governs the exercise of this entitlement. Namely, in accordance

with the Law on Rehabilitation⁵²⁹, applications for rehabilitation compensation are decided upon by the Rehabilitation Compensation Committee of the Ministry of Justice. However, if the Committee fails to pass a decision within 90 days of application, the applicant may take legal action for damage compensation before the competent court within the statutory period. Judging by citizens' complaints, the said Committee frequently fails to pass a decision within the 90-day period without proper reason, which thwarts the purpose of the applicable regulation, namely to ensure that applications are primarily decided on by an administrative authority in a swift and efficient procedure, without any unnecessary expenses. The problem is further aggravated by the fact that an instrument that would provide for the composition of the Committee and regulate its work in more detail has not yet been passed, although the Law on Rehabilitation took effect on 15 December 2011 and the said instrument should have been passed within 60 days of the effective date of that Law. In this reporting period, the Protector of Citizens issued a recommendation to the Ministry of Justice in which he underscored the need to comply with the statutory duty to pass the said instrument. However, the instrument has not been passed notwithstanding all these efforts.

There are still problems regarding the actions of the Ministry of Justice and its supervision of the work of courts pursuant to citizens' complaints, which the Protector of Citizens had already pointed out in the previous reporting periods. Judging by the way in which this supervision is governed by the applicable legislation and the Ministry's practice of handling complaints, it would appear that the statutory supervision is not fully functional.

PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Ministry of Justice** should expedite its drafting of the Law on Free Legal Assistance.
2. **The Ministry of Justice** should pass an instrument that would provide for the composition of the Rehabilitation Compensation Committee and govern its work in detail.
3. **The Ministry of Justice** should undertake activities within its sphere of competence under the Law on the Public Attorney's Office in connection with the passing of a Bylaw on Administration of the Public Attorney's Office.
4. **The Ministry of Justice** should, by improving *inter alia* the legislative framework which governs supervision of the handling of citizens' complaints by courts, provide for functional supervision arrangements, in accordance with citizens' expectations.

⁵²⁹ Official Gazette of RS, No. 92/11.

3.15. DEFENCE SECTOR⁵³⁰

I BACKGROUND

1. Key Government's achievements

1.1. The Protector of Citizens has not observed any major achievements in this field during the course of 2015.⁵³¹

2. Key results achieved by the Protector of Citizens

2.1. In accordance with his statutory powers, the Protector of Citizens issued public recommendations to the competent authorities to remove from office Minister of Defence Bratislav Gašić and Director of the Military Security Agency Petar Cvetković, because of their responsibility for illegal and irregular work of the authorities they manage and their refusal to cooperate with the Protector of Citizens in connection with the incidents which occurred during last year's Pride Parade.

2.2. The Protector of Citizens submitted an initiative to the Ministry of Labour, Employment, Veteran and Social Affairs and the Republic Pension and Disability Insurance Fund to take measures in cooperation with the Ministry of Defence with the aim of amending the Law on Pension and Disability Insurance in order to regulate the manner of determining the personal salary-based coefficient applied in the calculation of pension amounts for the professional servicemen of the Serbian Armed Forces in cases where the Ministry of Defence and the Serbian Armed Forces do not have salary information because the relevant documents had been destroyed in NATO air strikes.

2.3. To protect the principle of prohibition of *reformatio in peius*, which means that a body of second instance cannot amend a decision to a less favourable one for the defendant than the decision of the body of first instance if the defendant was the only one to appeal the decision, the Protector of Citizens submitted an initiative for the Ministry of Defence to harmonise the provisions of the Military Discipline Rules with the provisions of the Criminal Procedure Code that govern appellate proceedings.

2.4. By remedying the omissions committed through belated acting on requests made by the Republic Pension and Disability Insurance immediately upon learning that the Protector of Citizens had initiated an investigation of the Ministry of Defence, that Ministry enabled its employees a more efficient exercise of their rights.

2.5. In 2015, the Protector of Citizens received 79 complaints in this field, in which complainants alleged 69 violations of rights. In the same period, he completed the investigations in a total of 91 cases received in 2015 and in earlier years. Out of the total of 12 investigations conducted, five (41.67%) investigations were closed by issuing recommendations in an expedited procedure. The Protector of Citizens issued no recommendation after oversight procedures in this field in 2015. Based on the number of identified (5) and remedied (5) omissions⁵³², the rate of efficiency in this field is 100%.

⁵³⁰ The work of the Military Security Agency and the Military Intelligence Agency, which are both subordinate bodies to the Ministry of Defence, is addressed in detail in a separate part of this Report on security services.

⁵³¹ the Protector of Citizens addressed the Law amending the Law on Serbian Armed Forces, enacted in early 2015, in his 2014 Annual Report. The positive effects of implementation of this Law have been visible in 2015 in the field of gender equality. For more details, see the section on gender equality of this Report.

⁵³² The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

3. Shortcomings at the national level

- 3.1. The unchanged legislative provisions and undetermined legal basis for calculation of the amount of pensions in cases where the Ministry of Defence has no records of the amounts of past salaries is still one of the major issues for the professional servicemen of the Serbian Armed Forces in the field of pension and disability insurance, because the calculation is still based on the average net wage of employees in the Republic of Serbia, which results in much lower pensions than those that would have been calculated if the actual wage had been used as the base for calculation.
- 3.2. Cooperation between the Ministry of Defence and the Ministry of Labour, Employment, Veteran and Social Affairs and the Republic Pension is still inefficient and ineffective in addressing the issue of determining the amount of pensions in cases when “they do not have documents evidencing the amounts of their past salaries” of the professional servicemen of the Serbian Armed Forces.
- 3.3. The provisions of the Military Discipline Rules violate the principle of prohibition of *reformatio in peius* and provide grounds for putting professional servicemen of the Serbian Armed Forces in a worse situation after their appeal is adjudicated, which undermines legal certainty normally afforded to appellants, which implies that making use of a remedy cannot put them in a worse situation.
- 3.4. There is still no adequate regulatory framework that would set out the conditions for superior officers’ approval of their subordinate servicemen’s requests for leave for the purpose of undergoing specialist medical examinations which can only be performed during working hours.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

- 4.1. No actions have been taken to comply with the following recommendations for improving the citizens’ position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:
 - That **the Ministry of Defence** should establish cooperation with **the Ministry of Labour, Employment, Veteran and Social Affairs** in addressing the issue of determining the amount of pensions of the professional servicemen of the Serbian Armed Forces in cases when “they do not have documents evidencing the amounts of their past salaries”;
 - That **the Ministry of Defence** should pass an implementing regulation to regulate the exercise of the right to specialist medical examinations by professional servicemen in accordance with the law.
- 4.2. The publicly made recommendations of the Protector of Citizens issued to the competent authorities to remove from office the Minister of Defence and the Director of the Military Security Agency because of their responsibility for illegal and irregular work of the authorities they manage and their refusal to cooperate with the Protector of Citizens in connection with the incidents which occurred during the Pride Parade held in 2014 have not been implemented.

5. Explanation

The Protector of Citizens has not observed any major achievements in this field during the course of 2015. This reporting period, similarly as the previous one, saw a significant number of complaints from professional servicemen about violations of their rights arising from

pension and disability insurance due to deficient regulations which result in a situation where the calculation of the amount of pensions is based on figures on the average insurance contribution payments according to the scale of the Republic Pension and Disability Insurance Fund applicable on the retirement date, rather than on the average salary actually disbursed to the person concerned.

In that regard, the Protector of Citizens submitted an initiative to the Ministry of Labour, Employment, Veteran and Social Affairs and the Republic Pension and Disability Insurance Fund to cooperate with the Ministry of Defence, taking due account of the terminology and legislative arrangements used in the Law on Pension and Disability Insurance, as well as past experiences in its implementation, to provide for a method of determining the personal coefficient used in the calculation of the amount of pension based on subsequently determined information on actually earned wage for professional servicemen and civilians in cases where such information was destroyed in NATO air strikes.

In this reporting period, the Protector of Citizens received a significant number of complaints about belated acting of the Ministry of Defence on requests by the Republic Pension and Disability Fund for deciding on the entitlements arising from pension and disability insurance for employees at the Ministry of Defence. In the investigations conducted by the Protector of Citizens in such cases, the Ministry of Defence as a rule promptly remedied its omissions.

Based on allegations made in a complaint and facts and circumstances found in an investigation of the Military Academy of the Ministry of Defence, the Protector of Citizens found that the Military Discipline Rules included a provisions according to which a disciplinary measure may be reversed to a more severe penalty if the person subject to such disciplinary measure appeals it, which is contrary to the institute of prohibition of *reformatio in peius*, according to which a decision cannot be amended to a worse one for the defendant by an appellate ruling on the defendant's appeal.

As the Law on Serbian Armed Forces provides that the Military Discipline Rules cannot contravene the provisions of the Criminal Procedure Code, this means that the provision of the Rules which contravenes the Criminal Procedure Code violates the constitutional norm according to which general implementing regulations must comply with laws and other national legislation.

Taking into account both the provision of the Constitution which provides for the duty to respect the hierarchy of general administrative instruments and the importance of the prohibition of *reformatio in peius*, the Protector of Citizens issued an initiative to the Ministry of Defence to harmonise the provisions of the Military Discipline Rules which govern acting on appeals lodged by persons subject to disciplinary measures with the provisions of the Criminal Procedure Code.

The issue of exercising the right to health care, which had been in the focus of the Protector of Citizens in earlier years, has still not been resolved in this reporting period. There is still not instrument in place that would provide for a clear and predetermined procedure according to which professional servicemen of the Serbian Armed Forces to take specialist medical examinations which are available at military medical establishments only during regular working hours because of the organisation of work in these establishments. As a result of the lack of implementing regulations, a superior officer may, at his/her discretion, demand access to medical records as a condition for granting a leave for the purpose of undergoing a specialist medical examination during working hours. In such situations there is scope for violation of the right to privacy if a superior officer demands access to medical documents. Furthermore,

a superior officer could also potentially abuse his/her discretion to decide whether a request for specialist medical examination is justified or not.

In this reporting period, unlike the previous ones, employees at the Ministry of Defence and the Serbian Armed Forces frequently sought from the Protector of Citizens to protect them from workplace harassment. In most cases, the complainants were advised to make use of judicial protection mechanisms. However, the omissions which the complainants reported in connection with the handling by relevant bodies of their requests for protection from workplace harassment seem to indicate that the persons assigned to initiate proceedings and mediate in such proceedings are not properly trained to do so.

II TYPICAL CASES

Military Discipline Rules contain provisions which contravene the prohibition of reformatio in peius, Military Academy cadet receives a more severe penalty after his appeal

Acting pursuant to an appeal lodged by a cadet in a second-instance disciplinary proceeding, the Military Academy of the Ministry of Defence applied the provisions of the Military Discipline Rules and amended the first-instance decision to a worse one for the cadet in question by reversing the first-instance order which imposed a lighter disciplinary measure and passing a decision which declared the cadet guilty of a more severe breach of military discipline and imposed a more severe penalty.

The Protector of Citizens issued an initiative to the Ministry of Defence to harmonise the provisions of the Military Discipline Rules which govern acting on appeals lodged by persons subject to disciplinary measures with the provisions of the Criminal Procedure Code pertaining to the prohibition of *reformatio in peius*, taking due consideration of the hierarchy of general administrative instruments.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Ministry of Defence and the Ministry of Labour, Employment, Veteran and Social Affairs** should establish effective cooperation to address the issue of determining the amount of pensions of the professional servicemen of the Serbian Armed Forces in cases when "they do not have documents evidencing the amounts of their past salaries".

2. **The Ministry of Defence** should, in cooperation with **the Ministry of Labour, Employment, Veteran and Social Affairs** amend the applicable regulatory framework to establish an effective mechanism to address the issue of determining the amount of pensions of the professional servicemen in cases where the Ministry of Defence and the Serbian Armed Forces have no records of the amounts of past salaries.

3. **The Ministry of Defence** should harmonise the provisions of the Military Discipline Rules with the provisions of the Criminal Procedure Code which govern acting on appeals lodged by persons subject to disciplinary measures, in full respect of the institute of prohibition of *reformatio in peius*.

4. **The Ministry of Defence** should pass an implementing regulation to regulate the exercise of the right to specialist medical examinations by professional servicemen in accordance with the law.

5. **The Ministry of Defence** should undertake all relevant activities in cooperation with the competent authorities to ensure that its employees who are in charge of handling requests for protection from workplace harassment receive proper training.

3.16. SECTORS OF CONSTRUCTION AND INFRASTRUCTURE, CADASTRE, NATURAL DISASTERS AND RESTITUTION

CONSTRUCTION, TRANSPORT AND INFRASTRUCTURE

I BACKGROUND

1. Key Government's achievements

- 1.1. The Law on Legalisation of Buildings⁵³³ has been enacted.
- 1.2. The Law on Inspection⁵³⁴ has been enacted and some of its provisions have taken effect.
- 1.3. The Bylaw on Implementation of Integrated Procedure⁵³⁵ has been passed.
- 1.4. The Bylaw on Electronic Implementation of Integrated Procedure⁵³⁶ has been passed.

The Group for Oversight and Cooperation in the Field of Anti-Corruption / Anti-Corruption Team within the Ministry of Transport, Construction and Infrastructure has seen the first effects of its work borne to fruition.

2. Key results achieved by the Protector of Citizens

- 2.1. Proposals of the Protector of Citizens for improving citizens' position in relation to administrative authorities presented in his 2014 Annual Report and his opinion on the Draft Law on Inspection, which have been accepted in the Law on Inspection, have improved the acting of inspection services in cases of lack of jurisdiction.
- 2.2. Acting in compliance with the proposals of the Protector of Citizens for improving citizens' position in relation to administrative authorities presented in his 2014 Annual Report, the Ministry of Construction, Transport and Infrastructure legislated for the procedure for issuing building permits in detail by passing implementing regulations, which ensured shorter time limits for and efficiency in the issuing of building permits.
- 2.3. In 2015, the Protector of Citizens received 225 complaints in this field, in which complainants alleged 350 violations of rights. In the same period, he completed the investigations in a total of 206 cases received in 2015 and in earlier years. Out of the total of 55 investigations conducted, 22 (40%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted oversight procedures and issued 12 recommendations, of which four (33.33%) have been accepted and eight (66.67%) have not been implemented. Based on the number of identified (34) and remedied (26) omissions⁵³⁷, the rate of efficiency in this field is 76.47%.

⁵³³ Official Gazette of RS, No. 96/15.

⁵³⁴ Official Gazette of RS, No. 36/15.

⁵³⁵ Official Gazette of RS, No. 22/15.

⁵³⁶ Official Gazette of RS, No. 113/15.

⁵³⁷ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

3. Shortcomings at the national level

- 3.1. The allocation of funds by the Ministry of Transport, Construction and Infrastructure to local self-government units for delegated powers, including in particular the enforcement of demolition orders, was not sufficient.
- 3.2. The Law on Legalisation of Buildings⁵³⁸, which was in effect until 26 November 2015, has not produced the intended results in terms of diligence and efficiency of acting pursuant to applications for legalisation and results in terms of the number of legalised buildings.
- 3.3. The Law on Planning and Construction⁵³⁹ has not provided an adequate basis for preventative work of building inspectorates, their responsibility and consequences for failure to comply with their duties and exercise their powers.
- 3.4. The issue of corruption and politicisation of local self-administrative authorities that perform duties delegated to them under the Law on Planning and Construction remains.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

- 4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:
 - That notwithstanding the enacted amendments to the Law on Planning and Construction which provide declaratory support to a stronger role of the building directorate, the **Ministry of Transport, Construction and Infrastructure** should put in place efficient mechanisms which will enable it to perform duties within its sphere of competence;
 - That **the Ministry of Transport, Construction and Infrastructure** should sufficiently build its human and administrative capacities, in particular in terms of the number of building and urban planning inspectors.
- 4.2. Local self-administrative authorities have not complied with the recommendations of the Protector of Citizens that they should undertake without delay all necessary measures in accordance with positive legislation in order to enforce demolition orders and enforcement orders.

5. Explanation

The National Assembly enacted the Law on Legalisation of Buildings, which identifies legalisation of illegally constructed buildings as a public interest. The enacted Law provides the basis for legalisation of illegally constructed buildings and prevention of further construction of buildings without building permits. Further specific objectives to be achieved include increase of public revenues of local self-government units and the state through collection of a legalisation fee, as well as inventorying and registration of all illegal buildings

⁵³⁸ Official Gazette of RS, No. 95/13 and 117/14.

⁵³⁹ Official Gazette of RS, No. 72/09, 81/09 - corrigendum, 64/10 - decision of the Constitutional Court, 24/11, 121/12, 42/13 - decision of the Constitutional Court, 50/13 - decision of the Constitutional Court, 98/13 - decision of the Constitutional Court, 132/14 and 145/14.

in the territory of the Republic of Serbia. Since the Law provides for a simpler procedure and decreased costs of legalisation of illegal buildings, it is expected that this Law will provide better effects than the previous laws which regulated the legalisation procedure.

The Protector of Citizens believes that the purpose of enactment of the Law on Legalisation of Buildings would be achieved only if it is implemented to the letter and if the building inspectorate operates efficiently and takes timely measures for prevention of illegal construction of buildings and orders investors of such construction of buildings to eliminate irregularities.

Enactment of the Law on Inspection was a major step forward in regulating this important area, which provided a comprehensive framework for the actions of inspectorates when performing public administration duties in the field of inspection. The Law was published in the Official Gazette in April 2015⁵⁴⁰; however, the effectiveness of most of its provisions was delayed for one year from the date of its coming into force, i.e. 30 April 2016. One of the provisions which took effect on 30 April 2015 was that governing the actions undertaken by inspectorates with respect to business operations or activities of inspected entities which fall within the remit of a different inspectorate. Namely, pursuant to the said provision⁵⁴¹, if an inspector finds that an inspected entity has violated a law or other regulation the implementation of which is overseen by a different inspectorate, he/she must draw up a report of the situation found, based on his/her knowledge and experience. The inspector must then forward the report without delay to the inspectorate in charge of the business operations or activities performed by the inspected entity, as well as to any other competent authorities and the Coordination Commission, to enable that other inspectorate to undertake measures and actions within its sphere of competence or to cooperate or conduct a joint inspection with such other inspectorate. Immediately upon providing notification under paragraph 2 of this Article, the inspector must prepare an official note of the situation found and the notifications given.

The Minister of Construction, Transport and Infrastructure passed the Bylaw on Implementation of Integrated Procedure, the provisions of which took effect on 1 March 2015, except the provisions on the Central Register and electronic issuing of building permits, which took effect on 1 January 2016. The Bylaw provides for the scope and implementation of the integrated procedure, keeping and the content of the integrated procedures register and the central records, as well as the powers and duties of registrars, the extent of public availability of data and documents contained in the register, the manner of exchange of documents and submissions in the integrated procedure and the form in which technical documentation and instruments are submitted in such procedure.

The objective is to ensure simpler administrative procedures for the construction of buildings and to reduce the costs of such procedures. The one-stop shops are important because they should shift the burden of acting in complex administrative procedures with a large number of participants to the public administration, local self-governments and holders of public powers. An important role has been entrusted to local self-administrative authorities, while a part of the burden is borne the line ministry. The integrated procedure enables citizens to present applications with the statutory documentation and evidence of paid fees and charges in one place, using a "one-stop shop" at the competent authority, after which the authority will, on behalf and for the account of the applicant, ensure compliance with all applicable

⁵⁴⁰ Official Gazette of RS, No. 36/15.

⁵⁴¹ Article 30, paragraphs 1, 2 and 4 of the Law on Inspection.

requirements and obtain other documents from public enterprises and the Cadastre and will decide on applications within the statutory time limit.

Following the passing of the Bylaw on Electronic Implementation of Integrated Procedure, the repealed the Bylaw on Implementation of Integrated Procedure⁵⁴² was repealed. The Bylaw took effect on 1 January 2016 and introduced numerous novelties in the procedure of issuing of building permits to the benefit of citizens. An application is an initial document which initiates the integrated procedure in which competent authorities act pursuant to citizens' requests for the purposes of construction, annexation or reconstruction of buildings. The integrated procedure includes issuing of building permits or orders pursuant to Article 145 of the Law on Planning and Construction, registering of works, obtaining approval for technical documentation, issuing of certificates of occupancy, ensuring compliance with relevant design requirements or connecting buildings to the infrastructure network and obtaining public and other documents issued by holders of public powers. Under Article 8.a of the Law on Planning and Construction, which took effect on 1 January 2016, in the integrated procedure applications are filed and documents are exchanged electronically. All documents relating to this procedure are passed by competent authorities and holders of public powers, as well as submissions and documents submitted in this procedure, including technical documentation.

The Group for Oversight and Cooperation in the Field of Anti-Corruption / Anti-Corruption Team within the Ministry of Transport, Construction and Infrastructure has justified its purpose and achieved results by accepting 132 cases for processing by the end of 2015. Of those cases, 25 were complaints against the work of employees, 30 were complaints against the work of institutions and two were complaints against public procurement procedures. The remaining 75 cases were initiated pursuant to complaints relating to other possible abuses. The Anti-Corruption Team submitted eight cases to the Prosecutor's Office, after it found probable cause for suspected criminal offences in the processing of these specific cases.

In 2015, the Protector of Citizens received a large number of citizens' complaints against illegal construction of buildings, inefficient inspection of implementation of the Law on Planning and Construction performed by municipal and city building inspectorates and inefficient administrative enforcement of demolition orders by competent municipal and city administrations.

The situation in the field of prevention of illegal construction and demolition of illegal buildings remained the same as in 2014. This is the result of belated acting on requests for legalisation of buildings submitted in accordance with the then applicable Law on Legalisation of Buildings and on requests submitted in the previous period. Transitional and final provisions of the Law on Legalisation of Buildings provide that acting pursuant requests for legalisation of buildings submitted in the previous period must be completed in accordance with the new Law on Legalisation of Buildings and that the time limit for providing the necessary documentation would be extended accordingly. The time limit was extended from one year to one and a half years of the date when this Law enters into force, i.e. until 1 May 2015.

Although the Protector of Citizens identified omissions in the work of competent authorities of local self-governments in the investigations he conducted in the previous period and issued a cumulative recommendation to municipal and city local self-administrative authorities and the line ministry⁵⁴³, demolition of illegal buildings has not been carried out within the time

⁵⁴² Official Gazette of RS, No. 22/15.

⁵⁴³ Recommendation available at: <http://www.ombudsman.rs/index.php/lang-sr/2012-02-07-14-03-33/3383-2014-06-26-14-01-44>.

limits and to the extent reasonably expected. In an investigation of legality and regularity of work in 2015 it was found that the main reason for the failure to carry out administrative enforcement of demolition orders are pending legalisation procedures.

As regards illegal construction of buildings and inefficient work of building inspectorates, in an investigation of legality and regularity of work pursuant to individual citizens' complaints, the Protector of Citizens found irregularities which harmed the exercise of rights of diligent and responsible citizens whose property was put at risk by illegal construction. Recommendations for demolition of illegal buildings were issued to local self-governments in Leskovac⁵⁴⁴ and Smederevska Palanka⁵⁴⁵ and to the municipality of Čukarica of the city Belgrade⁵⁴⁶.

In 2015, the reason for non-enforcement of enforceable demolition orders was once again the lack of funds for this purpose or unsuccessful public procurements for the contractors who would perform works of demolition of illegal buildings.

Another typical trend observed in the actions of municipal and city building inspectors based on citizens' applications is the fact that they only formally take actions – by ordering the rectification of identified irregularities, including: suspension of works, closing of construction sites, demolition of buildings etc. – without any actual willingness and readiness to substantially ensure the *de facto* situation reflects the underlying legal basis. An increase has been observed in the number of criminal reports filed by building inspectors against developers engaging in illegal construction. Other reasons for this negative trend regarding compliance with demolition orders also include non-existence of dedicated organisational units within the organisational structure of local self-governments that would be in charge of enforcing the decisions, as well as lack of a clear plan and a schedule of work for the enforcement of demolition orders and/or failure to adhere to an existing schedule.

Amendments to the Law on Planning and Construction introduced a novelty by stipulating in Article 171, paragraph 6 that, if a competent authority lacks financial resources for enforcing a demolition order, an interested party may cover the costs of enforcement pending the collection of costs from the enforcement debtor. In communication with authorities and replies submitted to the Protector of Citizens there have been no indications that this option was presented to interested parties in demolition procedures whose right to peaceful enjoyment of property was jeopardised by illegal construction. Although from the aspect of investigation of the Protector of Citizens this provision constitutes a significant progress, it has been rendered futile in practice.

As regards legalisation of buildings, the fact remains that the applicable Law on Legalisation has failed to produce the expected results. In practice, the procedure was neither simple nor inexpensive, as had been anticipated. In addition, the outstanding issues from earlier periods have accumulated instead of being addressed, both in terms of the number of officers hired to process applications for legalisation and their expertise and qualifications for these procedures.

When supervising the exercise of duties delegated to local self-government units, the Ministry of Construction, Transport and Infrastructure performs the procedure only formally by forwarding citizens' petitions against the work of local and city building inspectorates to local

⁵⁴⁴ Recommendation available at: <http://www.ombudsman.rs/index.php/lang-sr/2012-02-07-14-03-33/4298-2015-08-27-11-26-29>.

⁵⁴⁵ Recommendation available at: <http://www.ombudsman.rs/index.php/lang-sr/2012-02-07-14-03-33/4446-2015-12-01-11-36-09>.

⁵⁴⁶ Recommendation available at: <http://www.ombudsman.rs/index.php/lang-sr/2012-02-07-14-03-33/4477-2015-12-10-09-27-40>.

self-government units for replies. During the course of 2015 there was not a single case in which the National Building Inspectorate supervised the work of building inspectors or indeed complied with the Law on Public Administration in any way.

In 2015, many citizens once again complained about the exercise of delegated powers by city and municipal administrative authorities in the field of construction. Citizens drew attention in particular to potential corrupt practices of building inspectors and construction and urban planning services, both with regard to prevention of illegal construction and administrative enforcement of demolition orders.

II OTHER ACTIVITIES

Effective cooperation established between inspectorates, the Ministry of Transport, Construction and Infrastructure and the Secretariat of the Protector of Citizens

As regards investigation of citizens' complaints by the Protector of Citizens, efficient cooperation has been established with inspection services of the Ministry of Transport, Construction and Infrastructure.

At a meeting held on 1 July 2015, cooperation was established with the Secretariat for Legalisation of Buildings of the City Administration of Belgrade in the exchange of information and data in connection with received complaints and a contact person was designated for liaising with the Secretariat of the Protector of Citizens. This enabled the Protector of Citizens to receive all information without delay and exchanges information and knowledge about the practices of relevant authorities.

III TYPICAL CASES

Names of co-developers changed in building permit after more than 2 years

Pursuant to a complaint which alleged that the Secretariat for Urban Planning and Construction Affairs of the City Administration of Belgrade had not decided for two years on a request to change the names of co-developers in a decision to issue a building permit, the Protector of Citizens initiated an investigation of regularity and legality of operations of this authority. The Secretariat subsequently passed a decision to change the names of the co-developers in the decision to issue the building permit and the investigation by the Protector of Citizens was terminated.

Window on complainant's apartment illegally bricked up

After omissions in work were identified in the inspection of regularity and legality of work which harmed the exercise of rights and lawful interests of a complainant, which included belated deciding and failure to comply with the orders and comments of the Secretariat for Property Law Affairs and Building and Urban Planning Inspection of the city of Belgrade at the Department for Second-Instance Administrative Procedure, the administration of the city municipality of Čukarica, as the authority of second instance, ordered the developer in legal building to open the window which was illegally bricked up in 2009.

IV PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. Sufficient funds should be provided in budgets at all levels for administrative enforcement of orders for demolition of illegal buildings:
 - **The Ministry of Transport, Construction and Infrastructure and the Ministry of Finance** should plan in the preparation of the Law on Budget for an adequate amount of funds for delegated powers of local self-government units for the purpose of enforcement

of orders for demolition of illegal buildings constructed after the Law on Legalisation of Buildings entered into force and demolition orders issued after the completion of legalisation proceedings, which would consistently prevent illegal construction;

- **The Ministry of Transport, Construction and Infrastructure** should propose sufficient funds for the demolition of illegal buildings within the sphere of competence of this Ministry in the preparation stage of the budget of the Republic of Serbia;

- **Local self-government units** should ensure in the budget revision a sufficient amount of funds for administrative enforcement of orders envisaged by the plan and programme for demolition of illegal buildings.

2. **The Ministry of Transport, Construction and Infrastructure** should ensure that initiated processes in the field of urban planning and construction and in the field of legalisation of buildings are completed within legal time frames and time limits.

3. **The Ministry of Transport, Construction and Infrastructure** should efficiently perform its enforcement role of the Law on Legalisation of Buildings and should provide instructions to direct organisation of duties and work of local self-government.

4. **The Ministry of Transport, Construction and Infrastructure** should increase its professional capacities, ensure stricter depoliticizing of its staff and prevent corruption through reorganisation, employment of new officers and professional advancement of its employees.

5. In order to strengthen the preventive function of the building inspectorate, a change in the legal framework must be accompanied by greater involvement of **the Ministry of Transport, Construction and Infrastructure** through: increased oversight of local inspections, establishment of an efficient mechanism for enforcing inspection orders, proper allocation and direction of inspection resources, use and imposition of appropriate penalties in cases of unlawful acting by inspectors, establishment of a clear system of evaluation of inspectors' work that would not be based on a quota of inspections and issued orders, but on the rate of success in preventing negative effects of illegal and irregular actions.

6. **The Ministry of Transport, Construction and Infrastructure** should, **in cooperation with other competent authorities**, should make additional efforts to ensure the Republic of Serbia finally completes the legalisation process.

7. **Local self-government units** should form adequate organisational units competent for enforcement of demolition orders, where such units have not been formed.

8. **Local self-government units** should timely conduct public procurement procedures for demolition works and calls for tenders should be transparent.

9. **Local self-government units** should pass a Plan and Programme for the Demolition of Buildings within specified time limits and according to clear criteria and should consistently comply with it.

10. **Local self-government units** should transparently, accurately and precisely provide information on the options to contact the Anti-Corruption Team of the Ministry of Transport, Construction and Infrastructure and file complaints about the work and negligence of employees, as well as other rights in case of negligent acting of officers.

REAL ESTATE CADASTRE

I BACKGROUND

1. Key Government's achievements

1.1. The Law amending the Law on State Cadastre and Land Survey⁵⁴⁷ has been enacted.

2. Key results achieved by the Protector of Citizens

2.1. The need for more efficient acting pursuant to complaints against decisions of real estate cadastre offices, which the Protector of Citizens highlighted in numerous recommendations and opinions, has finally been accepted through amendments to the Law on State Cadastre and Land Survey.

2.2. Rectifying of omissions in the work of the Republic Geodetic Authority and/or real estate cadastre offices, immediately upon learning that the Protector of Citizens initiated inspection of their work, ensured that a large number of citizens are able to exercise their rights more efficiently.

2.3. In compliance with the recommendation of the Protector of Citizens, real estate cadastre offices of the Republic Geodetic Authority introduced the practice of processing requests for correction of technical mistakes in accordance with the Law on General Administrative Proceedings.

2.4. In 2015, the Protector of Citizens received 251 complaints in this field, in which complainants alleged 427 violations of rights. In the same period, he completed the investigations in a total of 188 cases received in 2015 and in earlier years. Out of the total of 169 investigations conducted, 79 (46.75%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted investigations and issued 16 recommendations, of which seven (43.75%) have been accepted and nine (56.25%) have not been implemented. Based on the number of identified (95) and remedied (86) omissions⁵⁴⁸, the rate of efficiency in this field is 90.53%.

3. Shortcomings at the national level

3.1. The major shortcoming in this field – inefficient deciding on citizens' applications by real estate cadastre offices – has not been fully remedied.

3.2. Shortcomings of the pilot project "Day for Day", which aims to ensure expedited handling of the backlog of cases dating back to 2014 and 2015, further delayed the handling of citizens' requests submitted in earlier years.

3.3. There is still no efficient system in place for issuing copies of the required documents demonstrating the basis for changes of title or other changes in properties from the period in which land registries were used.

⁵⁴⁷ Official Gazette of RS, No. 96/15.

⁵⁴⁸ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

3.4. Even after presentation and formation of real estate cadastres, there are still large discrepancies between the data recorded in real estate cadastres and the data recorded in land registries or between the data recorded in real estate cadastres and the factual situation on the ground.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **all competent authorities should jointly work towards** integrating land register files and collections of documents from the period when land registries were used. This would enable the citizens to obtain documents demonstrating the basis for changes in properties without the problems hitherto associated with this procedure;

- That appropriate measures should be taken to ensure more efficient functioning of **real estate cadastre offices** and their acting pursuant to received applications within the statutory time limits;

- That **the Republic Geodetic Authority and local self-administrative authorities** should cooperate in order to provide the conditions (in particular in terms of funding) for a repeated land survey in the municipalities of Belgrade and in all other municipalities in Serbia where citizens experience problems due to discrepancies between the factual situation on the ground and the data recorded in real estate cadastres.

5. Explanation

The competence of the Republic Geodetic Authority to act both as the authority of first instance and as the authority of second instance has been revoked by the Law on State Cadastre and Land Survey of 2009, when the ministry competent for construction and urban planning became competent for passing second-instance decisions. However, this Ministry, as an authority of second instance, with about 20 civil servants, did not successfully and efficiently handle the large number of complaints against first-instance decisions of the Republic Geodetic Authority. The number of complaints that have not been decided on increased in the period 2010 - 2015 from about 8,000 to about 47,000. In such situation, the number of citizens' complaints against violations of the right to receive a decision within the statutory time limit was very high and the Protector of Citizens introduced a procedure of direct phone contact between his Secretariat and the competent real estate cadastre offices to ensure more expedited handling of such complaints.

Under the enacted amendments of December 2015, the Republic Geodetic Authority was reinstated as the authority of second instance for deciding on complaints against decisions of real estate cadastre offices, which is certainly indicative of the country's effort to ensure higher efficiency in handling of citizens' complaints.

In addition, certain novelties specified by amendments to the Law should also, from the aspect of the issues faced by the Protector of Citizens in handling of complaints, contribute to both improvement of the work of real estate cadastre offices and increased extent of the protection of citizens' rights and interests. This primarily includes extension of the time limit to correct errors concerning registration of rights *in rem* to real estate from five to 10 years of the date of

registration in the maintenance of real estate cadastres or from the date when real estate cadastres were first implemented.

Complaints against the work of real estate cadastre offices are mainly lodged against their belated and inefficient acting. Investigations of their work are as a rule terminated because omissions are promptly rectified.

A significant progress in the acting of real estate cadastre offices has been made pursuant to the recommendation concerning the duty to handle requests for correction of technical errors in the records of real estate cadastres which do not relate to rights *in rem* on real estate in accordance with provisions of the Law on General Administrative Proceedings. The Republic Geodetic Authority expressed willingness to comply with the recommendation by forwarding this recommendation to all services for compliance. Once the practice called for in this recommendation is fully implemented, it will ensure prompt deciding on citizens' requests which are filed for the sole purpose of correcting technical errors, as they are by their nature not treated as new registration applications, which are handled in accordance with the principle of priority.

Although the Republic Geodetic Authority had a justified aim in implementing the project "Day for Day" - to expedite deciding on requests dating back to 2014 and 2015 - the project has had the adverse effect of further delaying the handling of requests dating back to earlier years (2013, 2012 and earlier). This has put persons who filed requests in earlier years at an unjustified disadvantage, where they would normally be entitled to have their requests handled first. The Protector of Citizens recommended that the Republic Geodetic Authority implement the project "Day for Day" only once all cases carried forward from earlier years have been closed.

II TYPICAL CASES

By failing to handle requests of a geodetic agency owned by the complainant, Real Estate Cadastre Office in Čajetina put the complainant at a disadvantage compared with other geodetic agencies

The complainant, who is the owner of a geodetic agency, complained about the work of the Real Estate Cadastre Office Čajetina because it put his agency at a disadvantage compared to other geodetic agencies when deciding on filed requests for registration. Upon investigation, it was found that in 2013 and 2014 the Real Estate Cadastre Office in Čajetina had belatedly handled a large number of cases in which the complainant's agency was involved by exceeding the statutory time limits multiple times on end.

The Protector of Citizens issued a recommendation ordering the Real Estate Cadastre Office in Čajetina to take all measures to complete the handling of cases in which the complainant's agency is involved as soon as possible and not to put the said agency at a disadvantage compared to other agencies in the future. The Real Estate Cadastre Office in Čajetina has not replied whether it complied with the recommendation within the specified time limit.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Ministry of Construction, Transport and Infrastructure** should, with active participation of **the Republic Geodetic Authority**, enable the citizens to obtain documents demonstrating the basis for changes in real estate without any issues by taking adequate measures and activities to finally integrate land register files and collections of documents from the period when land registries were used.

2. **The Republic Geodetic Authority** should consider the possibility of hiring the necessary number of employees or making changes in work organisation to ensure all real estate cadastre offices efficiently perform duties in their spheres of competence within statutory time limits.
3. **The Republic Geodetic Authority** should, in accordance with the enacted amendments to the Law on State Cadastre and Land Survey, take all necessary measures within its sphere of competence to establish an efficient mechanism for efficient and timely acting on complaints, in accordance with the provisions of the Law on General Administrative Proceedings.

RESTITUTION

I BACKGROUND

1. Key Government's achievements

- 1.1. Efficient work of the Restitution Agency has yielded tangible results reflected in a large number of completed handling of requests for restitution of property in kind.

2. Key results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens submitted to the National Assembly the Bill of Amendments to the Law on Property Restitution and Compensation⁵⁴⁹, with the aim of ensuring more efficient restitution of farmland to citizens, primarily in kind.
- 2.2. After omissions in the work of the Agency which the Protector of Citizens pointed out in investigations have been rectified, a large number of citizens are able to exercise their rights more efficiently.
- 2.3. In 2015, the Protector of Citizens received 47 complaints in this field, in which complainants alleged 71 violations of rights. In the same period, he completed the investigations in a total of 38 cases received in 2015 and in earlier years. The Protector of Citizens initiated a total of 13 investigations. The Protector of Citizens issued no recommendation after oversight procedures in this field in 2015.

3. Shortcomings at the national level

- 3.1. The identified problems which make implementation and completion of the restitution procedure more difficult have still not been addressed by relevant amendments to the Law on Property Restitution and Compensation.
- 3.2. The existing regulatory framework does not clearly specify who is responsible for enforcement of decisions allowing restitution in kind.
- 3.3. The Restitution Agency, contrary to the agreement made with the Protector of Citizens and the positive regulations, still does not pass partial decisions where restitution in kind is not possible, but there is a possibility of compensation.
- 3.4. Citizens suffer adverse consequences because they are not able to obtain the documentation they need for the restitution procedure to be successful (in particular documents which contain evidence of nationalisation) which the competent authorities had a duty to file and keep.

⁵⁴⁹ Official Gazette of RS, No. 72/11, 108/13 and 142/14.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **the Government** should initiate amendments to the Law on Property Restitution and Compensation which would provide for an additional period, corresponding to the time limit for filing rehabilitation claims, in which citizens could file claims for restitution of seized property;
- That **the Government** should propose amendment to the regulatory framework which would precisely and unambiguously regulate the procedure of enforcement of decisions on restitution passed by the Restitution Agency;
- That **the Government and the competent ministry** should adopt and implement the remarks made on the amendment to the Law which extend the time limit to set the compensation coefficient and again delay the time limit for making advance payments for compensation.

5. Explanation

According to the available data, more than 90% of property in kind, or a total of 4.516 facilities, premises, buildings and apartments, have been returned so far to previous owners or their heirs in procedures before the Restitution Agency.

Due to the complexity of the property appraisal procedure and shortcomings of the applicable legal framework, the procedures where restitution in kind is not possible but the requirements for compensation are met have not been completed, as well as those relating to restitution of consolidated land.

The Protector of Citizens submitted on 12 March 2015 to the National Assembly the Bill of amendments to the Law on Property Restitution and Compensation. The provisions of Article 24 of the Law⁵⁵⁰ generally grant the right to restitution of consolidated farmland, but do not specify in detail the exact manner and procedure of restitution. The aim of the Bill is to increase the possibilities for restitution of land in kind whenever possible and thus reaffirm the principle of priority of restitution in kind. The Bill provides that, if seized farmland was subject to consolidation or regrouping, land in the territory of a cadastral municipality where such consolidation or regrouping was performed or in consolidated territory of a neighbouring cadastral municipality where there is land that can be returned in kind should be returned to previous owners. The Bill proposed by the Protector of Citizens has not yet been enacted. The Ministry of Justice prepared the Draft Law amending the Law on Property Restitution and Compensation, in which it incorporated the proposals of the Protector of Citizens relating to restitution of consolidated land. In addition to the issue of restitution of consolidated land, the practice of the Protector of Citizens showed that the applicable Law does not contain precise and clear provisions pertaining to enforcement of decisions on restitution of property, which is why citizens cannot gain possession of the returned property, although the relevant decisions provide for the surrender of possession. In spite of all the efforts to address this issue

⁵⁵⁰Official Gazette of RS, No. 72/11, 108/13, 142/14 and 88/15 - decision of the Constitutional Court.

through cooperation between the competent authorities initiated by the Protector of Citizens, no progress has been made in this regard. To eliminate any scope for uncertainty, the provision of Article 49 of the relevant Law should be made more precise. without any potential ambiguity as to which authority is in charge of enforcing decisions and the manner in which decisions are enforced.

II TYPICAL CASES

Time limit for submission of restitution requests missed because of belated acting of competent public authorities

A complainant, who is a citizen of Bosnia and Herzegovina, through fault of his own, filed a restitution request for his deceased mother only after the procedure to declare the person deceased was completed and after he obtained an order for the seizure of property from the Historical Archive in Sremska Mitrovica.

In the statement of reasons for its decision, the Restitution Agency stated that the time limit for submission of requests set by the Law is a preclusive time limit⁵⁵¹, which is why the complainant's restitution request had to be rejected, without considering the reason for belated submission. In spite of the obvious belated acting of the competent authorities in procedures before the submission of the restitution request, the Protector of Citizens had to accept the facts pointed out by the Restitution Agency and advise the complainant to voice his dissatisfaction with the resolution dismissing his request in an appellate procedure before the authority of second instance.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Republic of Serbia** should accept responsibility for inadequate keeping of archival material, because of which citizens suffer adverse consequences in the restitution procedure as they are not able to obtain the necessary documents, and should propose ways to rectify this shortcoming (amendments to the law which would provide for a subsidiary manner of providing evidence of seized property).
2. **The Government** should adopt as soon as possible the abovementioned amendments to the Law on Property Restitution and Compensation and submit it to the National Assembly for endorsement.
3. **The Ministry of Justice** should, **in cooperation with the Restitution Agency and other competent authorities**, review the existing legislative framework, human resources and technical capacities of the Restitution Agency and accordingly propose amendments to regulations which would regulate in sufficient detail the enforcement of decisions on property restitution and should take other necessary measures.
4. **The Restitution Agency** should introduce a compulsory practice of passing partial decisions where restitution in kind is not possible, but the requirements for compensation have been met.
5. **The Restitution Agency** should act more proactively in complex procedures which require both collecting of data from other authorities and their active participation in identification of property which may be the subject of restitution and compensation.

⁵⁵¹ A time limit which, if missed, results in forfeiture of a right.

NATURAL DISASTERS

I BACKGROUND

1. Key Government's achievements

- 1.1. The Law on Recovery after Natural and Other Disasters⁵⁵² has been enacted.
- 1.2. The Public Investment Management Office has been formed.

2. Key results achieved by the Protector of Citizens

- 2.1. The opinion of the Protector of Citizens and the key principles of the Model Law on Government Assistance after Natural Disasters drafted by the Protector of Citizens, which have been accepted in the Law on Recovery after Natural and Other Disasters, have improved the procedure of allocation of solidarity assistance and refurbishment of damage from natural disasters.
- 2.2. In 2015, the Protector of Citizens received 48 complaints in this field, in which complainants alleged 59 violations of rights. In the same period, he completed the investigations in a total of 43 cases received in 2015 and in earlier years. Out of the total of 15 investigations conducted, five (33.33%) investigations were closed by issuing recommendations in an expedited procedure. The Protector of Citizens issued no recommendation after oversight procedures in this field in 2015. Based on the number of identified (5) and remedied (5) omissions⁵⁵³, the rate of efficiency in this field is 100%.

3. Shortcomings at the national level

- 3.1. The new Law on Recovery after Natural and Other Disasters again does not provide for a duty of the state regarding relief after minor natural disasters (e.g. minor landslides).
- 3.2. Local self-government units still do not act timely and efficiently in handling of citizens' applications for disaster relief and do not cooperate with the Protector of Citizens and other public authorities in that regard.
- 3.3. In spite of announcements and adopted assistance programmes, the Public Investment Management Office⁵⁵⁴ and local self-government units have not initiated the first stage (recording and research works) remediation of numerous landslides activated after the May 2014 floods.
- 3.4. The Law on Management of Risks from Natural Disasters has not been enacted.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

⁵⁵² Official Gazette of RS, No. 112/15.

⁵⁵³ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

⁵⁵⁴ After the Decree on Foundation of the Public Investment Management Office came in the force, the Office for Reconstruction and Flood Relief was closed.

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **local self-administrative authorities** should undertake all necessary measures to improve the organisation and coordination of work of these authorities in the handling of citizens' applications for disaster relief, in order to ensure more expedient handling of citizens' submissions, accessibility, good service and a fairer treatment of citizens;
- That **the Government** should allocate relief funds for the natural disasters which occurred prior to the May 2014 floods, in order to award solidarity assistance at least to the socially vulnerable so they could live in adequate conditions.

4.2. **The chairman of the Municipality of Mionica** has still not complied with or responded to the Recommendation of the Protector of Citizens to inform a complainant why her building was not included in the list of priorities for rehabilitation/construction; to compile records and determine the amount required for the rehabilitation of damaged buildings; and to make a proposal to the Government for allocation of earthquake relief funds to the municipality.

5. Explanation

In his Opinion of 13 June 2014, the Protector of Citizens had already advised the Government of the need to pass special regulations which would provide in detail for the procedure of allocation of solidarity assistance and recovery of damage caused by natural disasters.

For the same reasons, the Protector of Citizens presented to the Government on 24 June 2015 the Model Law on Government Assistance after Natural Disasters which would for the first time guarantee citizens the right to government assistance, regulate the clear criteria and the procedure for exercise of the right to government assistance and the manner of control. The focus is on particularly vulnerable groups, such as persons with disabilities and/or persons who receive social benefits, who would have priority in the handling of cases and award of government assistance. The National Assembly enacted the Law on Recovery after Natural and Other Disasters on 31 December 2015 in an expedited procedure, primarily because of the need to ensure continuity in the procedures initiated under the Law on Post-Flood Rehabilitation in the Republic of Serbia, which was repealed on 31 December 2015. The above Law and the Model Law submitted by the Protector of Citizens are based on the same principles: that government assistance is awarded to citizens if natural disasters cause material damage exceeding 10% of gross domestic product in a local self-government unit, where normal life is disrupted to such an extent that individuals and local self-governments are unable to recover; a regulated procedure for property reconstruction and provision of assistance to citizens, which ensures access to remedies; clearly defined control; special protection of vulnerable groups; and a provision allowing the Government to decide, in exceptional circumstances, to award government assistance even in cases when damage caused is lower than 10% of gross domestic product in a local self-government unit, where particularly justified reasons pertain.

Although the Protector of Citizens had drawn attention to this issue in his Opinion issued in 2014, the new Law does not provide for duties of the state with regard to relief in case of minor natural disasters (usually minor landslides). Citizens' requests in such cases are mainly left to arbitrary and discretionary decisions of local self-government units, which depend on the availability of funds allocated in the budget for such purposes.

Consequences of damage caused by minor natural disasters might in the future be remediated more easily also through the activities of the newly-formed Public Investment Management Office, the operations of which will be focused on the reconstruction of buildings that should be reconstructed by local self-governments, in cases where the latter lack funds for such purposes.

II TYPICAL CASES

Authority of second instance rectified shortcoming by passing a decision pursuant to a complaint

A complainant complained against belated ruling on his complaint against the decision of the City Administration of Loznica lodged on 5 January 2015. Only after the Protector of Citizens initiated an investigation, the Committee on the Assessment of Damage caused by Natural Disasters passed a decision pursuant to the complaint and overturned the first-instance decision, at which point the investigation pursuant to the complaint was terminated.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Government** should as soon as possible enact a law which would provide for the improvement, strengthening and expanding of the system for protection against natural disasters (the Bill on Management of Risks from Natural Disasters).
2. **The Public Investment Management Office** should take all necessary measures to ensure efficient landslide mitigation.
3. **Local self-government units** should allocate more funds from their budgets for the remediation of damage from natural disasters, since there are no regulations which would put an obligation to the state to do so.

3.17. SECTORS OF ENERGY AND MINING, CONSUMER PROTECTION, AGRICULTURE AND ENVIRONMENT PROTECTION

ENERGY AND MINING

I BACKGROUND

1. Key Government's achievements

- 1.1. The Bylaw on Energy Permit⁵⁵⁵, the Bylaw on Licences for Energy Businesses and Certification⁵⁵⁶, the Decree on Application of Fee Rates for the Calculation of the Cost of Access to the Electricity Distribution System⁵⁵⁷ and the Rules on Change of Supplier⁵⁵⁸ have been passed.
- 1.2. The Decree on Vulnerable Energy Consumers⁵⁵⁹ has been passed.
- 1.3. The Energy Development Strategy of the Republic of Serbia until 2025 with projections until 2030⁵⁶⁰ has been passed.

2. Key results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens prepared the Special Report "Issues in the Exercise of Electricity Consumer Rights, with Recommendations", which was submitted to the public enterprise "Elektroprivreda Srbije" (Serbian state-owned electric utility power company), the Ministry of Mining and Energy, the Energy Agency and their affiliated companies in charge of electricity distribution.⁵⁶¹
- 2.2. Acting in compliance with the proposal for improving citizens' position in relation to administrative authorities contained in the 2014 Annual Report of the Protector of Citizens, the Government passed the Decree on Vulnerable Energy Consumers.
- 2.3. In 2015, the Protector of Citizens received 151 complaints in this field, in which complainants alleged 156 violations of rights. In the same period, he completed the investigations in a total of 330 cases received in 2015 and in earlier years. Out of the total of 38 investigations conducted, seven (18.42%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted investigations and issued 10 recommendations, of which 7 (70%) have been accepted and 3 (30%) have not been implemented. Based on the number of identified (17) and remedied (14) omissions⁵⁶², the rate of efficiency in this field is 82.35%.

⁵⁵⁵ Official Gazette of RS, No. 15/15.

⁵⁵⁶ Official Gazette of RS, No. 87/15.

⁵⁵⁷ Official Gazette of RS, No. 65/15.

⁵⁵⁸ Official Gazette of RS, No. 65/15.

⁵⁵⁹ Official Gazette of RS, No. 113/15.

⁵⁶⁰ Official Gazette of RS, No. 101/15.

⁵⁶¹ Special Report of the Protector of Citizens "Issues in Exercise of Electricity Consumer Rights with Recommendations", available at: http://www.ombudsman.rs/index.php/lang-sr_YU/2011-12-25-10-17-15/4288-2015-08-19-13-26-56

⁵⁶² The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

3. Shortcomings at the national level

- 3.1. Some implementing regulations necessary for the full implementation of the Law on Energy have not been passed, although the time limit for their passing has expired.
- 3.2. The Bylaw on the Form and Content of the Identity Document of Electric Power Inspectors and Pressurized Equipment Inspectors⁵⁶³ and the Decree on Requirements for Electricity Distribution and Supply⁵⁶⁴ have not been harmonized with the provisions of the Law on Energy.
- 3.3. The Preventative Action Plan to Ensure Security of Supply of Natural Gas and the Contingency Plan to Ensure Security of Supply of Natural Gas have not been passed.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

- 4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **the Ministry of Energy and Mining** and **energy sector operators** should review the functionality of power generation and distribution facilities and decommission any facilities that are out of order or unsafe, ensure efficient and correct adjudication of claims made by electricity consumers, ensure lawful, efficient and expedient acting in cases of reported, identified or suspected malfunction of metering devices and ensure that customers' complaints are adjudicated by a body outside the energy sector operator concerned.

- That **the Ministry of Energy and Mining** should ensure that electricity bills are comprehensible and clearly state what the customer is paying for.

- 4.2. The recommendation given by the Protector of Citizens in his Special Report "Issues in Exercise of Electricity Consumer Rights with Recommendations" to ensure that in case of a change which requires execution of a new electricity supply agreement, consumers are not required to pay debt of the previous electricity consumer, has not been implemented.
- 4.3. The recommendation given by the Protector of Citizens in his Special Report "Issues in Exercise of Electricity Consumer Rights with Recommendations" to regulate the procedure for deciding on consumers' complaints in order to ensure impartiality and independence of an authority which will decide on complaints has not been implemented.

5. Explanation

Certain progress has been observed in the field of energy and mining in the previous period, primarily concerning the protection of the most vulnerable population categories.

In late 2015, the new Decree on Vulnerable Energy Consumers was passed, which ensured compliance with the Law on Energy. The main changes compared with the previously applicable regulation include the possibility for households whose members' lives or health could be at risk as a result of disconnection of electricity or natural gas because of their health status to be classified as vulnerable energy consumers, in compliance with the recommendations given in the 2014 Annual Report of the Protector of Citizens. The Decree

⁵⁶³ Official Gazette of RS, No. 5/14.

⁵⁶⁴ Official Gazette of RS, No. 63/13.

sets out that citizens can file applications to acquire the status of a vulnerable consumer to a local self-government authority competent for social security affairs, with a possibility to file complaints against decisions granting the status of a vulnerable consumer or a decisions rejecting a request.

In addition, a number of implementing regulations have been enacted which are necessary for implementation of certain provisions of the Law on Energy. Thus, the Bylaw on Licences and Certification for Energy Businesses specifies in detail the requirements for issuing, changing and revocation of licences for energy businesses, the content of licence application, the content of requests for issuing of reports of competent inspectors and evidence enclosed to requests for issuing of such reports, as well as the manner of keeping the register of issued and revoked licences. The rules on the change of electricity supplier set out the requirements and procedure for changing the electricity supplier who supplies an end consumer under an electricity or natural gas supply agreement in accordance with the law which governs the field of energy, as well as the rights, duties and time limits for acting of the power system operator, the supplier and the end consumer in the procedure of supplier change. However, certain regulations necessary for full implementation of the Law on Energy have not been passed.

In 2015, the National Assembly passed the Energy Development Strategy of the Republic of Serbia until 2025 with Projections until 2030, which sets out the path for market restructuring and technological modernisation of the Serbian energy sector in anticipation of a period of increased general demand for goods and services. According to the Strategy, the strategic approach to energy implies that processes in the economy and the state, as well as in the lives of citizens, should take place at lower financial costs and with a higher level of social and environmental sustainability. The aim of the Strategy is to ensure a sustainable energy system, more efficient economy and improved social welfare through Serbia's energy policy, while ensuring sustainable balances of natural resources and keeping pollution levels as low as possible.

Upon submitting the Special Report "Issues in Exercise of Electricity Consumer Rights with Recommendations", the Protector of Citizens closed the investigation of regularity and legality of work of the public enterprise "Elektroprivreda Srbije" (Serbian state-owned electric utility power company), the Ministry of Mining and Energy and related companies in charge of electricity distribution pursuant to several hundred complaints filed by citizens. The Protector of Citizens identified omissions in work of the authorities and companies and issued recommendations with the aim of eliminating the identified omissions and irregularities. The identified irregularities include: use of obsolete and run-down power facilities which citizens consider to be unsafe and are often constructed without appropriate permits and decisions; energy providers enter and make changes to citizens' property when owners are not present and without prior notification to owners; failure to take appropriate measures to rectify the damage caused to citizens' property by energy providers; failure to comply with the rules of the general administrative proceedings when performing (delegated) duties; functionality checks and certification of metering devices; unclear bills and inefficient and belated provision of notices to consumers, as well as inefficient and belated deciding on their requests and complaints; lack of control mechanisms in the actions taken by energy providers pursuant to consumer rights; and failure to comply with decisions of competent courts.

As the Report "Issues in Exercise of Electricity Consumer Rights with Recommendations" was written in August 2015 and the Protector of Citizens is well aware that certain omissions may take a long time to rectify, he will continue overseeing compliance of these authorities and organisations with the recommendations and activities aimed at improving the status of consumers.

Under the Decree on Requirements for Electricity Distribution and Supply, signing of electricity supply agreements with owners of properties fitted with metering devices is still conditional upon debt settlement by the previous energy consumer (previous owner of the property, developer, tenant etc.). Under the Law on Property Restitution and Compensation⁵⁶⁵, many citizens face a situation where a building they acquired through restitution is burdened with unpaid electricity debt racked up by previous electricity consumers. Energy providers refuse to sign new electricity supply agreements with the new owners, i.e. they refuse to connect such buildings to the electricity grid, until outstanding debt is paid, which puts new owners in an unfavourable position without a fault of their own. The situation has *de facto* been like this since the enactment of the Law on Property Restitution and Compensation and the protector of Citizens has received a number of citizens' complaints against possible violations of their rights by these arrangements which are provided for by implementing regulations. This is why it is necessary to amend the Decree on Requirements for Electricity Distribution and Supply as soon as possible, to ensure normal signing of electricity supply agreements for new owners who acquired property burdened by unpaid electricity bills after restitution, while electricity providers should seek to collect any outstanding debt from the persons who incurred such debt.

Impartiality and independence have not been ensured in the process of handling energy consumers' complaints, since such complaints are handled by electricity providers, rather than by an authority independent from both parties. To achieve impartiality in the assessment of regularity of treatment of consumers by energy providers, it is necessary to ensure full impartiality in the handling of complaints, while those who pass decisions must be independent from the contracting parties. Since the Law on Energy provides that consumers' complaints are to be handled internally by energy providers, it must be ensured that energy providers handle complaints in a way which ensures lawful, regular, diligent, fair, impartial and timely acting; furthermore, energy providers should refrain from any activities that might harm consumers' rights during the resolution of consumer disputes.

II TYPICAL CASES

Electricity debt settlement agreement signed with subtenant instead of electricity consumer

After an apartment was disconnected from the grid at the request of its owner and registered electricity consumer, the distribution system operator allowed the metering point to be connected to the grid before the expiry of the statutory period pursuant to an oral request made by a subtenant who resides at that address. In doing so, the operator exercised public powers contrary to the law and good governance principles and treated the complainant unlawfully, irregularly and extremely unfairly, as the Protector of Citizens found upon an investigation of regularity and legality of its work. The Protector of Citizens issued recommendations for the operator to remedy the identified irregularities in its work, with which the operator has complied.

⁵⁶⁵ Official Gazette of RS, No. 72/2011, 108/2013, 142/2014 and 88/2015 – decision of the Constitutional Court.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Government** should pass the Preventative Action Plan to Ensure Security of Supply of Natural Gas and the Contingency Plan to Ensure Security of Supply of Natural Gas.
2. **The Ministry of Mining and Energy** should, **in cooperation with the Energy Agency** amend the applicable implementing regulations or pass new ones to ensure implementation of all provisions of the Law on.
3. **The Ministry of Mining and Energy, the Energy Agency, the public enterprise "Elektorprivreda Srbije" and related companies** should act in compliance with the recommendations given by the Protector of Citizens in his Special Report "Issues in Exercise of Electricity Consumer Rights with Recommendations".

CONSUMER PROTECTION

I BACKGROUND

1. Key Government's achievements

- 1.1. The Bylaw on Operations of Bodies for Out-of-court Settlement of Disputes⁵⁶⁶ has been passed.
- 1.2. The Decree on Vulnerable Energy Consumers⁵⁶⁷ has been passed.
- 1.3. The Bylaw on the Content and the Manner of Keeping of Records of Consumer Associations and their Federations and Requirements for Registration⁵⁶⁸ has been passed.
- 1.4. The Decree Setting the Support Measures and Detailed Requirements Regarding the Criteria for Identification of Vulnerable Consumers in Distribution of Vouchers for Subsidized Purchase of Digital TV Signal Reception Equipment⁵⁶⁹ has been passed.

2. Key results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens informed many citizens of consumer rights, the available protection mechanisms, competent services, consumer protection authorities and associations and the right to file lawsuit or take other recourse.
- 2.2. The Protector of Citizens prepared the Special Report "Issues in Exercise of Electricity Consumer Rights, with Recommendations".⁵⁷⁰
- 2.3. In 2015, the Protector of Citizens received 246 complaints in this field, in which complainants alleged 253 violations of rights. In the same period, he completed the investigations in a total of 331 cases received in 2015 and in earlier years. Out of the total of 22 investigations conducted, five (22.73%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted investigations and issued 22 recommendations, of which one (4.55%)

⁵⁶⁶ Official Gazette of RS, No. 74/15.

⁵⁶⁷ Official Gazette of RS, No. 113/15. For more details see the section on energy of this Report.

⁵⁶⁸, Official Gazette of RS, No. 21/15.

⁵⁶⁹, Official Gazette of RS, No. 28/15.

⁵⁷⁰ Report available at: <http://www.xn--80aneakq7ab5c.xn--90a3ac/index.php/lang-sr/izvestaji/posebnii-izvestaji/4289-2015-08-19-13-46-17>. For more details see the section on energy of this Report.

has been accepted and 21 are still pending. Based on the number of identified (6) and remedied (6) omissions⁵⁷¹, the rate of efficiency in this field is 100%.

3. Shortcomings at the national level

3.1. A National Programme for the Protection of Vulnerable Consumers has not been adopted.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **the Government** should pass a National Programme for the Protection of Vulnerable Consumers.

5. Explanation

In the reporting period, out-of-court protection of consumer rights has been improved by passing of the Bylaw on Operations of Bodies for Out-of-court Settlement of Disputes. This Bylaw regulates in detail the requirements for out-of-court settlement of consumer disputes, in particular the rules and criteria for operations of the bodies for out-of-court settlement of consumer disputes, as well as the request form for inclusion in the list of the bodies for out-of-court settlement of consumer disputes and the form for initiation of out-of-court settlement of disputes. This provided an opportunity for consumers and buyers to settle consumer disputes promptly and more efficiently, without additional costs, before an independent body for out-of-court settlement of disputes, thus avoiding court proceedings.

The Bylaw on the Content and the Manner of Keeping of Records of Consumer Associations and their Federations and Requirements for Registration has also been passed, which ensures full implementation of the legal provisions relating to the role and activities of consumer associations and their federations with the aim of protecting consumer rights. The Decree Setting the Support Measures and Detailed Requirements Regarding the Criteria for Identification of Vulnerable Consumers in Distribution of Vouchers for Subsidized Purchase of Digital TV Signal Reception Equipment has also been passed. This Decree provided subsidized purchase of set top box devices necessary for digital TV signal reception to a certain number of financially vulnerable citizens.

The key shortcoming is the fact that Serbia still lacks a National Programme for the Protection of Vulnerable Consumers, which should set out the criteria for defining of vulnerable consumers and specific requirements for the provision of services of general economic interest to vulnerable consumers in certain areas of services of general economic interest. The Protector of Citizens highlighted the need for such National Programme in his previous Annual Report.

Since the Protector of Citizens lacks the authority to oversee the work of companies and sole traders, against whose actions he received the highest number of complaints in the field of consumer protection, in such cases the citizens were referred to the competent authorities and

⁵⁷¹ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

organisations (administrative authorities, judicial authorities, consumers' organisations) and were given information, guidelines and instructions on how to protect their consumer rights.

II OTHER ACTIVITIES

Cooperation with the Ministry of Trade, Tourism and Telecommunications

To ensure more efficient protection of consumer rights, in 2015 the Protector of Citizens held a meeting with the Ministry of Trade, Tourism and Telecommunications which addressed numerous issues relating to acting of the Market Inspectorate Department on consumers' petitions. A high agreement has been achieved on the more efficient future compliance of the Market Inspectorate Department with the requests of the Protector of Citizens in connection with citizens' petitions.

III TYPICAL CASES

Provisions of contract changed unilaterally

A telecommunication operator modified a telecommunications service subscription agreement a contract unilaterally and without prior notice, which unreasonably increased the amount of the complainant's bill for that service. The complainant filed a petition against those actions with the Republic Agency for Telecommunications and Postal Services, which undertook the statutory measures of intermediation in out-of-court settlement of disputes. Since the outcome of the intermediation was not favourable for the complainant, the complainant was advised to bring the matter before a competent court due to a potential breach of contract by the operator.

Distribution system operator fails to comply with the good governance principle in deciding on a consumer's complaint

Acting on a consumer's request to be connected the electricity distribution grid, a distribution system operator passed a decision which specified the connection costs. Dissatisfied with the amount of costs, the consumer filed a complaint against the decision; however, the operator failed to decide on it. Almost six months after filing the first complaint, the complainant filed a new complaint, but the operator again failed to decide on it and did not inform the consumer of any actions it had undertaken pursuant to the complaint. The Protector of Citizens issued recommendations to the distribution system operator, urging that body to act on the consumer's complaint against the decision without delay, to issue the consumer with a written apology for the omission made and to comply with provisions of the law and the good governance principles when deciding on consumers' requests in the future. The distribution system operator failed to comply with the recommendations, notwithstanding an urging sent by the Protector of Citizens.

IV PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Government** should pass protection programmes for vulnerable categories of consumers in the services of general economic interest (National Programme for the Protection of Vulnerable Consumers).

AGRICULTURE AND ENVIRONMENT PROTECTION

I BACKGROUND

1. Key Government's achievements

- 1.1. The Law amending the Law on Incentives in Agriculture and Rural Development⁵⁷² has been enacted.
- 1.2. The Law amending the Law on Farmland⁵⁷³ has been enacted.
- 1.3. The Law amending the Law on Forests⁵⁷⁴ has been enacted.
- 1.4. The Law amending the Law on Chemicals⁵⁷⁵ has been enacted.
- 1.5. The Law amending the Law on Biocidal Products⁵⁷⁶ has been enacted.
- 1.6. The Law amending the Law on Integrated Protection and Prevention of Environmental Pollution⁵⁷⁷ has been enacted.
- 1.7. The Law on Soil Protection⁵⁷⁸ has been enacted.

2. Key results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens submitted an initiative to the Government for amendments to the relevant regulations which govern the sources of non-ionising radiation and their environmental impact assessment.
- 2.2. The Protector of Citizens issued a recommendation to the Ministry of Agriculture and Environment Protection to take all necessary measures to ensure that agricultural land restitution processes that are still pending are completed as soon as possible and, when the relevant decisions become final and enforceable, to enable former owners of such land to freely and at no cost register their title in the real estate cadastre and gain possession of the land returned to their ownership or otherwise to compensate them financially for the value of such land without delay.
- 2.3. The Protector of Citizens issued a recommendation to the municipality of Majdanpek to comply with its statutory duties as soon as possible by providing animal control and animal shelter services in its territory and to pass and begin implementing a Programme for the Control and Reduction in the Population of Stray Dogs and Cats.
- 2.4. The Protector of Citizens issued an opinion to the Ministry of Agriculture and Environment Protection in which he advised the Ministry it should undertake all necessary activities within its sphere of competence to draft amendments to the Law on Water in order to ensure its fuller and more efficient application.
- 2.5. In compliance with the recommendation of the Protector of Citizens, the Ministry of Agriculture and Environment Protection has begun implementing the necessary measures with the aim of passing the missing planning documents for water management and ensuring effective cooperation between all competent authorities in order to devise a

⁵⁷² Official Gazette of RS, No. 103/15.

⁵⁷³ Official Gazette of RS, No. 112/15.

⁵⁷⁴ Official Gazette of RS, No. 89/15.

⁵⁷⁵ Official Gazette of RS, No. 25/15.

⁵⁷⁶ Official Gazette of RS, No. 25/15.

⁵⁷⁷ Official Gazette of RS, No. 25/15.

⁵⁷⁸ Official Gazette of RS, No. 112/15.

comprehensive and permanent solution to the issue of pollution of the river Krivaja in the municipality of Bačka Topola.

- 2.6. In connection with the recommendation of the Protector of Citizens to undertake measures pursuant to the Law on Psychoactive Controlled Substances in order to identify such substances seized under court orders and to determine their storage arrangements and further handling, the Ministry of Health asked for an extension of the period for compliance.
- 2.7. The Protector of Citizens noted in his recommendation it was necessary for the Minister without Portfolio in charge of emergency situations, the Ministry of Agriculture and Environment Protection, the Ministry of Health, public enterprises, agencies and expert organisations to undertake all measures to provide the required resources and begin as soon as possible with the cleaning of contaminated soil and remediation of solution in the Kostajnički creek, the rivers Korenita and Jadar and underground waters on that site, as well as to monitor the status of all aspects of human health and environment protection in the hotspot.
- 2.8. In 2015, the Protector of Citizens received 54 complaints in the field of agriculture, in which complainants alleged 76 violations of rights. In the same period, he completed the investigations in a total of 51 cases received in 2015 and in earlier years. Out of the total of 17 investigations conducted, four (23.53%) investigations were closed by issuing of recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted oversight procedures and issued 10 recommendations, of which two (20%) have been accepted, five (50%) have not been complied and three are still pending. Based on the number of identified (11) and remedied (6) omissions⁵⁷⁹, the rate of efficiency in this sector is 54.55%. In 2015, the Protector of Citizens received 45 complaints in the field of environment, in which complainants alleged 59 violations of rights. In the same period, he completed the investigations in a total of 58 cases received in 2015 and in earlier years. Out of the total of 19 investigations conducted, four (21.05%) investigations were closed by issuing of recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted oversight procedures and issued 13 recommendations, of which four (30.77%) have been accepted, seven (53.85%) have not been complied and two are still pending. Based on the number of identified (15) and remedied (8) omissions⁵⁸⁰, the rate of efficiency in this sector is 53.33%.

3. Shortcomings at the national level

- 3.1. Some planning documents in the field of environment protection have not yet been adopted.
- 3.2. There are still no laws and implementing regulations that would govern the quality of building materials and the quality of air in indoor areas (residential and non-residential), i.e. The national regulations in this field are not harmonised with the EU regulations and international standards.

⁵⁷⁹ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

⁵⁸⁰ The number of omissions identified is the sum of terminated investigations and the number of implemented and unimplemented recommendations, while the number of remedied omissions is calculated as the sum of terminated investigations and implemented recommendations.

- 3.3. The Law on Protection from Environmental Noise⁵⁸¹ still does not provide for detailed methods and manners of control and powers of environmental inspectors with regard to noise emanating from hospitality and catering establishments.
- 3.4. The citizens of Zajača continue to live in a polluted environment, notwithstanding the pledges made by competent authorities to remedy the source of pollution and put in place a water, air and soil quality monitoring mechanism in this area.
- 3.5. The Ministry of Agriculture and Environment Protection does not decide within the statutory time limits on requests for the establishment of hunting grounds or for the granting of rights to manage hunting grounds.
- 3.6. The municipalities of Majdanpek and Bač have not yet complied with their duties under the Law on Veterinary Medicine⁵⁸² and the Law on Animal Welfare⁵⁸³ to provide animal control and animal shelter services in their respective territories and to pass a Programme for the Control and Reduction in the Population of Stray Dogs and Cats.

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- That **the Ministry of Agriculture and Environment Protection and the Ministry of Transport, Construction and Infrastructure** should jointly undertake measures to enact laws or implementing regulations that would govern the quality of building material from the aspect of environment protection;

- That **the Ministry of Agriculture and Environment Protection and the Ministry of Health** should jointly undertake measures to enact laws or implementing regulations that would govern the quality of building materials and the quality of air in indoor areas (residential and non-residential), in accordance with the EU regulations and international standards;

- That **the Ministry of Agriculture and Environment Protection** should take statutory measures to enact the missing strategies and planning documents in the field of environment protection;

- That **the Ministry of Agriculture and Environment Protection** should put in place measures to improve the arrangements incorporated in the Law on Protection from Environmental Noise, including introducing more detailed provisions governing the methods and manner of inspection and the powers of environmental inspectors in cases of noise emanating from hospitality and catering establishments;

- That **the Ministry of Agriculture and Environment Protection** should review the importance and practicality of constructing a long-distance high-voltage power line in the community of Vinča in an area of increased sensitivity, i.e. in the immediate vicinity of a school or a pre-school facility, in compliance with the principle of fairness and the proclaimed principles of protection from non-ionizing radiation;

- That **the Ministry of Agriculture and Environment Protection and the Ministry of Health** should comply with the recommendations of the Protector of Citizens

⁵⁸¹ Official Gazette of RS, No. 36/09 and 88/10.

⁵⁸² Official Gazette of RS, No. 91/05, 30/10 and 93/12.

⁵⁸³ Official Gazette of RS, No. 41/09.

in order to implement continual monitoring of air, water and soil pollution in the town of Zajača and eliminate the source of the pollution.

5. Explanation

The government's greatest achievement in the field of agriculture in 2015 was the enactment of a number of legislative instruments to regulate in detail and improve the situation in this field. The existing legal framework was further improved on 1 June 2015 when the Law on Financing and Provision of Financing for Agricultural Production took effect. The aim of this Law is to improve the position of farmers by introducing an appropriate financing system. The newly-enacted Law amending the Law on Incentives in Agriculture and Rural Development introduces introduced credit support as a form of incentive which facilitates access to loans for agricultural holdings.

The Law amending the Law on Farmland governs in detail the issues of lease and acquisition of title to state-owned farmland. Finally, the Law amending the Law on Forests further regulates the rights and duties of forestry inspectors and provides for the imposition of penalties on sole traders for breaches of the law, which enables more efficient enforcement of this Law and better achievement of its objectives.

In investigations initiated pursuant to citizens' complaints it was found that some local self-governments, such as the municipalities of Majdanpek and Bač, have not yet complied with their duties under the Law on Veterinary Medicine and the Law on Animal Welfare to provide animal control and animal shelter services in their respective territories and to pass a Programme for the Control and Reduction in the Population of Stray Dogs and Cats, although the legislation which provides for these duties has been in force for years.

A particular issue was identified with regard to actions of the Ministry of Agriculture and Environment Protection, which did not decide within the statutory time limits on requests for the establishment of hunting grounds or for the granting of rights to manage hunting grounds, for which reason this authority was issued with a recommendation to remedy the omission in its work. Namely, in practice the Ministry delayed deciding on such requests until the conditions are met for the establishment of new hunting grounds, which left interested persons waiting for its decision for years.

As the Protector of Citizens received a number of complaints relating to the work of committees of local self-governments responsible for conducting procedures and passing decisions pursuant to requests for restitution of seized land which became socially-owned through inclusion in agricultural land funds or through confiscation due to failure to comply with mandatory buy-up of agricultural products, the Protector of Citizens conducted an investigation into the legality and regularity of work of those committees. The Protector of Citizens found that certain proceedings for the restitution of such land had been pending for more than twenty years. The committees justified their failure to act by the fact that they faced a number of issues, claiming they had sought assistance from the Ministry of Agriculture on multiple occasions, but to no effect. For this reason, the Protector of Citizens initiated an investigation of the Ministry of Agriculture and Environment Protection. Upon completing the investigation, the Protector of Citizens found shortcomings in the work of the Ministry of Agriculture and Environment Protection and issued a recommendation for that Ministry to cooperate with other authorities in order to undertake measures which will ensure agricultural land restitution processes that are still pending are completed as soon as possible and, when the relevant decisions become final and enforceable, to enable former owners of such land to freely and at no cost register their title in the real estate cadastre and gain possession of the land returned to their ownership by a decision of a Land Restitution Committee. Furthermore,

the Ministry should cooperate with other authorities in order to undertake the necessary measures and ensure that former owners of seized land who are entitled to financial compensation pursuant to a decision of a Land Restitution Committee receive such compensation without delay, in accordance with the relevant agreement or court decision.

Unlike 2014, when there were no major legislative activities in the field of environment protection, 2015 saw the enactment of a number of new laws, while a number of regulations crucial for environment protection are currently being drafted. The most important new piece of legislation is the new Law on Soil Protection, the aim of which is to conserve land surface areas, preserve the function of the soil as a natural resource and prevent or remedy any harmful changes in the soil which may result from pollution or other processes.

Amendments to the Law on Chemicals imposed new fees and separated the powers of inspection authorities. Amendments to the Law on Biocidal Products vested inspection authorities with new powers. Amendments to the Law on Integrated Protection and Prevention of Environmental Pollution extended the period for issuing integrated permits for those plants and activities that may be hazardous for human health, the environment or material resources. Drafting and enactment of the Law on Liability for Environmental Damage is underway, while draft amendments to the Law on Environment Protection, the Law on Protection of Nature and the Law on Waste Management have also been prepared.

On the other hand, from the aspect of citizens' interest it is noteworthy that certain areas highlighted by the Protector of Citizens in his 2014 Annual Report have not yet been regulated or have not been regulated in sufficient detail, e.g. the quality of air in indoor areas or the quality of building materials used in the construction of buildings.

As the Protector of Citizens observed on the basis of citizens' complaints that there was a need for reviewing the regulations pertaining to sources of non-ionising radiation and their environmental impact assessment, he issued an Initiative for the Government to amend and supplement the legislation in this field. The Initiative calls on the Government to specify in detail the testing methods for new and reconstructed sources of non-ionising radiation which are not subject to mandatory building permits or building work approvals. It also calls on the Government to impose an obligation on the operators of such sources to put in place environment protection conditions and measures and to commission an environmental impact assessment. The Initiative also includes a proposal to designate the authority that would be in charge of determining in each individual case whether the operator had complied with the duty to file an application for deciding whether an environmental impact assessment is needed for the plant in question.

The Protector of Citizens issued a recommendation which the Ministry of Agriculture and Environment Protection accepted and which called on that Ministry to undertake the necessary measures in order to pass the missing planning documents for water management and to ensure effective cooperation between all competent authorities in order to find a comprehensive and permanent solution to the issue of pollution of the river Krivaja in the municipality of Bačka Topola. Furthermore, as numerous irregularities were observed in the actions of the municipality of Batočina⁵⁸⁴, which failed to comply with its obligations under the Law on Water⁵⁸⁵ for years, the Protector of Citizens issued an opinion to the Ministry of Agriculture and Environment Protection in which called on that Ministry to address the identified shortcomings of the Law on Water by undertaking all necessary activities to draft

⁵⁸⁴ For more details, see the section on local self-government in this Report.

⁵⁸⁵ Official Gazette of RS, No. 30/10 and 93/12.

amendments to that Law in order to ensure its full and effective application and implementation.

In the course of 2015, the Protector of Citizens also found shortcomings in the work of the Ministry of Health, which failed to undertake measures pursuant to the Law on Psychoactive Controlled Substances in order to identify such substances and to determine their storage arrangements and further handling. The Protector of Citizens issued a recommendation to the Ministry, which accepted the recommendation and asked for an extension of the period for compliance.

The Protector of Citizens continues actively monitoring the work of the Ministry of Agriculture and Environment Protection and the Ministry of Health regarding their compliance with the recommendations of the Protector of Citizens to eliminate the source of the pollution in the town of Zajača and to implement continual monitoring of air, water and soil pollution, since those recommendations have not yet been fully implemented, notwithstanding all reassurances to the contrary. The landfill identified as the main source of pollution has not yet been remediated and continual monitoring of water and soil pollution on its site has not been implemented.

II TYPICAL CASES

Ministry of Agriculture and Environment Protection retains complainant's letter addressed to Government

In her complaint filed with the Protector of Citizens, a complainant stated the Ministry of Agriculture and Environment Protection had not forwarded to the Government her letter of April 2015, in which she tendered her resignation from the post of Director of the Public Institution "Cattle Veterinary Medicine Centre" in Krnjača.

The Protector of Citizens initiated an investigation and asked the Ministry of Agriculture and Environment Protection to provide information about the subject matter of this complaint. Soon afterwards, the complainant notified the Protector of Citizens the Ministry had forwarded her letter of resignation to the Government after the investigation was initiated and she was subsequently relieved of duties as the Director of the institution.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The Ministry of Agriculture and Environment Protection and the Ministry of Transport, Construction and Infrastructure** should jointly undertake measures to enact laws or implementing regulations that would govern the quality of building material from the aspect of environment protection.

2. **The Ministry of Agriculture and Environment Protection and the Ministry of Health** should jointly undertake measures to enact laws or implementing regulations that would govern the quality of air in indoor areas (residential and non-residential), in accordance with the EU regulations and international standards.

3. **The Ministry of Agriculture and Environment Protection** should undertake all measures to adopt the missing strategies and planning documents in the field of environment protection, such as national waste management plans for various types of waste (other than packaging waste), a water management strategy for the territory of the Republic of Serbia, a water management plan, an air protection strategy, air quality plans etc.

4. **The Ministry of Agriculture and Environment Protection** should put in place measures to improve the arrangements incorporated in the Law on Protection from

Environmental Noise, including introducing more detailed provisions governing the methods and manner of inspection and the powers of environmental inspectors in cases of noise emanating from hospitality and catering establishments.

5. **The Ministry of Agriculture and Environment Protection** should decide as soon as possible on applicants' requests for the establishment of hunting grounds or for the granting of rights to manage hunting grounds.

6. **The Ministry of Agriculture and Environment Protection** should ensure that those local self-government units that have not yet provided animal control and animal shelter services in their respective territories or have not passed a Programme for the Control and Reduction in the Population of Stray Dogs and Cats to remedy these omissions as soon as possible.

7. **The Ministry of Agriculture and Environment Protection** should review the importance and practicality of constructing a long-distance high-voltage power line in the community of Vinča in an area of increased sensitivity, i.e. in the immediate vicinity of a school and a pre-school facility, in compliance with the principle of fairness and the proclaimed principles of protection from non-ionizing radiation.

8. **The Ministry of Agriculture and Environment Protection** and **the Ministry of Health** should comply with the recommendations of the Protector of Citizens in order to eliminate the source of the pollution and implement continual monitoring of air, water and soil pollution in the town of Zajača.

3.18. SECURITY SECTOR

I BACKGROUND

1. Key Government's achievements

- 1.1. Public authorities have made significant efforts to provide humanitarian and other assistance to refugees who are in transit through the Republic of Serbia, striking a balance between humanitarian considerations and the need to preserve national security.
- 1.2. Efficient actions of all security services and other competent authorities have enabled the Belgrade Pride Parade to go ahead as planned for the second time, as well as the first Trans Pride Parade.
- 1.3. The new Law on Police⁵⁸⁶ ensured regulatory preconditions for better cooperation between the Internal Control Department and the Protector of Citizens for the purpose of protecting citizens' rights.

2. Key results achieved by the Protector of Citizens

- 2.1. Even though the Ministry of Defence and the Military Security Agency refused to comply with their statutory duty to cooperate with the Protector of Citizens, in an investigation conducted in connection with an incident which had occurred during the 2014 Pride Parade it was found that the said authorities had made omissions which harmed the exercise of citizens' rights, which prompted this institution to issue 18 recommendations.
- 2.2. The Ministry of Internal Affairs have implemented the recommendations of this authority issued in connection with the incident which occurred during the 2014 Pride Parade.
- 2.3. The Protector of Citizens issued public recommendations to the competent authorities to remove from office Minister of Defence Bratislav Gašić and Director of the Military Security Agency Petar Cvetković due to violations of citizens' rights through illegal work of the authorities they manage, with their repeated behaviour indicating an intent to refuse to cooperate with the Protector of Citizens and to continue with the illegal and irregular activities.

3. Shortcomings at the national level

- 3.1. The Ministry of Defence and the Military Security Agency have broken the law and harmed the exercise of citizens' rights through the actions of their officials and employees who refused to comply with their statutory duty to cooperate with the Protector of Citizens.
- 3.2. In an open session held on 28 January 2015, the Security Services Control Committee found that the Protector of Citizens had not provided valid evidence in support of his claim that the Military Security Agency had illegally used surveillance procedures and measures against certain party-political leaders, although Minister of Defence Bratislav Gašić had confirmed during the session that the document which the Protector of Citizens had read,

⁵⁸⁶ Official Gazette of RS, No. 6/16.

which related to the surveillance of preparatory activities of a political party by the Military Security Agency, was authentic.

3.3. Instead of making efforts to build capacities of the independent oversight authorities, the executive and legislative branches of power often leash out against these authorities because they exercise their powers relating to control of the security sector.

3.4. Application of the Law on Private Security to legal entities and sole traders providing private security services has been delayed until 1 January 2017.⁵⁸⁷

4. Key recommendations, opinions and legislative initiatives of the Protector of Citizens that have not been complied with

4.1. No actions have been taken to comply with the following recommendations for improving the citizens' position in relation to public authorities set out in the 2014 Annual Report of the Protector of Citizens:

- The Ministry of Defence must comply with its statutory duties in the investigations initiated by the Protector of Citizens, no matter which case is investigated;
- To pool together the existing technical capacities of various agencies and the police into a single national agency which would act as a provider of technical services necessary for the interception of communications and other signals to all authorised users. The communication interception equipment should be collected from different authorities and from the different sites where it is currently kept and delivered to that agency for use. The agency's operations must be strictly overseen. Any possession of electronic communication interception equipment outside of this national agency should be a criminal offence;
- To integrate the procedures applicable to electronic communication service providers and their responsibilities;
- To provide for an indelible trail of access to telecommunications, with all data necessary for subsequent investigation of legality and regularity of access;
- To provide for efficient oversight of the private security sector;
- To criminalise any obstruction of investigations conducted by independent oversight authorities (the Protector of Citizens, the Commissioner for Information of Public Importance and Personal Data Protection, the Anti-Corruption Agency, the State Audit Institution, the Equality Commissioner). Any harassment, threat or other attempt to influence a complainant or a witness who cooperates with oversight authorities should be qualified as a criminal offence;
- To impose an obligation on internal oversight mechanisms of all security authorities to report their findings relevant for the respect for human rights to the Protector of Citizens and other external oversight authorities, especially if they are ignored by the leaders of their own bodies or if they reveal serious alleged or confirmed violations of human rights;

⁵⁸⁷ The Law amending the Law on Private Security, Official Gazette of RS, No. 42/15, Article 3.

- To analyse the implementation of the Law on Data Confidentiality⁵⁸⁸, in particular declassification of old documents, and to consider the need for thorough amendments of that Law or enactment of a new one to ensure the achievement of its proclaimed objectives;
- To provide support to oversight institutions in building their capacity for handling and keeping confidential information;
- To enact a new Law on Security Information Agency to ensure, among other things, predictability in the use of special measures;
- To re-examine the police powers of the intelligence/security services, i.e. Their participation in criminal proceedings.

4.2. The Ministry of Defence and the Military Security Agency have not implemented the following recommendations issued upon finding all facts in connection with the incident which occurred during the 2014 Pride Parade and the related events:

- The Ministry of Defence should, where appropriate, launch without delay an initiative to amend the Law on Serbian Armed Forces as it pertains to the provision of personal security services, as well as to amend the Law on Military Security Agency and the Military Intelligence Agency as it pertains to the circle of persons covered by counterintelligence protection by the Military Security Agency;
- Officers of the Military Police and the Military Security Agency should not provide personal security services and counterintelligence protection outside of the mandate and scope of work of their respective authorities;
- The Ministry of Defence should ensure that the discharge of military assignments is organised in such a way that other administrative authorities are sufficiently aware of them and military assignments, including military police assignments, should be coordinated with other administrative authorities whenever it is reasonably likely that those assignments might affect in any way the performance of duties and tasks within the mandate of those administrative authorities (and vice versa), in order to reduce scope for violations of the citizens' right to proper (by which is also meant coordinated and efficient) functioning of administrative authorities and other citizens' rights in the fields of good governance and security;
- The Ministry of Defence should ensure that employees at the Ministry and officers of Serbian Armed Forces are aware they do not have the power to intervene in their official capacity in cases where they consider based on their personal assessment that police officers have exceeded their powers and that in such cases they have the right to necessary self-defence, the right to defence in an emergency, the right to make visual and sound recordings of the officers' actions (without obstructing them in the exercise of their duties) and other rights in accordance with the general regulations which apply to all citizens;
- The Ministry of Defence should find the causes for violation of the law pursuant to the request of the Protector of Citizens to provide with all necessary information and files (whether this was due to incompetence, bad faith or other causes) and undertake appropriate measures in response (training, demotion, disciplinary action or other measures in accordance with the law);

⁵⁸⁸ Official Gazette of RS, No. 104/09.

- The Minister of Defence should undertake measures to ensure his replies to requests made by the Protector of Citizens and other oversight authorities are truthful and accurate;
- The Minister of Defence should not issue illegal orders to the Military Security Agency and should respect its independence in the performance of duties within its mandate;
- The Minister of Defence should refrain from interfering with the work of the Military Security Agency and other parts of the Ministry of Defence, in particular those that are granted independence in the performance of duties within their mandate under the law. The Minister of Defence should request and obtain findings of external control authorities in order to improve the legality and regularity of work of the Ministry as a whole and its integral parts, but should not interfere in the control process uninvited while the process is ongoing;
- The Military Security Agency should provide thematic training to its officers about the powers of that Agency and the conditions under which the Agency can undertake measures and actions within its mandate, with emphasis on the restrictions imposed by Articles 5, 6, 7, 8, 9 and 23 of the Military Security Agency and the Military Intelligence Agency;
- The Military Security Agency should ensure (by determining the reasons and responsibility for the omission that has been made and by adapting its training programmes accordingly) that any activities and measures taken against persons who are not officers of Serbian Armed Forces or employees of the Ministry of Defence are subject to mandatory coordination with the Security Information Agency and/or the police and should jointly with those authorities determine the further course of action in such cases;
- The Military Security Agency should undertake the required measures (provide training) to ensure its officers are more aware of their duty to identify themselves to persons when obtaining data, except in cases of secret data collection in accordance with the Law;
- The Military Security Agency should find the causes for the initial violation of the law pursuant to the request of the Protector of Citizens to provide with all necessary information and files (whether this was due to incompetence, bad faith or other causes) and undertake appropriate measures in response (training, demotion, disciplinary action or other measures in accordance with the law);
- The Director of the Military Security Agency, as the person responsible for lawful and professional functioning of that Agency, should independently assess the legality and regularity of any orders received from the Minister of Defence or any other person and should refuse to carry out illegal orders, while any irregular orders should be carried out in the regular fashion;
- The Director of the Military Security Agency should notify the Protector of Citizens whenever an illegal order is received which, if implemented, would violate citizens' rights;
- If he suspects an order he received is illegal from the aspect of observance of citizens' rights, the Director of the Military Security Agency should seek the opinion of the Protector of Citizens;
- The Military Security Agency should initiate the procedure to revoke the confidentiality of data contained in the document Top Secret No. 44-123 of 7 October 2014 in accordance

with Article 21 of the Law on Data Confidentiality and other similar documents and assign a classification level in accordance with the Law (this specific recommendation also has the legal nature of a motion to repeal within the meaning of Article 23, paragraph 1 of the Law on Data Confidentiality);

- The Military Security Agency should train its officers on the manner of classification of confidential information, as provided for by the Law on Data Confidentiality and relevant implementing regulations;
- The Military Security Agency should determine the reasons why the Agency's internal control body had not prevented the omissions identified here or the reasons why, if the internal control body had pointed to some or all of the omissions identified here, the opinion of the internal control body was not acknowledged.

5. Explanation

The Protector of Citizens initiated on 10 November 2014 on his own initiative an investigation of legality and regularity of work of the Ministry of Defence and the Ministry of Internal Affairs in connection with an event which occurred on 28 September 2014 during Pride Parade in Belgrade.

In the open session of the Security Services Control Committee of the National Assembly held on 28 January 2015, deputies demanded of the Protector of Citizens to provide evidence in support of the publicly raised suspicions about the legality of work of the Military Security Agency. When deputy Vladimir Đukanović said the Protector of Citizens did not have a single supporting document and was causing public commotion without a proper reason, the Protector of Citizens read from the copy of a document he held, noting he could not claim with certainty at that moment that the copy was authentic and insisted it was his duty and power to verify its authenticity in an investigation. The document copy that was read contained a report of the Second Regional Centre of the Military Security Agency about the preparations for political activity made by certain political organisations, their leaders, members and sympathisers, with a notice that stated there were no threats to the security of Serbian Armed Forces and the Ministry of Defence and the data collection would be continued. The Protector of Citizens said from the floor of the parliament that this document, if proven to be authentic, showed the Military Security Agency had exceeded its powers and acted illegally and, as such, the document was not afforded the protection granted under the Law on Data Confidentiality.⁵⁸⁹ The Minister of Defence, who took the floor immediately after the Protector of Citizens, confirmed before the Committee and the public the document was authentic by stating the document was the work "of a man who was retired in December because of criminal offences, whom I cannot name because he is currently under investigation by the Military Security Agency for the embezzlement of a significant amount of money." The Committee nevertheless concluded the Protector of Citizens had not provided valid evidence in support of his claim that the Military Security Agency had illegally used surveillance procedures and measures to collect data. The chairman of the Committee later said he believed it was necessary to "review the laws on the Ombudsman and the Commissioner"⁵⁹⁰ in order to narrow down and restrict the powers of independent oversight authorities.

⁵⁸⁹ Article 3 of the Law on Data Confidentiality, Official Gazette of RS, No. 104/09.

⁵⁹⁰ "Stojanovic: Laws on Ombudsman and Commissioner need overhaul", N1, 15 May 2015, available at: <http://rs.n1info.com/a60768/Vesti/Stojanovic-Preispitati-zakone-o-ombudsmanu-i-povereniku.html>.

A document passed by the Protector of Citizens listed ten shortcomings in the work of the Ministry of Defence, eight shortcomings in the work of the Military Security Agency (body subordinated to the Ministry of Defence) and five shortcomings in the work of the Ministry of Internal Affairs which harmed the exercise of citizens' rights and, in accordance with his powers under the Law, issued eight recommendations to the Ministry of Defence, ten recommendations to the Military Security Agency and four recommendations to the Ministry of Internal Affairs to remedy the identified shortcomings.

The Ministry of Internal Affairs has implemented all four recommendations by taking the following actions: it has taken disciplinary action against five police officers for gross breaches of duty and overstepping of police authority and belated provision and calling od of medical aid in the incident which took place during the 2014 Pride Parade; it has found that, due to insufficient coordination between several organisational units (the Police Administration for the City of Belgrade, the Gendarmerie and the Internal Control Department) which acted during the 2014 Pride Parade, no investigation had been conducted after the incident; it has recognised its officers made an omission by not seizing the handgun in question after the incident which took place during the 2014 Pride Parade, which was justified by the fact that the holder of the handgun had identified himself as an officer of Serbian Armed Forces, for which reason the handgun was returned to him; and it has passed the Rules on Acting of Police Officers assigned to Internal Control Posts at the Internal Control Department of the Police pursuant to Documents and Recommendations issued by the Protector of Citizens.⁵⁹¹

In the investigation which took place before the issuing of these recommendations, the Ministry of Defence and the Ministry of Internal Affairs had not complied with their statutory duty to cooperate with the Protector of Citizens in order to fully and unbiasedly determine all circumstances surrounding the specific case and all omissions which harmed the exercise of citizens' rights. The duty of administrative authorities to cooperate with the Protector of Citizens was introduced in the interest of citizens and consequently any failure to comply with that duty also constitutes a violation of citizens' rights. The Ministry of Defence and the Ministry of Internal Affairs first refused to provide the documents and relevant information they held about the contentious event and advised the Protector of Citizens to contact the relevant public prosecutor. After a clarification of the powers of the Protector of Citizens and the differences between criminal proceedings and investigations conducted by the Protector of Citizens, the Ministry of Internal Affairs provided all information it held, while on the part of the Ministry of Defence the only body to comply - belatedly - was the Military Security Agency, which provided some of the data and files it held, which prevented the Protector of Citizens from fully examining even the actions of the Military Security Agency in connection with the contentious event. Other parts of the Ministry of Defence did not provide any information, including information on the actions taken by officers of the Military Police. For this reason, this document cannot purport to identify all omissions that were made and to present all recommendations that are necessary to improve the legality and regularity of work of the Ministry of Defence.

A communication of the Ministry of Defence signed by Minister of Defence Bratislav Gašić notified the Protector of Citizens that the Ministry of Defence had not implemented and would not implement any of the issued recommendations because it did not accept the Ministry had made any of the identified omissions in its work. Minister Gašić supported this by claims

⁵⁹¹ See also the part on police powers of the section on rights of persons deprived of liberty of this Report.

which had already been made during the investigation and which the Protector of Citizens had taken into consideration before identifying the omissions and explaining his opinion in detail. On the same day, a similar communication was issued on behalf of the Military Security Agency by its Director, Petar Cvetković, who also refused to implement the recommendations and denied the identified shortcomings.

Through the actions of their employees and officials, the Ministry of Defence and the Military Security Agency violated the law and harmed the exercise of citizens' rights, with the repeated behaviour of the Minister of Defence and the Director of the Military Security Agency clearly indicating an intent to refuse to cooperate with the Protector of Citizens. For this reason, the Protector of Citizens issued public recommendations for the removal of Minister of Defence Bratislav Gašić and Director of the Military Security Agency Petar Cvetković.

The public recommendations for removal from office were based on a conclusion that the behaviour of the said officials had violated the constitutional principle of the rule of law provided for in Article 3 of the Constitution⁵⁹², which is achieved *inter alia* by the government's compliance with the Constitution and laws and which is based on inalienable human rights, and that they had violated the constitutional guarantee of democratic and civilian control of Serbian Armed Forces.⁵⁹³ As of the end of the reporting period, the public recommendations of the Protector of Citizens were not implemented.

Since the beginning of the year, hundreds of thousands of people from war-torn countries have passed through Serbia and nearly half of them are women and children, i.e. persons belonging to particularly vulnerable categories who need special care and support. For several years, the Protector of Citizens has been systematically monitoring the actions taken by the competent administrative authorities in respect of persons in transit through Serbia and persons recognised as asylum-seekers in our country. After the terrorist attacks in Paris, the countries of transit and destination countries have faced additional challenges, in an attempt to strike a balance between humanitarian considerations and the need to preserve national security. The exercise of fundamental human rights of a vast majority of refugees should not be prejudiced by isolated incidents perpetrated by individuals. It is necessary to strike the right balance between humanitarian considerations and the need to preserve national security and in this regard the administrative authorities of the Republic of Serbia, including security services, have achieved satisfactory results.

The new Law on Police imposes a duty on the Internal Control Department to notify the Protector of Citizens if it finds that the actions of a police officer constitute an excess of police powers which violate citizens' rights. This ensured compliance with one of the 14 systemic recommendations dating back to 2012, which the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection had issued to the competent authorities in order to ensure better respect for citizens' rights in the work of the security sector.⁵⁹⁴ What remains is to legislate for a duty of the internal supervision mechanisms in all other security bodies to notify any findings relevant for the observance of human rights to the Protector of Citizens and other external control bodies, especially in cases where the management of their respective authorities fails to acknowledge those findings and

⁵⁹² Official Gazette of RS, No. 98/06.

⁵⁹³ Article 141, paragraph 1 of the Constitution of the Republic of Serbia, Official Gazette of RS, No. 98/06.

⁵⁹⁴ For more details, see: <http://www.poverenik.rs/ym/saopstenja-i-aktuelnosti/1386-konferencija-za-medije.html>.

in cases of serious alleged or confirmed violations of human rights. Most of the 14 recommendations have not been implemented.

Implementation of the Law on Private Security⁵⁹⁵, enacted in 2013, as it pertains to legal entities and sole traders providing private security services, has been delayed until 1 January 2017.⁵⁹⁶ Some of the positive effects expected from implementation of this Law include better quality of human resources, addressing the issue of dishonest competition and supervision of operations. Although most of the relevant implementing regulations were passed in 2015, implementation of the Law was delayed because it was not possible for the large number of employees in this sector to undergo relevant training and obtain relevant licences within the originally specified timeframe.⁵⁹⁷

II TYPICAL CASES

Extremely unfair treatment of retired officer by security service

The Military Security Agency acted in an unprincipled, retaliatory and utterly unfair way towards one of its retired officers by filing criminal charges against him six months after his retirement in connection with activities he had undertaken while in employment. Several months before retirement, the officer in question was sent to one of the highest personnel schools in the defence system, which is a training opportunity afforded to the most promising staff, rather than those who are likely to retire soon. From the circumstances found by the Protector of Citizens in the investigation it follows that the said officer had been forced to retire because internal control, whose composition and impartiality were under a question mark, found irregularities in his work. Although members of the internal control should have been appointed in such a way as to ensure there were no doubts about its impartiality and the officer should have been held to disciplinary, misdemeanour or criminal action, he was retired. Six months after his retirement, when the Military Security Agency came to suspect the officer in question had provided the Protector of Citizens with a document which showed the Military Security Agency had illegally collected data on political activities of political organisations, criminal charges were brought against the retired officer which presumably otherwise would not have been brought. The Protector of Citizens issued a recommendation to the Military Security Agency to undertake measures and activities to prevent the identified shortcomings in its work from repeating.

Security service not mandated to assess compliance with the conditions for investigation of its own work

The Protector of Citizens initiated an investigation of the work of the Security Information Agency. In its reply, the the Security Information Agency denied the allegations made in the complaint and noted the complainant was “free to seek the protection of his right or interest in judicial or other legal proceedings... while recourse to the Protector of Citizens is possible only after all other remedies have been exhausted.” because of this, the Protector of Citizens reminded the Agency that exhaustion of all available remedies was not a necessary condition for initiation of an investigation by the Protector of Citizens, as the Law on the Protector of Citizens sets out the conditions and reasons for initiating an investigation before that.⁵⁹⁸ This allows for simpler, more comprehensive and more economical verification of claims made in a complaint than going through all available remedies. The Agency was also advised that a

⁵⁹⁵ Official Gazette of RS, No. 104/13 and 42/15.

⁵⁹⁶ Article 3 of the Law amending the Law on Private Security, Official Gazette of RS, No. 42/15.

⁵⁹⁷ “Few agencies will survive: rocky road to a licence”, *Dnevnik*, 16 October 2015, available at: <http://www.dnevnik.rs/hronika/malo-agencija-ce-preziveti-do-licence-tezak-put>.

⁵⁹⁸ Article 25, paragraph 5 of the Law on Protector of Citizens, Official Gazette of RS, No. 79/05 and 54/07.

final assessment of the merits of a complaint and an assessment of compliance with the conditions for initiating and conducting an investigation can be made only by the Protector of Citizens. After being presented with these comments, the Security Information Agency remedied the omission and resumed its cooperation with the Protection of Citizens, as provided by the Constitution and the applicable laws.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES

1. **The National Assembly** should, through its working bodies, conduct timely, impartial and unbiased controls of security services and should ensure better cooperation with other external control mechanisms in this field.

2. **Security services** should be professional, depoliticized and subject to democratic and civil oversight.

3. **The Ministry of Defence** must comply with its statutory duties in the investigations initiated by the Protector of Citizens, no matter which case is investigated.

4. **Security services** should cooperate with the Protector of Citizens without exceptions, grant him access to offices and make available all data they hold which may be relevant for his actions, while refraining from making any assessments regarding (non)fulfilment of the conditions for their investigation.

5. **Internal control authorities within security services** should act lawfully and efficiently to ensure timely punishment is meted out for any irregularities in the work and to maintain the trust of security service officers in their independence and professionalism.

6. To pool together the existing parallel technical capacities of various agencies and the police into a single national agency which would act as a provider of technical services necessary for the interception of communications and other signals to all authorised users. The communication interception equipment should be collected from different authorities and from the different sites where it is currently kept and delivered to that agency for use. The agency's operations must be strictly overseen. Any possession of electronic communication interception equipment outside of this national agency should be a criminal offence.

7. To integrate the procedures applicable to electronic communication service providers and their responsibilities.

8. To provide for an indelible trail of access to telecommunications, with all data necessary for subsequent investigation of legality and regularity of access.

9. To provide for efficient oversight of the private security sector.

10. To criminalise any obstruction of investigations conducted by independent oversight authorities (the Protector of Citizens, the Commissioner for Information of Public Importance and Personal Data Protection, the Anti-Corruption Agency, the State Audit Institution, the Equality Commissioner). Any harassment, threat or other attempt to influence a complainant or a witness who cooperates with oversight authorities should be qualified as a criminal offence.

11. To impose an obligation on internal oversight mechanisms to report their findings relevant for the respect for human rights to the Protector of Citizens and other external oversight authorities, especially if they are ignored by the leaders of their own bodies or if they reveal serious alleged or confirmed violations of human rights.

12. To analyse the implementation of the Law on Data Confidentiality⁵⁹⁹, in particular declassification of old documents, and to consider the need for thorough amendments of that Law or enactment of a new one to ensure the achievement of its proclaimed objectives.

13. To provide support to independent oversight institutions in building their capacities for handling and keeping confidential information.

14. To enact a new Law on Security Information Agency to ensure, among other things, predictability in the use of special measures.

15. To re-examine the police powers of the intelligence/security services, i.e. Their participation in criminal proceedings.

⁵⁹⁹ Official Gazette of RS, No. 104/09.

PART IV COOPERATION BY THE PROTECTOR OF CITIZENS

4.1. COOPERATION WITH PUBLIC AUTHORITIES EXCLUDED FROM OVERSIGHT BY THE PROTECTOR OF CITIZENS

Contrary to Article 58 of the Law on National Assembly and Articles 238 and 239 of the Rules of Procedure of the National Assembly⁶⁰⁰, the National Assembly has not reviewed the 2014 Annual Report of the Protector of Citizens at its Plenum session although two parliamentary committees, namely the Committee on Human and Minority Rights and Gender Equality and the Committee on Judiciary, Public Administration and Local Self-Government, adopted the draft resolutions in connection with the review of this Report.

According to the information available to the Protector of Citizens, the Government still has not complied with the Conclusion passed by the National Assembly in connection with the review of the 2013 Annual Report of the Protector of Citizens⁶⁰¹, which stipulates the duty of the Government to inform the National Assembly once every six months about compliance with the recommendations of the Protector of Citizens, although the Government passed the Conclusion⁶⁰² as early as in July 2014 which provided the basis for monitoring the compliance with recommendations of the Protector of Citizens.

The only systematic form of communication with public authorities in 2015 were regular monthly meetings of the Prime Minister and the Protector of Citizens. Although fruitful, this newly-established form of cooperation proved to be insufficient to replace the statutory cooperation and communication with the administrative authorities which must cooperate with the Protector of Citizens in the assessment of legality and regularity of their work and must comply with recommendations of the Protector of Citizens or must always notify the Protector of Citizens of the reasons for their failure to comply with his recommendations. While cooperation with the Government, embodied in meetings of the Prime Minister and the Protector of Citizens, has been improved, cooperation with the National Assembly, which must oversee the legality of the work of the Government and public administration authorities, has worsened.

The Protector of Citizens also noted that the Government has not responded at all to some of the initiatives of the Protector of Citizens submitted to it in accordance with an explicit provision of the Law on the Protector of Citizens⁶⁰³ (e.g. the initiative for the Government to draft a Bill of Amendments to the Law on Signing and Execution of International Agreements and the initiative for the Government to propose a Bill on Ratification of the Optional Protocol to the Convention on the Rights of the Child).

As regards cooperation with the working bodies of the Assembly, in 2015 the Protector of Citizens established particularly good cooperation with the Committee on Human and Minority Rights and Gender Equality. This Committee has in its cooperation with the Protector of Citizens always complied with provisions of the Constitution, laws and the Rules of Procedure of the National Assembly. Good cooperation was also established with the Committee on Labour, Social Issues, Social Inclusion and Poverty Reduction.

⁶⁰⁰Official Gazette of RS, No. 20/12 – consolidated text.

⁶⁰¹ Official Gazette of RS, No. 60/14.

⁶⁰² Number 05 021-7728/2014.

⁶⁰³ Article 18 of the Law on the Protector of Citizens.

Contrary to the practice established in previous years, 2015 was characterized by lack of substantial cooperation between the Committee on the Rights of the Child and the Protector of Citizens. The Protector of Citizens and the Deputy Protector of Citizens for Child Rights were not involved or invited to participate in activities of the Committee. The Committee has not reviewed the section on child rights of the 2014 Annual Report of the Protector of Citizens.

Cooperation with the Committee on the Judiciary, Public Administration and Local Self-Government had its ups and downs in 2015. The Committee reviewed the 2014 Annual Report of the Protector of Citizens and proposed affirmative conclusion. However, contrary to the explicit provisions of the Law on the Protector of Citizens and the Rules of Procedure of the National Assembly, on several occasions the Committee did not review legislative initiatives submitted to it by the Protector of Citizens.

The initially good cooperation with the Security Services Control Committee took a turn for the worse in January 2015, when a session of the Committee convened to investigate allegations of irregularities in the work of Military Security Agency (MSA) turned into a campaign against the Protector of Citizens because of his efforts to investigate the alleged irregularities in the work of the MSA. The Protector of Citizens was under huge pressure, with accusations of jeopardising national security being flung his way. The Committee closed its session by adopting a Conclusion which completely ignored the information presented by the Protector of Citizens during the session and misrepresented the information and documents made public by this independent government authority. The Committee concluded the Protector of Citizens was wrong, although it has no authority to evaluate his work.

The Committee on Constitutional and Legislative Issues, which under the Law on the Protector of Citizens proposes to the National Assembly a candidate for the Protector of Citizens and which should accordingly be the basic committee in charge of reviewing Reports of the Protector of Citizens, has never, including in 2015, reviewed these Reports.

In November 2014, the Protector of Citizens submitted to the National Assembly for approval a new Rulebook on Internal Organisation and Job Classification of the Secretariat of the Protector of Citizens. Although the Committee on Administrative, Budgetary, Mandate and Immunity Issues prepared a Draft Decision on Approval of the Rulebook in a short time, this Rulebook was not on the agenda of the National Assembly for almost a year, although the parliament worked in an expedited procedure. It was not until November 2015 that the National Assembly passed the Decision which endorsed this Rulebook. The existing provision of the Law on the Protector of Citizens, under which the National Assembly endorses the general instrument on internal organisation and job classification of the Secretariat of the Protector of Citizens, affects the independence of the Protector of Citizens by reducing organisational flexibility, efficiency and adaptability to changes.

The Protector of Citizens is therefore of the opinion that the procedure for passing the Rulebook and obtaining its approval should be amended in that the parliamentary committee in charge of administrative issue should be in charge of approving the number of employees at the Secretariat of the Protector of Citizens, acting on a proposal of the Protector of Citizens, while the Rulebook should be passed by the Protector of Citizens and published on his website. This would increase the efficiency of the procedure for passing the general instrument on internal organisation and job classification of the Secretariat of the Protector of Citizens, in order to allow for greater organisational flexibility of this authority, which should lead to higher efficiency in the future.

In 2015, the Law on Budget System⁶⁰⁴ remained in force. According to that Law, the Protector of Citizens has to obtain an approval from the committee of the National Assembly responsible for administrative and budgetary issues for employment or hiring of any new person, notwithstanding the fact that the post is provided for in the Human Resources Plan and funding for it has been secured in the budget of the Republic of Serbia. The Protector of Citizens stands by his opinion that such approval procedure gives rise to a serious issue to the extent that it poses a threat to the independence and performance of the Protector of Citizens.

In addition, in 2015 the Law on Determining the Maximum Number of Employees in the Public Sector took effect, which stipulates that the Committee on Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly approves the maximum number of employees in the offices of the Protector of Citizens and other independent public authorities (the Commissioner for the Protection of Equality, the Commissioner for Information of Public Importance and Personal Data Protection, the State Audit Institution and the Anti-Corruption Agency). This has grossly violated independence of the Protector of Citizens set out by the Constitution (and that of other mentioned independent authorities the independence of which is provided for by organic laws), while the independence of the Government, the President of the Republic, the National Bank of Serbia, the High Judicial Council, the Constitutional Court and the State Prosecutorial Council has been preserved by a provision stipulating that these authorities themselves specify the maximum number of employees in their offices. This Law and its belated implementation have further undermined the independence and hindered the work of the Protector of Citizens and other independent public authorities by imposing unnecessary administrative procedures.

The procedure stipulated by this Law delays the implementation of the Decision on Approval of the Rulebook on Internal Organisation and Job Classification of the Secretariat of the Protector of Citizens passed by the National Assembly in November 2015 by essentially requiring another approval of the same parliamentary committee on virtually the same issue. The Protector of Citizens submitted to the Committee on Administrative, Budgetary, Mandate and Immunity Issues a substantiated proposal for a decision that would set the maximum number of full-time employees at the Secretariat of the Protector of Citizens for 2016, pursuant to which no decision has been passed as yet.

4.2. INTERNATIONAL COOPERATION AND PROJECTS

In March 2015, the Protector of Citizens was reaccredited as the National Institutions for the Promotion and Protection of Human Rights (hereinafter referred to as "NHRI") with the highest "A" accreditation status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (hereinafter referred to as "ICC").⁶⁰⁵ The Protector of Citizens carried out a number of activities as NHRI in 2015.

Assured that full and unbiased evaluation of the level of respect for human rights is key for proper focusing of activities carried out by government and other entities to improve the existing situation in the field of human rights in the state, the Protector of Citizens submitted reports to the UN Committee against Torture and the UN Committee on the Rights of Persons with Disabilities.

⁶⁰⁴ Official Gazette of RS, No. 54/09, 73/10, 101/10, 101/11, 93/12, 62/13, 63/13 - corrigendum, 108/13 and 142/14.

⁶⁰⁵ ICC is a global network of institutions for the promotion and protection of human rights, the internal accreditation system of which, based on Paris Principles, is recognized by the United Nations. ICC coordinates the relations between NHRIs and the United Nations in the field of human rights.

As part of his reporting activities in the field of international cooperation, the Protector of Citizens prepared and submitted replies to various questionnaires to the Office of the United Nations High Commissioner for Human Rights (OHCHR). He also prepared contributions for reports under special procedures of the United Nations. The Deputy the Protector of Citizens Robert Sepi met with the Special Rapporteur on the right to housing Leilani Farha and presented her the powers of the Protector of Citizens and activities in connection with the exercise of the right to adequate housing.

In 2015, the Protector of Citizens continued intensive international cooperation at multilateral and bilateral levels. Cooperation with regional and European international organisations and institutions and their specialized bodies was further strengthened. Established mechanisms for cooperation with ombudsmen in other countries were enhanced through bilateral and multilateral meetings, primarily in regular conferences, round tables, seminars, trainings and educative meetings organised in the country and abroad.

The Protector of Citizens continued his regular activities as a member of a number of expert networks: the International Coordinating Committee for National Human Rights Institutions, the International Ombudsman Institute, the Association of Mediterranean Ombudsmen, the European Ombudsman Institute and the Southeast European Network of Ombudsmen for Children.



Picture 10 Protector of Citizens, Saša Janković receiving the Franch National Medal for merit from Ms Christine Moro, the French Ambassador in Serbia, Belgrade, March 2015.

Strengthening of bilateral and multilateral cooperation with ombudsmen in the neighbouring countries has continued throughout 2015. The Protector of Citizens took part in a number regional conferences, while several delegations of foreign ombudsmen expressed willingness to make a study visit to the Protector of Citizens. Thus, the Protector of Citizens was a host to delegations of ombudsmen of Belarus, Moldova and Georgia.

The Protector of Citizens exchanged experiences in the protection of rights of members of armed forces with his colleagues at a conference held in Prague (an earlier conference was held in Belgrade and hosted by the Protector of Citizens). He presented his experiences with oversight of security services and with the establishment of effective and efficient external control of administrative authorities to Georgian and Libyan officials during visits organised and financed by the Geneva Centre for Democratic Control of Armed Forces.

In an effort to contribute to Serbia's EU accession process, apart from participation in meetings of the Committee and subcommittees on implementation of the Stabilisation and Association Agreement, the Protector of Citizens also had talks with Mr. Martin Schulz, the President of the European Parliament, Mr. David McAllister, European Parliament's standing rapporteur on Serbia, Mr. Jean-Eric Paquet, Director for Western Balkans at the EU Directorate General European Neighbourhood Policy and Enlargement Negotiations, and Mr. Christian Danielsson, the Director General for Enlargement at the European Commission. The Protector of Citizens also met with the delegation of the Stabilisation and Association Parliamentary Committee of the European Parliament, the delegation of the European People's Party and the delegation of the Foreign Affairs Committee of the European Parliament and its Human Rights Subcommittee. He also met with several expert EU missions. In addition, The Protector of Citizens participates in reporting in connection with EU accession on an ongoing basis.

In March 2015, the Protector of Citizens and his associates talked to Mr. Nils Muižnieks, the Commissioner for Human Rights of the Council of Europe, during his working visit to Serbia. The main topics of the meeting were freedom of the media and discrimination. During the visit, the Commissioner visited the "Veternik" Centre with Protector of Citizens Saša Janković and Deputy Protector of Citizens Miloš Janković.

In June 2015, the Protector of Citizens had a keynote address on the role of national human rights institutions in protection and improvement of human rights in the OSCE area at the annual OSCE Human Dimension Seminar held in Warsaw.

During the course of 2015, the Protector of Citizens also had meetings with high foreign officials, including Chancellor of Germany Angela Merkel, British Foreign Secretary Philip Hammond and US Deputy Assistant State Secretaries Thomas O'Malley, Hoyt Brian Yee and Robert Berschinski.

Projects

The project *Promoting Human and Minority Rights through more Intense Contact between the Protector of Citizens and Citizens* was completed in June 2015. The project was implemented with financial support of the Government of the Kingdom of Norway and in cooperation with the Librarian Association of Serbia and public libraries in fifteen selected municipalities and towns/cities. From these libraries from which citizens can contact the Secretariat of the Protector of Citizens by a video link and obtain information about their rights or lodge complaints against the work of public authorities. During the implementation of the project, a total of 2.028 citizens contacted the Protector of Citizens through a video link, while 3.096 citizens sought information on this initiative in local libraries. This practice will be continued for two more years after completion of the project. In addition, a dialogue on various issues in the field of human rights with a focus on the rights of marginalized groups has been initiated at the local level in cooperation with non-governmental organisations. In cooperation with the Accessibility Review Association, the electronic Accessibility Map has been prepared, which contains information on physical and communication accessibility of buildings for persons with disabilities and availability of local support services to these persons. The Map is available at the official websites of the Protector of Citizens and the Accessibility Review Association. The project also improved the electronic document management system of the Protector of Citizens.

The Protector of Citizens is a beneficiary of one component of the five-year project Judicial Reform and Government Accountability which has been implemented in Serbia since 2011 by the U.S. Agency for International Development (USAID). In 2015, the focus of implemented activities was on strengthening of the capacity of the Protector of Citizens for sounder and

more efficient reporting, with the aim of defining a single methodological framework for special reports of the Protector of Citizens. In addition, a training programme for patient rights advisors and local health councils.

In 2015, the Protector of Citizens continued cooperation with the OSCE (Organisation for Security and Cooperation in Europe) Mission to Serbia. A special focus was on improvement of the legal framework in the field of gender equality, which resulted in the Model Law on Gender Equality that has been submitted to the Government's Coordination Body for Gender Equality for further review. In addition, a number of activities were implemented which resulted in publishing of a special report on implementation of the General and Special on Protection of Women from Violence. In this field, an analysis was also performed of the existing training programmes for employees in the competent authorities in the field of prevention, elimination and protection of women from domestic violence and intimate partner violence. On the basis of the data collected in the analysis, the Protector of Citizens prepared the Special Report on Trainings to Acquire and Improve Knowledge and Competences for Prevention, Elimination and protection of Women from Domestic Violence and Intimate Partner Violence.⁶⁰⁶ Cooperation with the OSCE was also established in trainings for mobile teams for inclusion of the Roma. A representative of the Protector of Citizens held a lecture on powers of the Protector of Citizens and the existing mechanisms and affirmative measures for more efficient exercise of rights of the Roma for twenty mobile teams for inclusion of the Roma.

At the end of the reporting period, the Memorandum of Understanding and Cooperation between the Protector of Citizens and the office of the United Nations Children's Fund (UNICEF) in Belgrade was completed. During the course of 2015, the majority of implemented activities were dedicated to protection of children from violence, with a focus on sexual abuse and exploitation. In late 2015, a work meeting was held in Belgrade on protection of children from sexual abuse and exploitation, which was attended by representatives of competent public authorities and the civil sector. In addition, leaflets⁶⁰⁷ with messages of members of the Panel of Young Advisors about the exercise of child rights, a brochure⁶⁰⁸ containing the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and a collection⁶⁰⁹ of selected recommendations of the Protector of Citizens in the field of protection of children against violence, abuse and neglect. Trainings for paediatricians and visiting nurses were organised in cooperation with the UNICEF and the Paediatric Association of Serbia, where representatives of the Protector of Citizens held lectures on the situation of children who are members of the Roma national minority and child victims of violence, abuse and neglect and affirmative measures in the health care system, as well as other issues in connection with the situation of vulnerable groups.

The activities of the Children's Rights Ombudspersons Network in South and Eastern Europe (CRONSEE), which were initiated in 2014 and were organised by the Protector of Citizens, were continued in 2015. At the end of the previous year, a collection of selected works from the regular conference of the Network held in 2014 in Belgrade was published. The conference

⁶⁰⁶ Report available at: <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/4613-2016-02-26-10-48-42>.

⁶⁰⁷ Available at: http://www.pravadeteta.com/attachments/394_Liflet%20-%20priprema%20343x240mm.pdf

⁶⁰⁸ "Prevention and Protection of Children against Sexual Abuse and Sexual Exploitation - Selected Recommendations, Opinions and Initiatives of the Protector of Citizens with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse". Available at: http://www.pravadeteta.com/attachments/394_publikacija%20Lanzarot%20pdf.pdf

⁶⁰⁹ "Protection of Children against Violence, Abuse and Neglect: Selected Recommendations and Opinions of the Protector of Citizens".

Available at: http://www.pravadeteta.com/attachments/394_Za%C5%A1tita%20dece%20-%20za%20WEB.pdf

addressed sustainability of services and programmes for children under restrictive economy policies. At the Spring Seminar on protection of children against violence which was organised by the European Network of Ombudspersons for Children (ENOC)⁶¹⁰, the Deputy the Protector of Citizens for child rights and gender equality, together with the Bureau of the Network and a group of its members, was preparing the text of a document of the Network on protection of children against violence⁶¹¹ and planning and designing activities for the ENOC Annual Conference. The key activities of the Protector of Citizens in the previous year were presented at the Conference, in particular those in connection with protection of children against violence, abuse and neglect and children living and working on the streets.

With financial support of the Danish Embassy and with the aim of improving safety of citizens and ensuring more clear and transparent procedures for the award of government assistance in cases of natural disasters, the Protector of Citizens initiated in late 2014 preparation of the Model Law on Government Assistance after Natural Disasters which has been presented to the public in 2015 and submitted to the Government for the review. The key principles of the Model Law are contained in the Law on Recovery after Natural and Other Disasters enacted on the last day of 2015, which improved the procedure of allocation of solidarity assistance and remediation of damage from natural disasters. The Danish Embassy provided financial support for the project which ensured installation of a software and video surveillance equipment in order to improve the protection of confidential held by the Protector of Citizens and security of premises where such data are kept.

The Protector of Citizens and the United Nations Population Fund (UNFPA) have initiated cooperation to contribute to improvement of the situation of the elderly in Serbia and their full social inclusion. During the course of 2015, an analysis of the Serbian regulatory framework was made, as well as a comparative analysis of the international legal framework in the field of rights of the elderly. This analysis will be an integral part of a special report on the situation of the elderly which should be published in 2016. Successful cooperation with the UNHCR and the Ministry of Justice and Public Administration has been continued on further addressing the issue of “legally invisible persons”. Trainings have been continued for judges, registrars, employees in centres for social work and Roma civil society.

In mid-2015, the Protector of Citizens has initiated implementation of a project the purpose of which is to improve the legislative framework for the protection of human rights in accordance with the relevant international standards and *acquis communautaire*. Civil society organisations and research and development organisations dealing with the improvement of human rights have been hired to submit to the Protector of Citizens analyses of laws and implementing regulations and international documents on the exercise of human rights which have been ratified by the Republic of Serbia. These expert analyses will provide the basis for opinions of the Protector of Citizens on draft laws, amendments to laws in the parliamentary procedure and initiation of other legislative initiatives. The project will last until December 2016 and is financed by the British Embassy in Serbia. It is implemented in cooperation with the House of Human Rights which will provide administrative and technical support in implementation of the project.

⁶¹⁰ See more at: <http://enoc.eu/?event=enoc-seminar-on-violence-against-children>.

⁶¹¹ Available at:

http://www.pravadeteta.com/attachments/394_ENOC%20position%20statement%20on%20Violence%20against%20children%202015%20FV.pdf; <http://enoc.eu/wp-content/uploads/2014/12/ENOC-position-statement-on-Violence-against-children-2015-FV.pdf>.

4.3. PROTECTOR OF CITIZENS IN THE MEDIA

The number of articles and television reports about the Protector of Citizens has reached an all-time high, topping at twice as many as in 2014. The 16 daily and weekly papers covered by the analysis ran 1,167 articles of various genres. The majority of the texts were published by the following dailies: Danas, Politika, Blic, Dnevnik and Vecernje novosti, which remained the same as in the previous years. The situation is the same with television broadcasters with national coverage and the order of television stations measured by the number of broadcasted reports is the same as in the previous years: out of a total of 593 reports, most were broadcast on the Serbian Broadcasting Corporation and TV B92, followed by TV N1, which began operating at the end of 2014, TV Pink and RTV (Radio Television of Vojvodina) 1.

As in the previous years, the media covered the work of the Protector of Citizens with great interest, in accordance with their editorial policies. They reported on the basis of statements given by the Protector of Citizens and his deputies or other officials, on the basis of announcements or in the form of news, but they also regularly reported the opinions and comments posted by the Protector of Citizens on his Twitter account. The Protector of Citizens and his deputies appeared on television on 14 occasions. During the reporting year, the press published as many as 84 commentaries on the work and activities of this authority, most of them in Danas and Politika dailies.

The majority of media reports about the Protector of Citizens were worded impartially, while the vast majority of journalists have reported positively about the initiatives and comments of this institution. They covered with a special interest the unfolding of events after the Protector of Citizens filed criminal reports against two military policemen because of their attack on the Gendarmerie during the Pride Parade in Belgrade held in September last year, the refusal of the Ministry of Defence and the Military Security Agency to cooperate and the public recommendation of the Protector of Citizens to remove the line Minister and the Director of the said Agency from office (more than 200 texts), as well as the situation of the asylum seekers, collection of the solidarity tax, the situation of pregnant women etc.

Press articles and television reports in the local media are not included in these statistics, so it should be noted that the local media have taken a keen interest in the work of the Protector of Citizens whenever he or his deputies or members of his Secretariat visited other towns/cities and municipalities in Serbia.

Chart 11 Protector of Citizens in the media 2008-2015

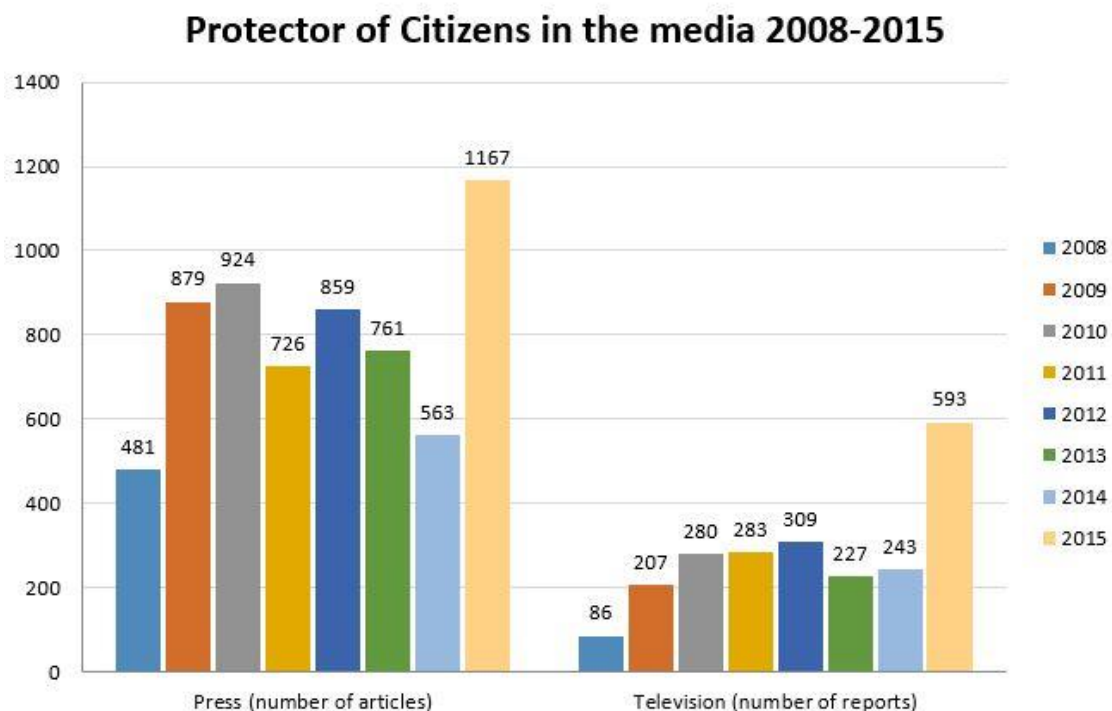


Chart 12 - Number of announcements in daily papers

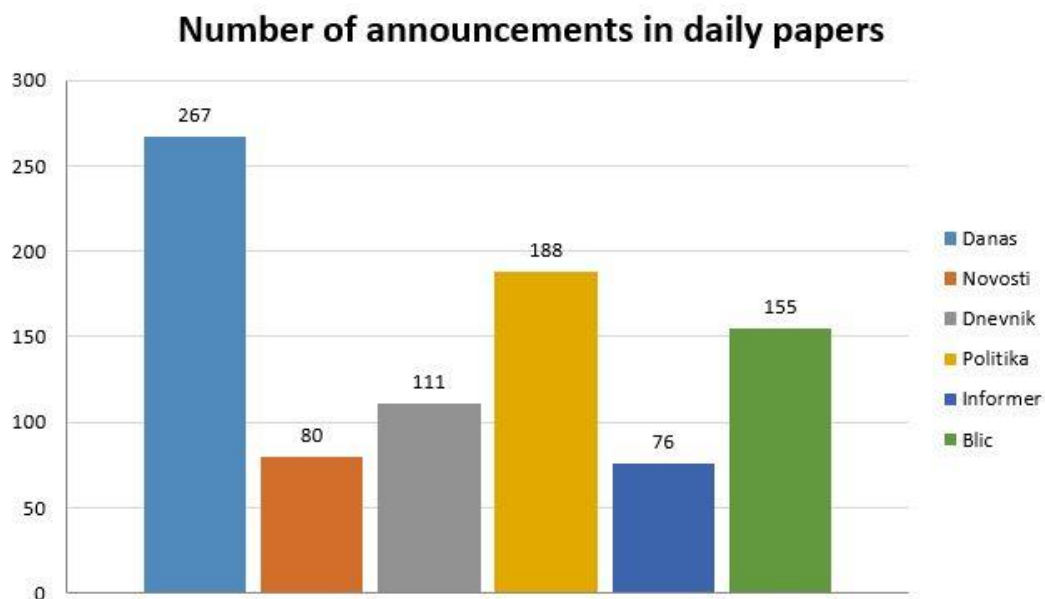
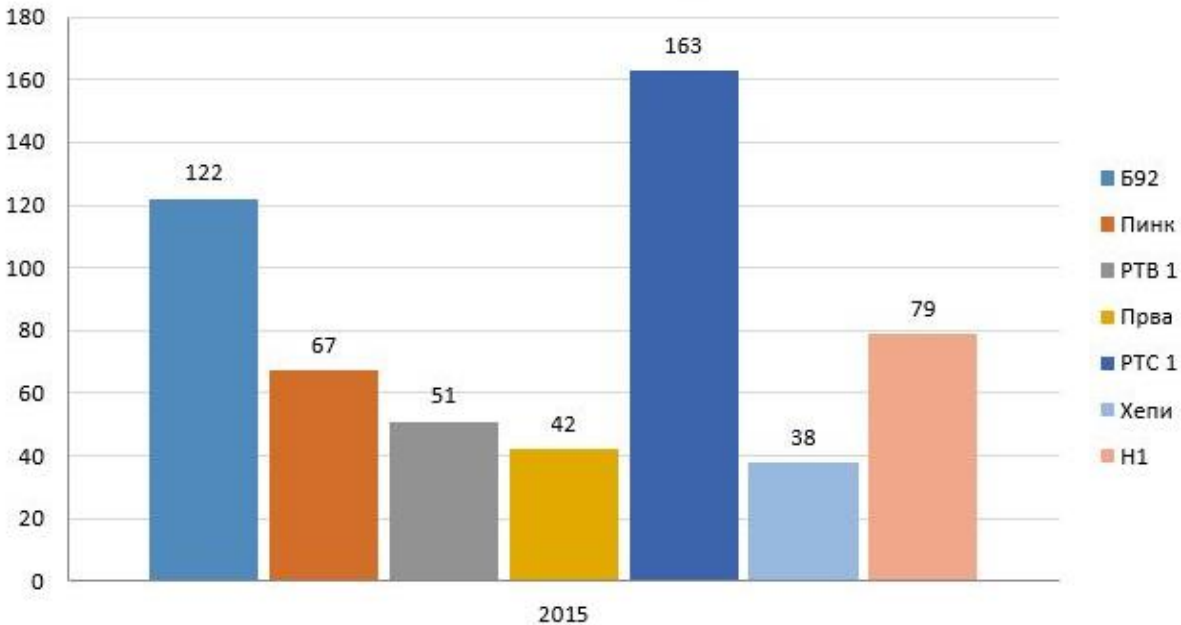


Chart 13 - Number of television reports



PART V TOTAL NUMBER AND CLASSIFICATION OF COMPLAINTS

Any natural person or legal entity, whether Serbian or foreign, who considers that his/her rights have been violated by act, action or failure to act of administrative authorities **may lodge a complaint with the Protector of Citizens**. The Protector of Citizens must handle every complaint, except where none of the grounds for handling in accordance with the Law are met, in which case he rejects a complaint and notifies a complainant about that, stating the reasons for rejection.

Any person (Serbian nationals, foreigners, legal entities, stateless persons, refugees, displaced persons, adults and children, various associations) who considers that administrative authorities inappropriately or incorrectly apply regulations of the Republic of Serbia or do not apply them may contact the Protector of Citizens. Complaints are lodged to the protector of Citizens free of charge, in writing or orally for the record with the Protector of Citizens.

In 2015, the Protector of Citizens received 6,231 complaints, which was over 28% more than in 2014.

To ensure more efficient acting on complaints and their precise statistical processing, all complaints the Protector of Citizens receives during a year or initiates on his own initiative are recorded in specialist fields which include vulnerable population groups (children, persons with disabilities and the elderly, national minorities, persons deprived of liberty, complaints in the field of gender equality) and then also in the sectors which belong to the so-called good administration. Sectors of the administration mainly correspond to the sphere of competence of competent ministries.

Table 35 - Classification of complaints by fields and sectors, their number and percentage compared with the total number of complaints received in 2015

Sector	No. of complaints	%
Labour and employment relations	708	11.36%
Justice and the judiciary	649	10.42%
Local self-government	481	7.72%
Child rights	446	7.16%
Finance	421	6.76%
Persons deprived of liberty	370	5.94%
Rights of persons with disabilities	293	4.70%
Pension and disability insurance	271	4.35%
Real estate cadastre	251	4.03%
Consumer protection	246	3.95%
Gender equality	232	3.72%
Construction and infrastructure	225	3.61%
Economy	192	3.08%
Ministry of Internal Affairs-police tasks	188	3.02%
Health sector	171	2.74%
Energy and mining	151	2.42%
Education and science	131	2.10%
Rights of national minorities	119	1.91%
Ministry of Internal Affairs-administrative tasks	113	1.81%
Defence	79	1.27%
Social security	77	1.24%

Refugees and displaced persons	61	0.98%
Agriculture	54	0.87%
Natural disasters	48	0.77%
Restitution	47	0.75%
Environmental protection	45	0.72%
Culture	34	0.55%
Serbian language and Cyrillic script	21	0.34%
Security affairs	18	0.29%
Transport and transport infrastructure	17	0.27%
Independent public authorities and bodies	17	0.27%
Expropriation	13	0.21%
Protection of whistleblowers	13	0.21%
Public administration	12	0.19%
Foreign affairs and diaspora	9	0.14%
Youth and sport	8	0.13%
Total	6,231	

The following table shows the data on percentage share of complaints received from different districts.

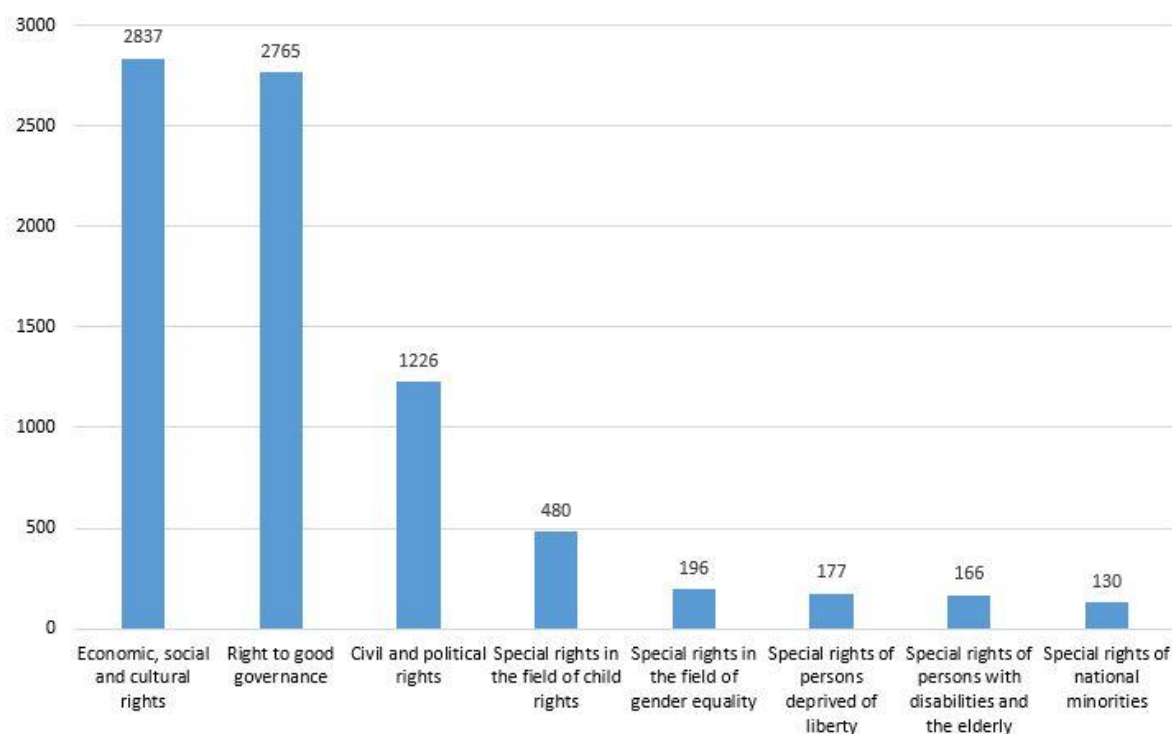
Table 36 - Number and classification of complaints according to addresses of complainants, with percentage share

	Number	Percentage
Belgrade	1,857	29.80%
Autonomous Province of Vojvodina	989	15.87%
Autonomous Province of Kosovo and Metohia	50	0.80%
Nisavski district	325	5.22%
Macvanski district	183	2.94%
Sumadijski district	182	2.92%
Raski district	164	2.63%
Zlatiborski district	153	2.46%
Branicevski district	142	2.28%
Rasiniski district	141	2.26%
Pcinjski district (without Preševo and Bujanovac)	129	2.07%
Jablanicki district (without Medvedja)	129	2.07%
Pomoravski district	119	1.91%
Podunavski district	113	1.81%
Borski district	103	1.65%
Moravicki district	102	1.64%
Preševo, Bujanovac and Medvedja	21	0.34%
Foreign countries	53	0.85%
Other districts with less than 100 complaints	415	6.66%
Without information on address (e-mail)	861	13.82%
Total	6,231	

5.1. CLASSIFICATION OF COMPLAINTS ACCORDING TO RIGHTS VIOLATED

Through examination of 6,231 complaints lodged with the Protector of Citizens in 2015, it was found that most of the violations of rights reported by the citizens were violations of economic and social rights and violations of the principles of good governance.

Chart 14 - Number and classification of complaints according to rights violated



The following table shows types of rights violated, their number and percentage share in the number of complaints lodged.

The number of rights violated is always higher than the number of complaints lodged because many citizens' complaints include multiple violations of rights. Thus, 6,231 complaints received in 2015 related to a total 7,977 violations of rights.

Table 37 - Types of rights violated, their number and percentage share in the total number of all registered violations of rights in complaints

Field of law	Number of rights violated	% in the total number of complaints
Economic, social and cultural rights	2,837	35.56%
Right to good governance	2,765	34.66%
Civil and political rights	1,226	15.37%
Special rights in the field of child rights	480	6.02%
Special rights in the field of gender equality	196	2.46%
Special rights of persons deprived of liberty	177	2.22%
Special rights of persons with disabilities	166	2.08%
Special rights of members of national minorities	130	1.63%
Total violated rights in 6,231 complaints:	7,977	

In their complaints, citizens mainly reported violation of economic, social and cultural rights and the right to good governance. This is indicative of the fact that the principles of good administration are violated in all administrative authorities before which the citizens, including vulnerable groups, exercise their rights, which makes the issue of violation of this right even more sensitive and difficult.

The share of political and civil rights, economic, social and cultural rights and the right to good governance in the total number of violated rights reported in complaints is presented in the following three tables.

Table 38 – Overview of violated civil and political rights, their number and percentage share in the total number of registered violations of these rights in complaints

	Number	Percentage
Right to legal aid	207	16.88%
Right to a fair trial	197	16.07%
Right to equal protection of rights and legal remedy	165	13.46%
Right to protection of refugees and internally displaced persons	84	6.85%
Right to protection against discrimination	83	6.77%
Right to trial within reasonable time	82	6.69%
Right to inviolability of physical and mental integrity	65	5.30%
Right to freedom and safety	60	4.89%
Right to personal identification documents	39	3.18%
Right to personal data protection	36	2.94%
Right to language and script	32	2.61%
Right to damage compensation	25	2.04%
Right to citizenship	23	1.88%
Religious rights	16	1.31%
Right to protection against torture, inhuman and degrading treatment	15	1.22%
Right to privacy	14	1.14%
Freedom of movement	14	1.14%
Right to protection against wrongful deprivation of liberty	13	1.06%
Other rights	56	4.57%
Total	1,226	

Table 39 – Overview of violated economic, social and cultural rights, their number and percentage share in the total number of registered violations of these rights in complaints

	Number	Percentage
Right to work and rights arising from employment	722	25.45%
Right to protection of property	711	25.06%
Protection of consumers' rights	345	12.16%

Right to health care and health insurance	332	11.70%
Rights arising from pension and disability insurance	249	8.78%
Right to social security	80	2.82%
Right to education	76	2.68%
Right to healthy environment	73	2.57%
Right to be informed	45	1.59%
Right to compensation of damage caused by natural disasters	37	1.30%
Other rights	167	5.89%
Total	2,837	

Table 40 - Overview of violated rights in the field of good governance, their number and percentage share in the total number of registered violations of rights in the field of good governance in complaints

	Number	Percentage
Right to observance of law	662	23.94%
Right to protection from administrative silence	385	13.92%
Right to efficient work of authorities	371	13.42%
Right to fair treatment by authorities	363	13.13%
Right to receive a decision within the statutory time limit	278	10.05%
Right to non-abuse of powers	218	7.88%
Right to respect for created legal expectations	171	6.18%
Right to protection against breach of procedure	140	5.06%
Right to equal treatment of citizens	118	4.27%
Right to protection from failure to implement judicial decisions	31	1.12%
Right to protection from failure to comply with enactments of administrative authorities	21	0.76%
Right to proportionality in the work of authorities	7	0.25%
Total	2,765	

5.2. CLASSIFICATION OF COMPLAINTS ACCORDING TO AUTHORITIES AGAINST WHICH THEY WERE LODGED

Most of the complaints pertain to the work of representatives of executive authorities, especially ministries, against which 22.81% of all complaints were lodged. The citizens mainly complained about the work of authorities and organisations in the field of pension and disability insurance, employment, health care, education, social security, tax authorities, public enterprises and institutions, judicial authorities and administrative authorities in local self-governments.

The following table classifies complaints according to the various authorities against which they were lodged with percentage share in the total number of authorities against which complaints were lodged. The number of authorities is always higher than the number of complaints, because many complaints include violation of rights by several authorities.

Table 41 - Classification of complaints according to various authorities against which they were lodged

	Number	Percentage
Ministries	1,497	22.81%
Agencies, institutes, funds, administrations	1,179	17.96%
Local self-government	866	13.20%
Judicial authorities	821	12.51%
Institutions and other public services	704	10.73%
Companies, employers and natural persons	606	9.23%
Public enterprises	431	6.57%
Bailiffs	128	1.95%
Highest national authorities (the Government, the National Assembly)	101	1.54%
Independent national authorities and independent bodies	92	1.40%
Banks	73	1.11%
Lawyers	42	0.64%
Autonomous provinces	16	0.24%
National councils of national minorities	7	0.11%
Total all authorities	6,563	

The following table shows ministries against which the citizens lodged most complaints.

Table 42 - Classification of complaints according to various ministries against which they were lodged

All ministries in the total number of complaints	1,497	22.81%
Individual ministries compared with all ministries		
Ministry of Internal Affairs	551	36.81%
Ministry of Construction and Urban Planning	187	12.49%

Ministry Labour and Social Policy	140	9.35%
Ministry of Education, Science and Technological Development	131	8.75%
Ministry of Defence	114	7.62%
Ministry of Health	100	6.68%
Ministry of Justice	62	4.14%
Ministry of Finance	48	3.21%
Ministry of Public Administration and Local Self-Government	47	3.14%
Ministry of Agriculture and Environment Protection	40	2.67%
Ministry of Economy	22	1.47%

The following table shows subtypes of authorities within large groups of authorities to which they belong. The table presents their number and percentage share in the total number of authorities from the group of authorities to which they belong.

Table 43 - Classification of complaints according to various authorities against which they were lodged

Agencies, institutes, funds, administrations, etc. in the total number of complaints	1,179	17.96%
Individual authorities in the group compared with all authorities which belong to the group		
Republic Pension and Disability Insurance Fund	349	29.60%
Tax Administration	235	19.93%
Republic Health Insurance Fund	192	16.28%
Republic Geodetic Authority	151	12.81%
National Employment Service	71	6.02%
Restitution Agency	42	3.56%
Privatisation Agency	38	3.22%
Commissariat for Refugees and Migration	22	1.87%
Security services (SIA, MSA, MIA)	13	1.10%
Other agencies	35	2.97%
Other administrations	31	2.63%
Institutions and other public services in the total number of complaints	704	10.73%
Individual institutions compared with all institutions		
Institutions in the field of education	260	36.93%
Institutions in the field of health	213	30.26%
Institutions in the field of enforcement of penal sanctions	178	25.28%
Institutions in the field of social security	26	3.69%
Institutions in the field of science and culture	20	2.84%
Institutions in the field of sport	6	0.85%

Institutions in the field of agriculture	1	0.14%
Local self-administrative authorities in the total number of complaints		
	866	13.20%
Individual authorities in the group compared with all authorities which belong to the group		
City of Belgrade and city municipalities	162	18.71%
Other towns/cities	112	12.93%
Other municipalities	532	61.43%
Judicial authorities in the total number of complaints		
	821	12.51%
Individual authorities in the group compared with all authorities which belong to the group		
Primary courts	391	47.62%
All prosecutor's offices	152	18.51%
Commercial courts	80	9.74%
Higher courts	78	9.50%
Court of Appeal	38	4.63%
Magistrates' courts	34	4.14%
Administrative Court	15	1.83%
Other judicial authorities	33	4.02%
Public enterprises in the total number of complaints		
	431	6.57%
Individual authorities in the group compared with all authorities which belong to the group		
Local public enterprises	328	76.10%
National public enterprises	103	23.90%

5.3. OUTCOME OF HANDLING OF COMPLAINTS

The Protector of Citizens investigates every complaint, except complaints falling outside his competence and complaints which are belated, premature, anonymous, incomplete or lodged by an unauthorised person.

In 2015, the Protector of Citizens investigated 6,231 cases, including 6,161 written complaints and 70 complaints initiated on his own initiative, of which he closed investigation in 4,812 cases. About 2,000 complaints from the previous years were also investigated, of which investigation was completed for 1,645 complaints, which means that in 2015 investigation was completed for the total of 6,457 complaints.

Table 44 - Outcome of handling of complaints from 2015 and from previous years

	Number	Percentage
Dismissed complaints	3,698	57.27%
Unfounded complaints	1,276	19.76%
Cases covered by recommendations issued in oversight procedure	716	11.09%
Cases covered by recommendations issued in expedited oversight procedure	558	8.64%
Complaint dropped by complainant	107	1.66%
Opinion	57	0.88%
Legislative initiatives resulting from complaints lodged	36	0.56%
Announcement	1	0.02%
Death of a complainant	8	0.12%
Total	6,457	

The Protector of Citizens dismisses the majority of the complaints received because the conditions for acting upon them provided for by the Law are not met. Complaints are dismissed on the grounds of lack of jurisdiction, belatedness, prematurity, anonymity of complainant or formal deficiencies.

Table 45- Reasons for rejection of complaints in 2015

	Number	Percentage
Declined jurisdiction - complainant referred to competent authority	1,861	50.32%
Premature complaint - complainant advised on available remedies	1,167	31.56%
Incomplete	463	12.52%
Untimely	119	3.22%
Anonymous	64	1.73%
Unauthorized complainant	24	0.65%
Total:	3,698	

Assistance in the form of legal advice accounts for a significant share of the actions taken by the Protector of Citizens pursuant to complaints; he provides this type of assistance even in the cases where he declines jurisdiction or dismisses a complaint as premature. In such cases, the Protector of Citizens refers the complainant to the competent authority or provides advice on available remedies.

can be seen in the following table, in 81.88% of dismissed complaints the Protector of Citizens gave the citizens legal assistance in the exercise of their rights before the competent authorities.

Table 46 - Assistance provided in the form of legal advice in 2015

	Number	Percentage
Dismissed complaints	3698	100%
Declined jurisdiction - complainant referred to competent authority	1861	50.32%
Premature complaint - complainant advised on available remedies	1167	31.56%
Total: assistance provided in the form of legal advice	3,028	81.88%

In addition to the provision of legal aid advice to the citizens through replies to complaints they lodged, more than 15,000 citizens contacted the Protector of Citizens in reception offices in Belgrade, Preševo, Bujanovac and Medvedja in 2015, to whom assistance was given by providing oral advice and referring to competent authorities and stipulated procedures for handling of their requests before those authorities.

In investigation of 2,759 complaints, in addition to those dismissed for the reasons specified by the law (3,698), the Protector of Citizens identified irregularities in operations of administrative authorities in over 49.58% of cases and the authorities subsequently received recommendations or opinions of the Protector of Citizens explaining how to rectify the identified irregularities in work or in regulations applied in work.

Table 47 - Outcome of launched investigations in 2015

1. Irregularities identified in operations of authorities		
Cases covered by recommendations issued in oversight procedure	716	25.95%
Cases covered by recommendations issued in expedited oversight procedure	558	20.22%
Opinions and announcements of the Protector of Citizens	58	2.10%
Legislative initiatives of the Protector of Citizens resulting from complaints lodged	36	1.30%
Total	1,368	49.58%
2. No irregularities identified in operations of authorities		
Unfounded	1276	46.25%
Complaint dropped by complainant	107	3.88%
Death of a complainant	8	0.29%
Total	1,391	50.42%
Total 1 and 2	2,759	100%

PART VI RECOMMENDATIONS, OPINIONS AND LEGISLATIVE INITIATIVES OF THE PROTECTOR OF CITIZENS

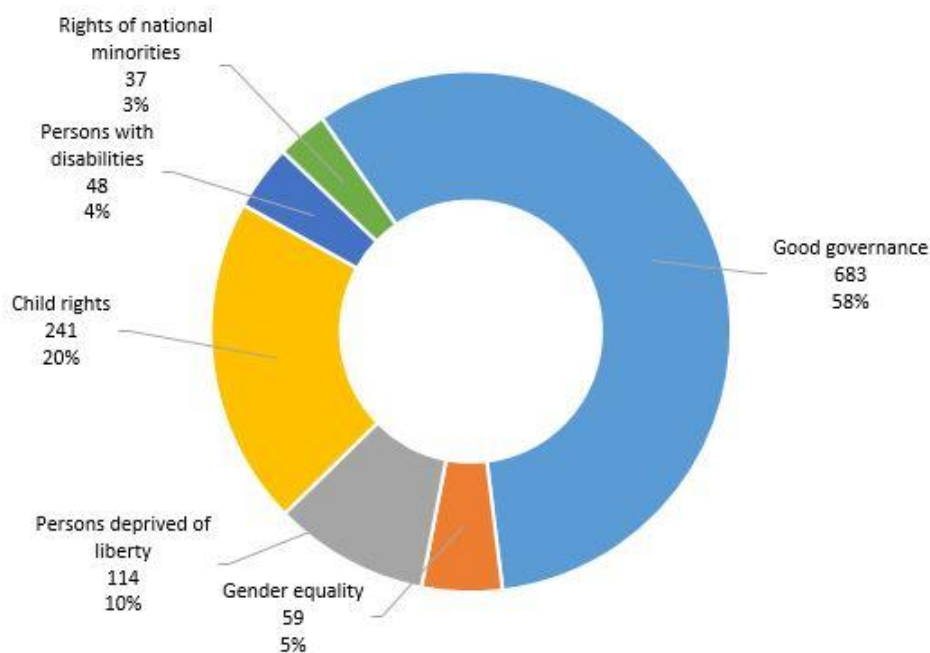
6.1. RECOMMENDATIONS

In 2015, acting upon citizens' complaints or upon own initiative in 1,186 cases (from 2015 and from the previous years), the Protector of Citizens found deficiencies in the work of administrative authorities, which caused the violations of citizens' rights, and issued 1,182 recommendations to authorities in an expedited investigation.

Recommendations are also recorded according to the field of the law to which they relate, i.e. depending on whether they relate to the protection and improvement of the rights of vulnerable groups (persons deprived of liberty, children, persons with disabilities, national minorities, the field of gender equality) or whether they relate to the respect of the good governance principles.

Out of the total number of recommendations issued, the majority – 683 or 57.78% - relate to the promotion of the respect of the good governance principles.

Chart 15 - Overview of recommendations by the field of the law in 2015



Note: As part of activities of the National Preventive Mechanism, the Protector of Citizens issued The Protector of Citizens 265 recommendations relating to persons deprived of liberty to competent bodies in 2015, meaning that the total number of recommendations is 1,447, while the total number of recommendations relating to persons deprived of liberty is 379.

Percentages of implementation of recommendations of the Protector of Citizens by fields is presented in the table below.

Table 48 - Number the recommendations by fields with percentage of compliance in 2015

Field	Due for implementation	Implemented	Percentage	Unimplemented	Percentage	Pending	Percentage share in the total number of recommendations issued (1186)
Gender equality	22	20	90.91%	2	9.09%	37	62.71%
Child rights	97	89	91.75%	8	8.25%	144	59.75%
Persons with disabilities	48	46	95.83%	2	4.17%	0	0%
Persons deprived of liberty	109	108	99.08%	1	0.92%	5	4.39%
National minorities	37	22	59.46%	15	40.54%	0	0%
Good governance	622	511	82.15%	111	17.85%	61	8.93%
Total	935	796	85.13%	139	14.87%	247	20.90%

Authorities implemented 796 (85.13%) recommendations within the specified time limit. The authorities did not implement 139 recommendations, while the time limit specified for the authorities to implement recommendations has not expired for 247 recommendations.

The highest percentage of implementation is observed in the recommendations relating to rights of persons deprived of liberty and persons with disabilities.

The lowest percentage of implementation was observed in the field of national minorities, where 59.46% issued recommendations were implemented, while the time limit for implementation has not expired for a certain number of recommendations. Recommendations relating to rights of national minorities have the highest percentage of non-compliance (40.54%).

The authorities and organisations to which recommendations were mainly issued in investigation are presented in the table below.

Table 49 - Authorities to which recommendations were issued in investigation in 2015

	Number	Percentage
Local self-government	200	32.05%
Ministries	97	15.54%
Education institutions	70	11.22%
Compulsory social insurance organisations	48	7.69%
Social security institutions	39	6.25%
Directorates within ministries	29	4.65%
Public enterprises	25	4.01%
Police administrations and stations	24	3.85%
Health care institutions	22	3.53%
Prisons	21	3.37%
Special organisations	16	2.56%
Security services	11	1.76%

Inspections	8	1.28%
Inspections	8	1.28%
National agencies	8	1.28%
Independent public authorities	6	0.96%
Total	624	

Table 50 - Issued-to-unimplemented recommendations ratio by authorities issued after investigation in 2015

Authority	Number of recommendations issued	Number of unimplemented recommendations	%
Security services	11	11	100
Independent public authorities	6	4	66.67
Health care institutions	22	14	63.64
Special organisations	16	9	56.25
National agencies	8	4	50
Ministries	97	39	40.21
Compulsory social insurance organisations	48	16	33.33
Local self-government	200	37	18.50
Public enterprises	25	3	12
Directorates within ministries	29	2	6.90

The following table presents authorities which most frequently failed to implement recommendations of the Protector of Citizens and the number and percentage of non-compliance compared with the total number of unimplemented recommendations.

Table 51 - Ratio of unimplemented recommendation to the total number of unimplemented recommendations issued after investigation in 2015

Authority	Number of unimplemented recommendations	Percentage
Ministries	39	28.06
Local self-government	37	26.62
Compulsory social insurance organisations	16	11.51
Health care institutions	14	10.07
Security services	11	7.91
Special organisations	9	6.47

National agencies	4	2.88
Public enterprises	3	2.16
Independent public authorities	4	2.88
Directorates within ministries	2	1.44
Total	139	

The highest percentage of unimplemented recommendations compared with the number of the recommendations issued to various authorities is observed in security services, more precisely the Military Security Agency, because the total of 11 recommendations was issued to it and none of these recommendations was implemented.

6.2. OPINIONS

In 2015, the Protector of Citizens issued 23 opinions to public authorities, including:

1. Fifteen (15) opinions in accordance with the legal provision giving him power to act preventively by giving advice and opinions on the issues from his competence, with the aim to improve operations of administrative authorities and protection of human freedoms and rights.
2. Eight (8) opinions in accordance with the legal provision giving him power to provide his opinion on draft laws and other regulations to the Government and to the National Assembly in the process of preparation of regulations if such regulations concern the issues relevant for the protection of citizens' rights.

The rights the Protector of Citizens tried to improve by his opinion are presented in the following table.

Table 52 - The rights which are improved by opinions issued by the Protector of Citizens

	Number	Percentage
Opinions in the field of economic, social and cultural rights	11	47.83%
Opinions in the field of the protection of rights of vulnerable population groups	8	34.78%
Opinions in the field of civil and political rights	4	17.39%
Total	23	100%

The opinions issued by the Protector of Citizens in the field of the protection of rights of vulnerable population groups included the protection of child rights (3), gender equality (3), rights of national minorities (1) and rights of persons with disabilities (1).

6.3. LEGISLATIVE INITIATIVES

The Protector of Citizens can use his legal right to submit legal initiatives if two cumulative conditions are met:

- When it is necessary to amend the text of a law or a draft law to ensure full and free exercise of citizens' rights guaranteed by the Constitution and other laws, regulations and general enactments, as well as ratified international agreements and generally accepted rules of the international law.
- When another authorized backer responsible for a specific field (usually the Government) fails to use its legislative initiative to ensure respect for, exercise, protection and improvement of citizens' rights and there is a threat of delay.

Proposing amendments and laws to the National Assembly is a measure of last resort for the Protector of Citizens, as a rule only when he finds that the "first-line" backer will not take the necessary steps to the benefit of the citizens' rights pursuant to an initiative, a recommendation or other proposal made by the Protector of Citizens.

This is why the legislative activity of the Protector of Citizens mainly consists of submission of meaningful initiatives to the public administration authorities the operations of which he controls, which call on them to prepare and propose normative amendments. Only in exceptional cases does the Protector of Citizens submit legislative proposals directly to the National Assembly.

Table 53 - Types of initiatives submitted by the Protector of Citizens in 2015

Submission of amendments to the competent committee of the National Assembly as the backer (<i>Article 157, paragraph 6 of the Rules of Procedure of the National Assembly</i>)	4	26.67%
Submission of amendments to bills to the National Assembly (<i>Articles 161 and 162 of the Rules of Procedure of the National Assembly</i>)	3	20.00%
Proposing of laws to the National Assembly (<i>Article 150, paragraph 2, of the Rules of Procedure of the National Assembly</i>)	1	6.67%
Initiatives to enact or amend laws and other regulations submitted to the Government, the National Assembly or line ministries	5	33.33%
Motion to the Constitutional Court to assess constitutionality and lawfulness	2	13.33%
Total	15	100%

Table 54 - Accepted initiatives which were submitted by the Protector of Citizens in 2015

Accepted legislative initiatives	5	33.33%
Legislative initiatives which were not accepted	6	40.00%
Pending initiatives	4	26.67%
Total	15	100%

In 2015, the Protector of Citizens submitted the following to the National Assembly :

1. An Initiative for the Committee on Judiciary, Public Administration and Local Self-Government of the National Assembly to submit amendments to the Bill of amendments to the Law on Notaries Public (pursuant to Article 157, paragraph 6 of the Rules of Procedure of the National Assembly). The Committee accepted this initiative and the National Assembly adopted this amendment.
2. The Law amending the Law on Property Restitution and Compensation (pursuant to Article 150 of the Rules of Procedure of the National Assembly). The National Assembly has not reviewed the proposed Law.
3. An Initiative for the Committee on Judiciary, Public Administration and Local Self-Government of the National Assembly to submit two (2) amendments to the Bill on Determining the Maximum Number of Employees in the Public Sector (pursuant to Article 157, paragraph 6 of the Rules of Procedure of the National Assembly). Since this Committee did not accept this initiative, the National Assembly enacted the Law without these amendments. However, the Government later proposed in draft amendments to the Law exactly the same corrections which the Protector of Citizens proposed through his amendments.
4. An Amendment to the Bill on Investments (pursuant to Articles 161 and 162 of the Rules of Procedure of the National Assembly). The National Assembly adopted this amendment.
5. Two (2) amendments to the Bill on Enforcement and Security. The National Assembly did not adopt these two amendments.
6. AN Initiative for the Committee on Judiciary, Public Administration and Local Self-Government of the National Assembly to submit amendments on the Bill of amendments to the Law on Notaries Public (pursuant to Article 157, paragraph 6 of the Rules of Procedure of the National Assembly). The Committee has not reviewed these two amendments, although it has a legal duty to do so.

In 2015, the Protector of Citizens submitted to the Government and line ministries four (4) initiatives for amendments to regulations, including:

1. An Initiative for the Ministry of Finance and the Tax Administration to propose amendments to the Law on Tax Procedure and Tax Administration to ensure harmonisation between the provisions pertaining to the principle of official secret and the relevant provisions of the Law on Data Confidentiality. The initiative was accepted and the Law on Tax Procedure and Tax Administration has been amended accordingly.
2. Initiative to the Ministry of Labour, Employment, Veteran and Social Affairs and the Republic Pension and Disability Insurance Fund for amendments to the Law on pension and Disability Insurance to provide for a method of determining the personal coefficient used in the calculation of the amount of pension based on subsequently determined information on actually earned wage for professional servicemen of Serbian Armed Forces in cases where such information was destroyed in NATO air strikes. Until the end of the reporting period, the Protector of Citizens received no information from the competent authorities as to whether this initiative was taken into consideration.
3. The Model Law on Government Assistance after Natural Disasters was submitted to the Government and its key principles were incorporated in the Law on Recovery after Natural and Other Disasters, which improved the procedure of allocation of solidarity assistance and remediation of damage from natural disasters.

4. An Initiative for the Government to amend regulations on the testing of new and reconstructed sources of non-ionizing radiation and their environmental impact assessment. Until the end of the reporting period, the Protector of Citizens received no information from the competent authorities as to whether this initiative was taken into consideration.

In addition to the above initiatives, on 3 August 2015 the Protector of Citizens submitted the Initiative to the Serbian President to return the Law on Determining the Maximum Number of Employees in the Public Sector for repeated parliamentary debate. The Serbian President did not accept the initiative; instead, he signed a decree promulgating of this Law.

The Protector of Citizens submitted to the Constitutional Court two motions for constitutional review, including:

1. Motion to the Constitutional Court for constitutional review of the provisions of Article 336 of the Law on Misdemeanours. The Constitutional Court did not review this motion, but the Government has modified the contested provision identified by the Protector of Citizens in the text of the Bill of amendments to the Law on Misdemeanours.
2. The Protector of Citizens and the Equality Commissioner jointly submitted a motion to the Constitutional Court for constitutional review of Article 20 of the Law on Determining the Maximum Number of Employees in the Public Sector, which provides that the employment of every public sector employee shall be terminated upon reaching the mandatory requirements for retirement (after completing the required number of years of employment covered by insurance contributions and after reaching the required age), which *de facto* denies women the choice to retire in accordance with under the Law on Pension and Disability Insurance (Article 19a) and imposes a duty on women - and women only - employed in the public sector to retire at a younger age than their male counterparts. The Constitutional Court found there were sufficient reasons under Article 56 paragraph 1 of the Law on the Constitutional Court to suspend the implementation of individual instruments passed pursuant to the contested provision until the Court passes a final decision on the constitutionality of the contested Article 20 of the Law on Determining the Maximum Number of Employees in the Public Sector.

ANNEX I – OVERVIEW OF PROPOSALS FOR IMPROVING CITIZENS’ POSITION IN RELATION TO ADMINISTRATIVE AUTHORITIES PROVIDED IN THE ANNUAL REPORT FOR 2015

Child Rights

1. **The National Assembly** should consider bills of amendments to the Labour Law and the Law on Financial Support to Families with Children submitted by the Protector of Citizens with the aim of improving support and assistance to families with children with developmental disorders and seriously ill children.
2. **The Government** should draft and submit to the National Assembly for enactment a Bill on Ratification of the Optional Protocol to the UN Convention on the Rights of the Child on a communications procedure for filing complaints with the Committee on the Rights of the Child, which Serbia signed in February 2012, in accordance with the Initiative launched by the Protector of Citizens.
3. **The Ministry of Justice** should enact a special law that would put in place an efficient mechanism to investigate the cases of the so-called “missing babies”, in accordance with the provision of item 92 of the judgement of the European Court of Human Rights in the case of *Zorica Jovanovic vs. Serbia* and recommendations issued by the Protector of Citizens.
4. **The Government** should draft and submit to the National Assembly for enactment a law that would outlaw corporeal punishment of children in all environments.
5. **The Government** should draft and submit to the National Assembly for enactment a Bill of Amendments to the Law on Financial Support to Families with Children, in accordance with the Initiative launched by the Protector of Citizens.
6. **The Ministry of Labour, Employment, Veteran and Social Affairs** should ensure (re)establishing and introduction of new services for developmental disorders and children who live or work in streets.
7. **The Government** should intensify the activities in order to ensure more efficient and effective process of protection of children from violence, abuse and neglect.
8. **The Government** should intensify the activities on prevention of children’s living and working in streets, improvement of the status of children who live and work in streets and introduction of measures with the aim of reintegrating children in the community and ensuring necessary services for children who live and work in streets.
9. **The Ministry of Justice** should propose amendments to the Criminal Code and the Law on Law on Juvenile Criminal Offenders and Criminal Law Protection of Juveniles in accordance with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, with a view to ensuring full protection of child victims from secondary traumatising and victimisation, in accordance with initiatives and recommendations of the Protector of Citizens.
10. **The Ministry of Health** should prepare amendments to the Law on Health Insurance which would eliminate inequalities in the enjoyment of children’s right to health care during a stay abroad, especially when they stay abroad for education purposes.
11. **The Ministry of Education, Science and Technological Development** should enact secondary legislation specifying in detail the requirements for and the manner of schooling of pupils in extended home or hospital treatment, home schooling and distance learning.

12. **The Ministry of Education, Science and Technological Development, authorities of autonomous provinces and self-government units** should step up their control of the manner in which education institutions handle cases of violence against pupils, including in particular timely, proper and diligent application of the Law on Basic Elements of Education System, the Regulations on the Protocol of Actions taken by Institutions in Response to Violence, Abuse and Neglect, the General Protocol on the Protection of Children from Abuse and Neglect and the Special Protocol on the Protection of Children and Pupils from Violence, Abuse and Neglect in Education Institutions.
13. **The Ministry of Education, Science and Technological Development and authorities of autonomous provinces and self-government units** should ensure efficient and timely initiation and conduct of proceedings to determine personal responsibility of school staff for violations of the prohibition of violence, abuse and neglect, negligence at work and omissions in the implementation of measures to protect children from violence, abuse and neglect.
14. **The Ministry of Education, Science and Technological Development** should, in accordance with recommendations of the Protector of Citizens, amend the the Bylaw on Additional Education, Health Care and Social Security Support to Children and Pupils and intensify the activities aimed at regulating the services of additional support and assistance to pupils with developmental disorders in education, the types of those services, the methods of their provision and financing, the procedure of assessment of the child's/pupil's needs and formation, operation and control of cross-departmental committees.
15. **The Ministry of Education, Science and Technological Development** should amend the bylaws setting out the criteria and standards for the financing of education institutions in a manner which will ensure a sufficient number of professional assistants at education institutions taking into account the needs of pupils, in particular with regard to implementation of inclusive education and protection of children from violence, abuse and neglect.
16. **The Ministry of Education, Science and Technological Development** should provide regular trainings at education institutions and exchange of good practice aimed at sensitising the staff to children with developmental disorders and adoption of practical skills and knowledge in the work with them.
17. **The Ministry of Education, Science and Technological in cooperation with the Ministry of Public Administration and Local Self-Government** should ensure that all local self-government units lawfully determine the amount of co-financing paid by the users of pre-school facilities and comply with the recommendations of the Protector of Citizens to consider ways to mitigate the consequences of unlawful charging of co-financing paid by parents for the placement of children in pre-school institutions.
18. **The Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Health and the Ministry of Education, Science and Technological Development** should organise public awareness raising campaigns on the harmfulness of corporeal punishment of children and the alternatives to this method of disciplining children and provide expert assistance and support to parents in the education of their children through the mechanisms of social and health care services (parent counselling, phone lines, "parenting classes" etc.).
19. **The Ministry of Culture and Information and the Regulatory Authority of Electronic Media** should efficiently and timely monitor work of the media and take measures in cases of violation of media laws and child rights in the media.

20. **The Ministry of Youth and Sports** should adopt a Protocol for the Protection of Children and Youth from Violence in Sports and Recreational Activities.
21. **The Ministry of Education, Science and Technological Development** should ensure that primary school "Sreten Mladenovic Mika" complies with the recommendations of the Protector of Citizens and takes steps to determine individual responsibility for past failures to comply with the recommendations.
22. **The Ministry of Internal Affairs** should ensure that the Police Administration of Novi Sad complies with the recommendations of the Protector of Citizens and takes steps to determine individual responsibility for past failures to comply with the recommendations.

Rights of National Minorities

1. **The Government** should ensure the planned legislative activities under the Action Plan for Exercise of Rights of National Minorities are implemented within set time limits.
2. **The Government** should adopt the National Strategy for Social Inclusion of Roma Men and Women and the supporting Action Plan for its implementation.
3. **The competent ministries** should propose ways for the Government to hire Coordinators for Roma Issues to staff the vacant jobs before the end of the fiscal year.
4. **The Ministry of Public Administration and Local Self-Government** should consider ways to address the issue of classifying the existing positions of Coordinators for Roma Issues at the level of local self-government units, increasing their number and building their capacities in those communities that have a high share of the Roma population.
5. **The Government, in cooperation with the Ministry of Culture and Information**, representatives of the media and national councils of national minorities, should consider the possibilities and manner of undertaking additional measures to mitigate and/or eliminate consequences of the now completed privatisation of media outlets.
6. **The Ministry of Internal Affairs** should take every effort to ensure that dual citizenship of members of national minorities does not act as an obstacle to their enrolment in police schools and subsequent employment.
7. **The Ministry of Construction, Transport and Infrastructure** should prepare a legal instrument which would govern the actions of competent authorities when resettling and moving settlements, in compliance with the basic principles of legality and protection of human rights and the right to alternative housing and should notify local authorities of these actions.
8. **The Ministry of Education, Science and Technological Development**, in cooperation with national councils of national minorities, should develop an adequate model of bilingual teaching in the Serbian language and languages of national minorities.
9. **The Ministry of Education, Science and Technological Development** should undertake measures to ensure that a new syllabus is in place before the beginning of the new school year for the course "Serbian as a Second Language" where teaching is done in the languages of national minorities.

Gender Equality and Rights of LGBTI Persons

1. **The Ministry of Justice** should prepare a legislative text that would govern the provision of free legal assistance, to improve the position of all vulnerable groups, including in particular the victims of domestic violence.
2. **The Government** should ensure full exercise and protection of the rights of LGBTI persons, in particular their physical and mental integrity and freedom of peaceful assembly, in particular by continual holding of a Pride Parade.

3. **The Government** should continually implement measures and activities aimed at raising awareness of gender equality and measures to improve the status of women.
4. **The Government** should propose and the National Assembly should enact a law that would regulate the issues relevant for gender equality, which will provide for gender mainstreaming, respect for international standards of gender equality and equal opportunity principles, prohibition of and protection from discrimination based on sex, gender and gender identity and special measures for achieving the principle of gender equality, including measures for protection from gender-based violence.
5. **The Government** should prepare and propose to the National Assembly to enact a law which would harmonise the legal framework of the Republic of Serbia with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in accordance with initiatives and recommendations of the Protector of Citizens.
6. **The Ministry of Labour, Employment, Veteran and Social Affairs** should amend regulations to ensure exercise of the right to salary compensation during pregnancy leave, maternity leave, child care leave and special child care leave by female farmers who are the holders of registered agricultural holdings and by women who perform temporary and occasional work.
7. **Public authorities** should continually implement measures and activities aimed at raising public awareness of the need to respect the rights of LGBTI persons.
8. **The Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Health, judicial authorities and local self-administrative authorities** should provide for more effective protection of women from domestic violence and intimate partner violence, in compliance with the recommendations of the Protector of Citizens given in the Special Report on Implementation of the General Protocol and the Special Protocols on the Protection of Women against Violence.
9. **The Ministry of Labour, Employment, Veteran and Social Affairs**, in cooperation with local self-governments and civil society organisations, should establish support services for young LGBTI persons who had to leave their homes after being disowned by their families upon coming out with their sexual orientation and gender identity.
10. **The Ministry of Education, Science and Technological Development** should propose amendments to the Law on Basic Elements of the Education System in order to provide for an explicit prohibition of discrimination based on sexual orientation and gender identity.
11. **The Ministry of Education, Science and Technological Development** should pass an implementing regulation that would lay down detailed criteria for recognition of forms of discrimination by the staff, the pupils or third parties in education institutions, including in particular discrimination based on the sexual orientation and gender identity of a pupil, a teacher or another member of school staff.
12. **The Ministry of Education, Science and Technological Development and the National Education Council** should include in the curricula and syllabuses of primary and secondary schools, and subsequently also the textbooks, content that would acceptably, and yet professionally cover all major issues relating to the rights of the LGBT population.
13. **The Ministry of Justice, the Ministry of Public Administration and Local Self-Government, the Ministry of Labour, Employment, Veteran and Social Affairs and the Ministry of Education, Science and Technological Development** should prepare draft legislation to regulate the legal consequences of sex and gender reassignment.

14. **The Ministry of Justice and Public Administration and the Republic Secretariat for Legislation** should propose measures for the introduction of gender-sensitive language in the work of public authorities, including the drafting of laws and other instruments.
15. **The Ministry of Public Administration and Local Self-Government** should, in the process of supervision of local self-governments, order the establishment of permanent working bodies or appointment of gender equality officers and equal opportunities officers, in accordance with the Law on Gender Equality.
16. **The Ministry of Health and the Republic Health Insurance Fund** should put in place measures to ensure that all women have access to medical services at all levels of health care.
17. **The Government** should ensure compliance with the Special Report on Training for Acquiring and Improving Knowledge and Competences for Prevention, Elimination and Protection of Women from Domestic and Intimate Partner Violence.

Rights of Persons with Disabilities

1. **The Government** should pass a clear decision and plan for “deinstitutionalisation” in the Republic of Serbia.
2. **The Ministry of Labour, Employment, Veteran and Social Affairs** should, independently and in cooperation with other public authorities, ensure a financially sustainable system of community-based support services for persons with disabilities and the elderly.
3. **The Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Health and the Republic Pension and Disability Insurance Fund** should improve and harmonise the implementing regulations and their compliance in the procedure of exercising the rights to disability pension, employment and rehabilitation by persons with disabilities.
4. **Local self-governments** should develop community-based support systems for persons with disabilities and the elderly.
5. **Local self-governments** which provide urban and suburban public transport services should undertake all necessary activities to inform transport operators and to inform and raise awareness of the citizens/users of public transport of the right of persons with disabilities to travel with assistance dogs.

Rights of Persons Deprived of Liberty, Police Powers and Prevention of Torture

Use of Police Powers

1. **The Ministry of Internal Affairs** should adapt the existing and provide new detention rooms in compliance with the applicable standards.
2. **The Ministry of Internal Affairs** should harmonise certain provisions of the Instructions on Treatment of Persons brought in by Police and Persons in Custody with the applicable regulations and standards.
3. **The Ministry of Internal Affairs** should train police officers in all police administrations in the Republic of Serbia on how to use police powers against persons with mental disorders.

Enforcement of Detention Measures and Prison Sentences

1. **The Administration for Enforcement of Penal Sanctions** should continue its activities on bringing the accommodation condition in penal institutions in compliance with the applicable standards.

2. **Penal institutions** should ensure all persons serving prison sentence or detention measures are allowed to spend the spare time during the day outside their dormitories, in communal areas with other convicts and detainees who have not been segregated under court order.
3. **Penal institutions** should continue providing more opportunities for occupational engagement to persons serving prison sentence or detention measures.
4. **Penal institutions** should ensure sufficient number of health professionals, in particular physicians, sufficient quantities of medicinal products and treatment and improve provision of health care.
5. **The Administration for Enforcement of Penal Sanctions** should improve the use of alternative sentencing in the Republic of Serbia.
6. **The Administration for Enforcement of Penal Sanctions** should ensure that persons with mental disorders serving prison sentences are transferred from regular correctional facilities and provided with health care appropriate to their disease and their treatment needs in an adequate in-patient medical unit within the institution, the Special Prison Hospital or other appropriate health facility.
7. **The Ministry of Justice** should put in place measures within its sphere of competence to pass regulations which would increase the number of institutions where women and juvenile offenders can serve prison sentences and correctional sentences, as well as correctional institutions for juveniles sentenced to correctional treatment.
8. **The Ministry of Justice** should take all necessary measures to include the Supervision Unit within that Ministry as its separate organisational part, outside the Administration for Enforcement of Penal Sanctions.
9. **The Ministry of Justice** should take all necessary measures to include health care services for persons deprived of liberty within penal institutions in the Ministry of Health as its organisational part.
10. **The Administration for Enforcement of Penal Sanctions** should ensure occupational engagement to detainees and their inclusion in social and cultural activities.

Psychiatric Institutions and Residential Social Security Institutions

1. **The Ministry of Health** should without any further delay implement all necessary activities aimed at introduction of non-institutional, community-based support for persons with mental disorders (and their families) and rationalisation of services in secondary and tertiary psychiatric institutions, focusing on day hospitals and out-patient treatment, and should ensure formation of special organisational units performing the tasks of community-based mental health protection.
2. **The Ministry of Health** should amend the Law on the Protection of Persons with Mental Disabilities, including the provisions relating to voluntary and involuntary hospitalisation procedures; the role of police in relation to persons with mental disorders; physical restraint and in particular solitary confinement of patients. It is also necessary to amend the Bylaw on Detailed Conditions for Use of Physical Restraint and Solitary Confinement of Persons with Mental Disorders Hospitalised for Treatment in Psychiatric Institutions accordingly.
3. **The Ministry of Health** should put in place measures to adapt the accommodation capacities in large psychiatric hospitals.
4. **The Ministry of Health** should put in place measures to employ sufficient number medical staff (paramedics and psychiatrists) and occupational therapists with the aim of enhancing the provision of health care services and improving psychosocial rehabilitation activities.

5. **The Ministry of Labour, Employment, Veteran and Social Affairs** should, in coordination with other competent authorities, implement systemic activities on comprehensive deinstitutionalisation, i.e. reduction of capacities and closing of the existing residential social security institutions, as well as on community-based care for persons with intellectual and mental difficulties (and their families).
6. **The Ministry of Labour, Employment, Veteran and Social Affairs** should put in place measures within its sphere of competence to pass a regulation that would govern the conditions and procedure for restricting the freedom of movement and using physical restraints on beneficiaries in residential social security institutions.

Treatment of Refugees/Migrants

11. **The Government** should prepare a Plan for Providing Care to Refugees/Migrants found in or returned to Serbia; a Plan of Action for refugees/migrants who are denied protection in Serbia; and a Plan of Integration for those who are granted asylum in Serbia.
12. **The Ministry of Internal Affairs** should put in place all available measures to ensure the Asylum Office is not attached to the Police Directorate.
11. **The Ministry of Internal Affairs** should put in place an efficient asylum system.
12. **The Ministry of Internal Affairs** and **the Commissariat for Refugees and Migration** should put in place measures to ensure the transport of vulnerable categories of refugees/migrants from border crossing points to the nearest Reception Centre, where they would be provided with humanitarian aid.
13. **The Ministry of Internal Affairs** should put in place measures to ensure that police officers take photographs of all minors when issuing them with certificates of stated intent to seek asylum and that the issued certificates should include under the heading "Other information and comments" the name and surname of the person who accompanies the minor and the number of the certificate issued to such persons.

Public Administration Sector

1. **The National Assembly** should review the Code of Good Governance submitted by the Protector of Citizens in 2010.
2. **The Ministry of Public Administration and Local Self-Government** should implement the public administration rationalisation process in a transparent, clear and unambiguous way, to ensure the public is aware of the anticipated positive effects of the proposed arrangements.
3. **The Ministry of Public Administration and Local Self-Government** should take specific activities and measures to achieve professionalization and depoliticizing of public administration and to substantially implement the Public Administration Reform Strategy.
4. **Ministries** should draft legislation in compliance with the principles set out in the National Assembly Resolution on Legislative Policy and in accordance with the Legislation Drafting Methodology adopted by the National Assembly in 2010.
5. **The Ministry of Public Administration and Local Self-Government** should take specific activities to raise employees' awareness of the good governance principles and to put in place an efficient mechanism which would ensure accountability of public sector employees for any violations of citizens' rights.
6. **The Ministry of Public Administration and Local Self-Government** should provide for a sufficient period in which draft laws and other proposed regulations are to be

examined, so as to enable full identification of any shortcomings in the proposed provisions which would systemically regulate the public sector.

7. **Competent public authorities** should effectively cooperate and exchange information in the procedures of deciding on citizens' rights, responsibilities and interests and should not shift the burden of obtaining information from public authorities to citizens, to enable citizens to timely exercise their rights guaranteed by the Constitution and applicable laws and to protect public interests.
8. **The Government** should finally enable the official use of the Serbian language and the Cyrillic script in operations of public administration;
9. **The Government** should review the need for regulating and the manner in which it would regulate the official use of the Latin script, in accordance with the Constitution.
10. **The Ministry of Public Administration and Local Self-Government** should review the Initiative of the Protector of Citizens for amendments to the Law on the Protector of Citizens and submit the Draft Law to the Government for endorsement of a Bill and its submission to the National Assembly for enactment.

Local Self-Government Sector

1. **Local self-governments** should inform citizens of their rights and ways of exercising those rights and keep them updated on the possibilities of filing complaints if they have any grievances in connection with the work of employees of local self-administrative authorities.
2. **Local self-governments** should ensure efficient handling of citizen's requests, petitions, reports and complaints in to should act pursuant to those instruments within the statutory timeframe .
3. **Local self-governments** should enforce their decisions timely, efficiently and economically.
4. **Local self-governments** should become more involved in addressing municipal problems faced by the citizens in their territories.
5. **Local self-governments** should take all necessary measures and actions to efficiently organise their work in order to ensure fast, easy and full exercise of citizens' rights guaranteed under the Constitution and the law.
6. **Local self-governments** should undertake all available activities to put in place better natural disaster protection mechanisms, including by conducting inspections and harmonising and guiding the work of their bodies and public enterprises or organisations which they founded, and should furthermore provide all necessary conditions to eliminate or mitigate any harmful effects suffered by the local population due to omissions made by local authorities.
7. **Local self-governments** should provide for and undertake specific activities, without any further delays or excuses, to ensure that, in the future, local inspectorates develop a higher level of cooperation in their work, both among themselves and with the competent authorities and organisations.
8. **Local self-governments** should assume responsibility for poor and inefficient exercise of their own and delegated powers, compensate citizens for any damage suffered due to gross negligence of their bodies and undertake appropriate activities to apportion individual responsibility for omissions to their employees and responsible persons.

Sector of Education and Science

1. **The Ministry of Education, Science and Technological Development** should ensure timely and efficient replies to all requests sent both to the Ministry and education institutions and higher education institutions within the time limits specified by the law.
2. **The Ministry of Education, Science and Technological Development** should ensure that education inspectors act timely and efficiently.
3. **The Ministry of Education, Science and Technological Development** should provide for and establish an efficient system for regular and timely compliance with the obligations of education institutions and the obligations with the Republic of Serbia and local self-governments have in relation to education institutions, in order to avoid any blocking of their commercial accounts and to swiftly and efficiently unblock any accounts that may be blocked.
4. **The Ministry of Education, Science and Technological Development** should adopt the National Qualifications Framework.
5. **The Ministry of Education, Science and Technological Development** should make every effort to improve the status of teachers, the quality of education and the exercise and protection of pupils' rights.
6. **The Ministry of Education, Science and Technological Development and higher education institutions** should put in place measures to inform students of their right protection mechanism for those rights.
7. **The Ministry of Education, Science and Technological Development** should intensify its work on full introduction of inclusive education at all levels of the education process.
8. **The Minister of Education, Science and Technological Development** should pass a bylaw which would regulate examinations and licencing for directors of education institutions.
9. **The Ministry of Education, Science and Technological Development and the National Council for Higher Education** should provide for impartial, meaningful and authoritative external oversight of higher education institutions in the award of vocational, academic and scientific titles and vocations and should exercise other public powers and enforce laws and secondary legislation.
10. **The National Council for Higher Education** should ensure that the Commission for Accreditation and Quality Assurance complies with recommendations of the Protector of Citizens.

Sector of Culture and Information

1. **The Ministry of Culture and Information and the Regulatory Authority for Electronic Media** should, immediately upon learning of potential violations of the law by written and electronic media outlets, undertake the measures envisaged by the law to protect citizens' rights and penalise any unlawful actions.

Sector of Youth and Sport

1. **The Ministry of Youth and Sports, the Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Health and the Ministry of Education, Science and Technological Development** should introduce appropriate mechanisms to inform the youth prevention and support services for young people in the fight against addiction and all forms of violence and services for protection of mental and reproductive health.
2. **The Ministry of Health** should provide health insurance to young persons, as a particularly vulnerable population group, as members of families of insured persons,

i.e. from the budget of the Republic of Serbia, when they are not entitled to insurance by any other basis.

3. **The Ministry of Education, Science and Technological Development** should intensify activities to ensure access to higher education to as many young people as possible.
4. **The Ministry of Education, Science and Technological Development** should intensify activities to ensure access to secondary and higher education to young people from vulnerable social groups.
5. **The Ministry of Education, Science and Technological Development** should intensify activities on application of the inclusive education principle at all levels of the education process, including higher education.
6. **The Ministry of Labour, Employment, Veteran and Social Affairs and the Ministry of Education, Science and Technological Development** should take all necessary measures to improve the situation and enhance the studying and living conditions for students with disabilities.
7. **The Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Education, Science and Technological Development, the Ministry of Youth and Sports and the National Employment Service** should pass comprehensive programs for employment and professional skills upgrading of youth.
8. **The Ministry of Youth and Sports** should prepare amendments to the Law on Sports to ensure the full scope of health services for underage athletes, in accordance with the opinion of the Protector of Citizens.
9. **The Ministry of Youth and Sports** should prepare amendments to the Law on Sports which would govern the duties of registrars when sports organisations are registered, in accordance with the opinion of the Protector of Citizens.

Health Sector

1. **The Ministry of Health** should initiate and, in cooperation with other public authority, expedite the opening and beginning of operation of a public cell and tissue bank.
2. **The Ministry of Health** should pass necessary regulations and ensure preconditions for implementation of the Law on Medical Documentation and Records in the field of Health Care.
3. **The Ministry of Health** should in cooperation with other authorities take appropriate measures to improve the public procurement procedure in health institutions, in order to ensure the highest possible quality of health care.
4. **The Ministry of Health** should ensure unobstructed inspection in all health institutions included in the Health Institutions Network Plan, as well as in the private practice.
5. **The Ministry of Health and the Republic Health Insurance Fund** should ensure more information to patients/insured persons on their health insurance and health care rights.
6. **The Republic Health Insurance Fund and the Tax Administration** should act promptly and cooperate efficiently in the execution of tasks from their spheres of competence in the field of compulsory social insurance, in accordance with their existing legal duties.
7. **The Ministry of Health and local self-administrative authorities** should ensure smooth functioning of patient rights advisors and health councils and should take all necessary measures to provide all necessary working conditions for them.

8. **The Ministry of Health** should take all actions within its remit and cooperate with other authorities for the purpose of performing tasks under the Law on Patient Rights.
9. **The Ministry of Health** should perform regular periodic analyses of the effects of implementation of the Law on Patient Rights with the aim of ensuring efficient and lawful exercise of patient rights and improving operations of mechanisms for protection of their rights.

Social Security Sector

1. **The National Assembly** should consider bills of amendments to the Labour Law and of the Law on Financial Support to Families with Children submitted by the Protector of Citizens.
2. **The Government** should draft and submit to the National Assembly for enactment Bill of Amendments to the Law on Financial Support to Families with Children, in accordance with the Initiative launched by the Protector of Citizens.
3. **The Government** should draft and submit to the National Assembly for enactment a bill which would clearly and precisely define the duties and responsibilities and mutual relations between the implementing agencies responsible for the housing policy, as well as the funding arrangements for social housing.
4. **The Government** should provide for the (re)introduction and development of social security services.
5. **The Ministry of Labour, Employment, Veteran and Social Affairs** should ensure that decisions to grant or deny social security rights are clear, fully substantiated and comprehensible to recipients and that they include all elements provided for by the law.
6. **The Ministry of Labour, Employment, Veteran and Social Affairs and the Republic Social Security Institute** should provide various forms of trainings and professional advancement for employees.

Pension and Disability Insurance Sector

1. **The Pension and Disability Insurance Fund** should assume responsibility for unpaid pension and disability insurance contributions dating back to the period when it was responsible for controlling the payment of those contributions in cases where beneficiaries' employers filed for bankruptcy.
2. **The Pension and Disability Insurance Fund and the Ministry of Labour, Employment, Veteran and Social Affairs** should jointly prepare a proposal for amendments to the Law on Pension and Disability Insurance to address the issue of inability or limited ability of citizens to exercise their rights in the field of pension and disability insurance due to inefficient organisation and functioning of the system put in place to control employers' compliance with their duty to pay social security contributions.
3. **The Pension and Disability Insurance Fund** should establish effective and efficient cooperation with other compulsory social insurance organisations and **the Tax Administration** with the aim of exchanging information on paid contributions.
4. **Ministry of Labour, Employment, Veteran and Social Affairs**, should, **in cooperation with the Pension and Disability Insurance Fund**, prepare amendments to the applicable regulatory framework to establish an efficient mechanism to address the issue which arose because citizens were ordered to pay contributions for farmers' pension and disability insurance.
5. **The Pension and Disability Insurance Fund** should transparently, clearly and unambiguously explain to military pensioners the effects of the Government's

Resolution on Adjustment of Pensions paid to Military Pension Beneficiaries, i.e. it should clarify whether it is fully compliant with the ruling of the Administrative Court that military pensions need to be adjusted and converted.

6. **The Pension and Disability Insurance Fund** should continue to undertake activities with the aim to improve its operations, to regularly update its registers, to ensure efficient acting on citizens' requests for the exercise of pension and disability insurance rights, to ensure timely acting on lodged complaints and should improve cooperation between branch offices and more efficient cooperation with foreign funds.
7. **The Pension and Disability Insurance Fund** should ensure all its organisational units act consistently in accordance with the law and internal instruments of the Pension and Disability Insurance Fund (instructions, guides...).
8. **The Ministry of Labour, Employment, Veteran and Social Affairs** should supervise the legality of operations and enactments of the Pension and Disability Insurance Fund, in connection with the recommendations the Protector of Citizens issued to the Fund.

Labour Sector

1. **The Ministry of Labour, Employment, Veteran and Social Affairs** should prepare a law that would make the existing arrangements more flexible and give unemployed persons more time to comply with their duty to report to the National Employment Service.
2. **The Ministry of Labour, Employment, Veteran and Social Affairs** should engage in constant social dialogue with representatives of employees and employers with the aim of providing conditions for decent work.
3. **The Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Education, Science and Technological Development, the Ministry of Youth and Sports and the National Employment Service** should pass holistic programmes for the employment, education and professional advancement of the unemployed.
4. **The Tax Administration, the Republic Pension and Disability Insurance Fund, the Republic Health Insurance Fund and the Labour Inspectorate** should establish effective, timely and efficient cooperation and diligently exchange information on the employees' labour rights.
5. **The National Employment Service** should pass documents which would govern the procedure of public calls for the selection of branch managers.
6. **The Labour Inspectorate of the Ministry of Labour, Employment, Veteran and Social Affairs** should pass decisions on rights and obligations on the basis of all relevant facts, after a diligent and careful weighing of evidence and with consistent application of the Law on General Administrative Proceedings.
7. **The Ministry of Labour, Employment, Veteran and Social Affairs should, in cooperation with the National Employment Service and the Republic Pension and Disability Insurance Fund** find an arrangement for those citizens who have been left without any income because they have forfeited the entitlement to benefits, but are not eligible for the entitlement to a pension due to amendments to the Law on Pension and Disability Insurance.

Internal Affairs Sector

1. **The Ministry of Internal Affairs** should prepare a draft law which would regulate the content of the Identification Questionnaire used in security clearance checks.

2. **The Ministry of Internal Affairs** should continue developing and strengthening its control mechanisms, actions of its complaints commissions pursuant to citizens' complaints and actions of the Internal Control Department.
3. **The Ministry of Internal Affairs** should improve its work by presenting decisive facts in the statements of reasons for its decisions.
4. **The Ministry of Internal Affairs** should improve its work in order to ensure that it responds timely and without delay to citizens' job applications for posts within that authority, especially where age of the applicant is a condition for employment.

Finance

1. **The Republic of Serbia** should provide for a procedure in which the claimants could exercise their rights and set aside the required amounts for compliance with the Judgement of the Grand Chamber of the European Court of Human Rights in the case pursuant to the submission of Ališić and Others, relating to the exercise of the rights arising from the so-called "old foreign-currency savings".
2. **The Tax Administration** should ensure that all citizens who were not charged "solidarity tax" within the statutory period should be compensated in accordance with the recommendations of the Protector of Citizens.
3. When deciding on the way in which tax documents would be served on citizens, **the Tax Administration** should act with due care, bearing in mind the justified interest of citizens to learn about the content of those documents.
4. **The Tax Administration** should improve the system for assessing tax on registered firearms and should engage in a more meaningful cooperation with the Ministry of Internal Affairs, so as to avoid creating an unjustified financial burden for citizens.
5. **The Tax Administration** should improve the human resources of its regional second-instance bodies in Belgrade, Novi Sad, Kragujevac and Nis, in order to ensure that decisions pursuant to appeals are made within the statutory timeframe.
6. **The Ministry of Finance**, in particular **the Customs Administration**, as its subordinate body, should improve its written communication with citizens, which inter alia implies consistent application of the regulations governing public administration, office operations, proper categorisation of received submissions by content and timely provision of replies in writing to the citizens who made the submissions.
7. When planning own-source revenues, **local self-government units** should take into consideration the economic status and financial circumstances of taxpayers, while **local tax administrations** should focus more on written communication with citizens and proper deciding on their requests.

Economy

1. **The Government and the Ministry of Economy** should, as soon as possible, devise and implement the best model for settling the claims registered in accordance with the Decree on Registration of Outstanding Debt of Socially-Owned Enterprises under Enforceable Judgements for Employment-Related Claims.
2. **The Ministry of Economy** should continue reforming the bankruptcy legislation, with a view to devising a model best suited to provide the fullest and most effective oversight of bankruptcy administrators in bankruptcy proceedings.
3. **The Ministry of Economy** should undertake adequate measures and activities to complete the privatisation process as soon as possible and as successfully as possible in those companies that are still undergoing privatisation.

4. **The Business Registers Agency** should comply with the provisions of the Law on Companies which pertain to the initiation and conduct of forcible liquidation procedures.

Justice Sector

1. **The Ministry of Justice** should expedite its drafting of the Law on Free Legal Assistance.
2. **The Ministry of Justice** should pass an instrument that would provide for the composition of the Rehabilitation Compensation Committee and govern its work in detail.
3. **The Ministry of Justice** should undertake activities within its sphere of competence under the Law on the Public Attorney's Office in connection with the passing of a Bylaw on Administration of the Public Attorney's Office.
4. **The Ministry of Justice** should, by improving *inter alia* the legislative framework which governs supervision of the handling of citizens' complaints by courts, provide for functional supervision arrangements, in accordance with citizens' expectations.

Defence Sector

1. **The Ministry of Defence** and **the Ministry of Labour, Employment, Veteran and Social Affairs** should establish effective cooperation to address the issue of determining the amount of pensions of the professional servicemen of the Serbian Army in cases when "they do not have documents evidencing the amounts of their past salaries".
2. **The Ministry of Defence** should, in cooperation with **the Ministry of Labour, Employment, Veteran and Social Affairs**, amend the applicable regulatory framework to establish an effective mechanism to address the issue of determining the amount of pensions of the professional servicemen in cases where the Ministry of Defence and the Serbian Army have no records of the amounts of past salaries.
3. **The Ministry of Defence** should harmonise the provisions of the Military Discipline Rules with the provisions of the Criminal Procedure Code which govern acting on appeals lodged by persons subject to disciplinary measures, in full respect of the institute of prohibition of *reformatio in peius*.
4. **The Ministry of Defence** should pass an implementing regulation to regulate the exercise of the right to specialist medical examinations by professional servicemen in accordance with the law.
5. **The Ministry of Defence** should undertake all relevant activities in cooperation with the competent authorities to ensure that its employees who are in charge of handling requests for protection from workplace harassment receive proper training.

Construction, Transport and Infrastructure

1. Sufficient funds should be provided in budgets at all levels for administrative enforcement of orders for demolition of illegal buildings:
 - **The Ministry of Transport, Construction and Infrastructure** and **the Ministry of Finance** should plan in the preparation of the Law on Budget for an adequate amount of funds for delegated powers of local self-government units for the purpose of enforcement of orders for demolition of illegal buildings constructed after the Law on Legalisation of Buildings entered into force and demolition orders issued after the completion of legalisation proceedings, which would consistently prevent illegal construction;

- **The Ministry of Transport, Construction and Infrastructure** should propose sufficient funds for the demolition of illegal buildings within the sphere of competence of this Ministry in the preparation stage of the budget of the Republic of Serbia;
 - **Local self-government units** should ensure in the budget revision a sufficient amount of funds for administrative enforcement of orders envisaged by the plan and programme for demolition of illegal buildings.
2. **The Ministry of Transport, Construction and Infrastructure** should ensure that initiated processes in the field of urban planning and construction and in the field of legalisation of buildings are completed within legal time frames and time limits.
 3. **The Ministry of Transport, Construction and Infrastructure** should efficiently perform its enforcement role of the Law on Legalisation of Buildings and should provide instructions to direct organisation of duties and work of local self-government.
 4. **The Ministry of Transport, Construction and Infrastructure** should increase its professional capacities, ensure stricter depoliticizing of its staff and prevent corruption through reorganisation, employment of new officers and professional advancement of its employees.
 5. In order to strengthen the preventive function of the building inspectorate, a change in the legal framework must be accompanied by greater involvement of **the Ministry of Transport, Construction and Infrastructure** through: increased oversight of local inspections, establishment of an efficient mechanism for enforcing inspection orders, proper allocation and direction of inspection resources, use and imposition of appropriate penalties in cases of unlawful acting by inspectors, establishment of a clear system of evaluation of inspectors' work that would not be based on a quota of inspections and issued orders, but on the rate of success in preventing negative effects of illegal and irregular actions.
 6. **The Ministry of Transport, Construction and Infrastructure** should, **in cooperation with other competent authorities**, should make additional efforts to ensure the Republic of Serbia finally completes the legalisation process.
 7. **Local self-government units** should form adequate organisational units competent for enforcement of demolition orders, where such units have not been formed.
 8. **Local self-government units** should timely conduct public procurement procedures for demolition works and calls for tenders should be transparent.
 9. **Local self-government units** should pass a Plan and Programme for the Demolition of Buildings within specified time limits and according to clear criteria and should consistently comply with it.
 10. **Local self-government units** should transparently, accurately and precisely provide information on the options to contact the Anti-Corruption Team of the Ministry of Transport, Construction and Infrastructure and file complaints about the work and negligence of employees, as well as other rights in case of negligent acting of officers.

Real Estate Cadastre

1. **The Ministry of Construction, Transport and Infrastructure** should, with active participation of **the Republic Geodetic Authority**, enable the citizens to obtain documents demonstrating the basis for changes in real estate without any issues by taking adequate measures and activities to finally integrate land register files and collections of documents from the period when land registries were used.
2. **The Republic Geodetic Authority** should consider the possibility of hiring the necessary number of employees or making changes in work organisation to ensure all real estate

cadastre offices efficiently perform duties in their spheres of competence within statutory time limits.

3. **The Republic Geodetic Authority** should, in accordance with the enacted amendments to the Law on State Cadastre and Land Survey, take all necessary measures within its sphere of competence to establish an efficient mechanism for efficient and timely acting on complaints, in accordance with the provisions of the Law on General Administrative Proceedings.

Natural Disasters

1. **The Government** should as soon as possible enact a law which would provide for the improvement, strengthening and expanding of the system for protection against natural disasters (the Bill on Management of Risks from Natural Disasters).
2. **The Public Investment Management Office** should take all necessary measures to ensure efficient landslide mitigation.
3. **Local self-government units** should allocate more funds from their budgets for remediation of damage from natural disasters, since there are no regulations which would impose an obligation on the state to do so.

Restitution

1. **The Republic of Serbia** should accept responsibility for inadequate keeping of archival material, because of which citizens suffer adverse consequences in the restitution procedure as they are not able to obtain the necessary documents, and should propose ways to rectify this shortcoming (amendments to the law which would provide for a subsidiary manner of providing evidence of seized property).
2. **The Government** should adopt as soon as possible the abovementioned amendments to the Law on Property Restitution and Compensation and submit it to the National Assembly for endorsement.
3. **The Ministry of Justice** should, **in cooperation with the Restitution Agency and other competent authorities**, review the existing legislative framework, human resources and technical capacities of the Restitution Agency and accordingly propose amendments to regulations which would regulate in sufficient detail the enforcement of decisions on property restitution and should take other necessary measures.
4. **The Restitution Agency** should introduce a compulsory practice of passing partial decisions where restitution in kind is not possible, but the requirements for compensation have been met.
5. **The Restitution Agency** should act more proactively in complex procedures which require both collecting of data from other authorities and their active participation in identification of property which may be the subject of restitution and compensation.

Sector of Energy and Mining

1. **The Government** should pass the Preventative Action Plan to Ensure Security of Supply of Natural Gas and the Contingency Plan to Ensure Security of Supply of Natural Gas.
2. **The Ministry of Mining and Energy** should, **in cooperation with the Energy Agency**, amend the applicable implementing regulations or pass new ones to ensure implementation of all provisions of the Law on Energy.
3. **The Ministry of Mining and Energy, the Energy Agency, the public enterprise "Elektorprivreda Srbije" and related companies** should act in compliance with the recommendations given by the Protector of Citizens in his Special Report "Issues in Exercise of Electricity Consumer Rights with Recommendations".

Consumer Protection

1. **The Government** should pass protection programmes for vulnerable categories of consumers in services of general economic interest (National Programme for the Protection of Vulnerable Consumers).

Sectors of Agriculture and Environment Protection

1. **The Ministry of Agriculture and Environment Protection** and **the Ministry of Transport, Construction and Infrastructure** should jointly undertake measures to enact laws or implementing regulations that would govern the quality of building material from the aspect of environment protection.
2. **The Ministry of Agriculture and Environment Protection** and **the Ministry of Health** should jointly undertake measures to enact laws or implementing regulations that would govern the quality of air in indoor areas (residential and non-residential), in accordance with the EU regulations and international standards.
3. **The Ministry of Agriculture and Environment Protection** should undertake all measures to adopt the missing strategies and planning documents in the field of environment protection, such as national waste management plans for various types of waste (other than packaging waste), a water management strategy for the territory of the Republic of Serbia, a water management plan, an air protection strategy, air quality plans etc.
4. **The Ministry of Agriculture and Environment Protection** should put in place measures to improve the arrangements incorporated in the Law on Protection from Environmental Noise, including introducing more detailed provisions governing the methods and manner of inspection and the powers of environmental inspectors in cases of noise emanating from hospitality and catering establishments.
5. **The Ministry of Agriculture and Environment Protection** should decide as soon as possible on applicants' requests for the establishment of hunting grounds or for the granting of rights to manage hunting grounds.
6. **The Ministry of Agriculture and Environment Protection** should ensure that those local self-government units that have not yet provided animal control and animal shelter services in their respective territories or have not passed a Programme for the Control and Reduction in the Population of Stray Dogs and Cats to remedy these omissions as soon as possible.
7. **The Ministry of Agriculture and Environment Protection** should review the importance and practicality of constructing a long-distance high-voltage power line in the community of Vinča in an area of increased sensitivity, i.e. in the immediate vicinity of a school and a pre-school facility, in compliance with the principle of fairness and the proclaimed principles of protection from non-ionizing radiation.
8. **The Ministry of Agriculture and Environment Protection** and **the Ministry of Health** should comply with the recommendations of the Protector of Citizens in order to eliminate the source of the pollution and implement continual monitoring of air, water and soil pollution in the town of Zajača.

Security Sector

1. **The National Assembly** should, through its working bodies, conduct timely, impartial and unbiased controls of security services and should ensure better cooperation with other external control mechanisms in this field.
2. **Security services** should be professional, depoliticized and subject to democratic and civil oversight.

3. **The Ministry of Defence** must comply with its statutory duties in the investigations initiated by the Protector of Citizens, no matter which case is investigated.
4. **Security services** should cooperate with the Protector of Citizens without exceptions, grant him access to offices and make available all data they hold which may be relevant for his actions, while refraining from making any assessments regarding (non)fulfilment of the conditions for their investigation.
5. **Internal control authorities within security services** should act lawfully and efficiently to ensure timely punishment is meted out for any irregularities in the work and to maintain the trust of security service officers in their independence and professionalism.
6. To pool together the existing parallel technical capacities of various agencies and the police into a single national agency which would act as a provider of technical services necessary for the interception of communications and other signals to all authorised users. The communication interception equipment should be collected from different authorities and from the different sites where it is currently kept and delivered to that agency for use. The agency's operations must be strictly overseen. Any possession of electronic communication interception equipment outside of this national agency should be a criminal offence.
7. To integrate the procedures applicable to electronic communication service providers and their responsibilities.
8. To provide for an indelible trail of access to telecommunications, with all data necessary for subsequent investigation of legality and regularity of access.
9. To provide for efficient oversight of the private security sector.
10. To criminalise any obstruction of investigations conducted by independent oversight authorities (the Protector of Citizens, the Commissioner for Information of Public Importance and Personal Data Protection, the Anti-Corruption Agency, the State Audit Institution, the Equality Commissioner). Any harassment, threat or other attempt to influence a complainant or a witness who cooperates with oversight authorities should be qualified as a criminal offence.
11. To impose an obligation on internal oversight mechanisms to report their findings relevant for the respect for human rights to the Protector of Citizens and other external oversight authorities, especially if they are ignored by the leaders of their own bodies or if they reveal serious alleged or confirmed violations of human rights.
12. To analyse the implementation of the Law on Data Confidentiality, in particular declassification of old documents, and to consider the need for thorough amendments of that Law or enactment of a new one to ensure the achievement of its proclaimed objectives.
13. To provide support to independent oversight institutions in building their capacities for handling and keeping confidential information.
14. To enact a new Law on Security Information Agency to ensure, among other things, predictability in the use of special measures.
15. To re-examine the police powers of the intelligence/security services, i.e. their participation in criminal proceedings.

ANNEX II – HUMAN AND MATERIAL RESOURCES

Organisational Structure

The Secretariat was established to carry out expert and administrative tasks within the mandate of the Protector of Citizens.

As at 31 December 2015, the Secretariat of the Protector of Citizens employed a total of 81 persons. Of that number, 50 civil servants are employed for an indefinite term, while 31 civil servants and employees are in fixed-term employment, including nine employed at the Cabinet. The total number of employees includes 65 employees with higher education and 16 with secondary school education. The Secretariat employs 58 women and 23 men. The above number of employees does not include the Protector of Citizens Saša Janković and his deputies: Mr. Miloš Janković, Ms Gordana Stevanović, Mr. Robert Sepi and Ms Vladana Jović.

The National Assembly of the Republic of Serbia approved by its Decision No. 49 of 16 November 2015 the Bylaw on Internal organisation and Job Classification in the Secretariat of the Protector of Citizens No. 48-709/2014 of 22 October 2014, submitted by the Protector of Citizens.

Before approval of the Bylaw on Internal organisation and Job Classification in the Secretariat of the Protector of Citizens, during the course of 2015, the Protector of Citizens contacted the Committee on Administrative, Budgetary, Mandate and Immunity Issues on two occasions because of the increased volume of work and requested approval for new hiring and additional engagement of existing employees at the Secretariat (request No. 31-69/15-14121 of 9 April 2015 and request No. 31-202/15-38085 of 16 October 2015). After requested approvals were obtained (Resolution 21 No.: 112-991/15 of 30 April 2015 and the Resolution 21 No.: 112-2043/15 of 6 November 2015), in accordance with the Human Resources Plan for 2015, which was approved by the Ministry of Finance by the document No.: 112-01-00044/2015-of 3 February 2015, necessary employments were made.

The new Bylaw on Internal organisation and Job Classification in the Secretariat of the Protector of Citizens provides for 76 jobs in total, staffed by a total of 106 civil servants and employees, including: six appointed civil servants and 95 employed civil servants, of whom four are employed for NPM tasks and five are employed at technical support and assistance jobs.

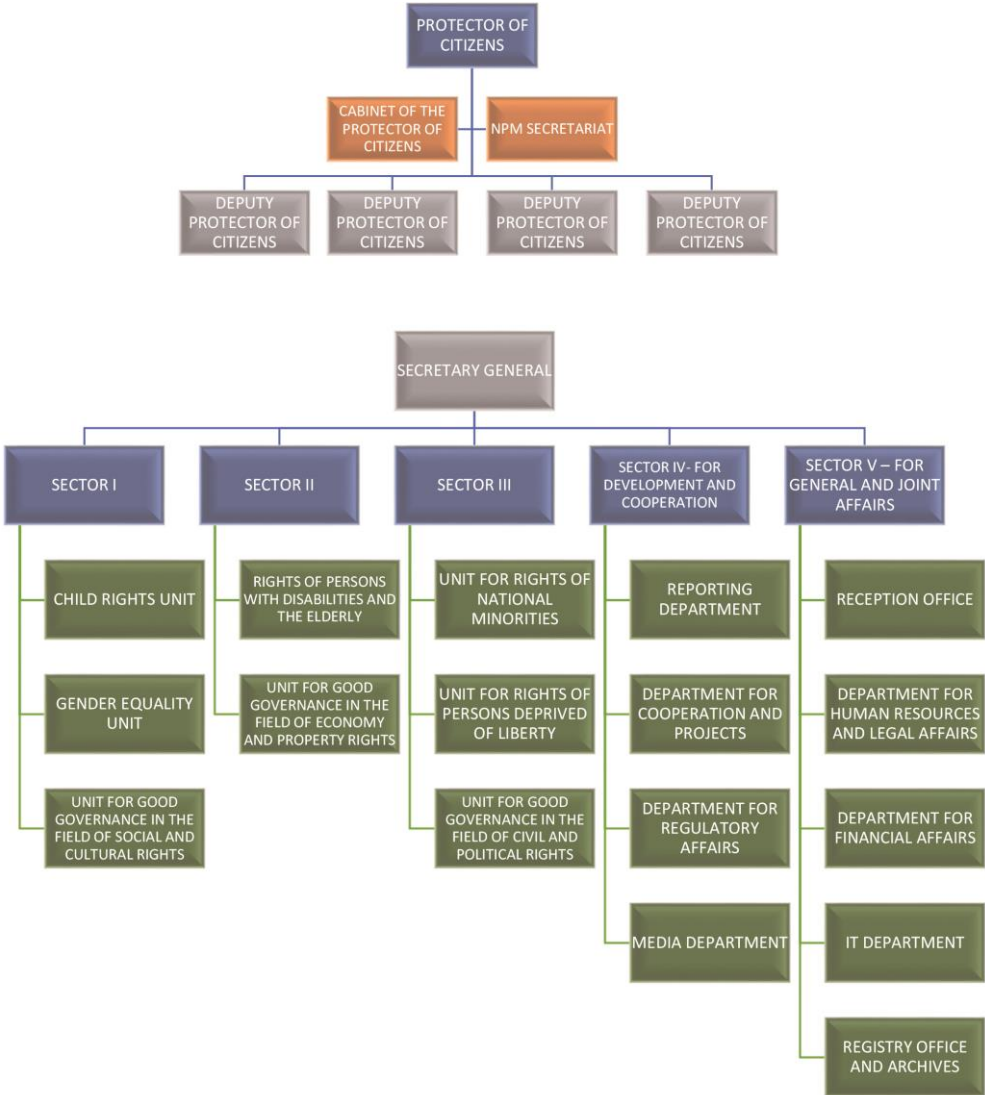
The Bylaw sets out that 74 employees, or 73.58%, are to be hired for tasks within the sphere of competence of the institution, 26 employees, or 24.53%, are to be hired for the supporting administrative and technical tasks, while two employees, or 1.98%, are to be hired for tasks in connection with the Cabinet of the Protector of Citizens.

Due to the constant increase in the number of complaints received by the Protector of Citizens and the increasing number of direct contacts with citizens and appointments with them at the reception offices in Belgrade, Preševo, Bujanovac and Medvedja, this institution needs to increase its staffing level. Taking into account the current economic situation in the country and the fact that permanent office space has not been provided, the Protector of Citizens plans to staff the posts in 2016 with 95 civil servants and employees, of whom 90 civil servants would be in indefinite employment, while three employees and two civil servants would be in fixed-term employment at the Cabinet of the Protector of Citizens.

Further capacity development of the Secretariat of the Protector of Citizens through hiring of new employees in indefinite employment, which would ensure that the total number of employees matches the current needs and provide the required number and structure of

employees for efficient performance of tasks within this institution’s sphere of competence, is an activity envisaged in item 3.2.1.1. of the Action Plan for Chapter 23.

ORGANISATIONAL CHART



OFFICE SPACE AND EQUIPMENT FOR WORK

Resolution 77 No. 361-6754/2013 of 2 August 2013 passed by the Commission for Housing and Allocation of Official Buildings and Offices of the Government temporarily allocated to the Protector of Citizens offices in Belgrade, Deligradska 16, with the total floor area of 1502.25 m², consisting of 57 offices, an archive room, a small and a large conference rooms and a garage for five vehicles.

Section 3 of the said Resolution specified that the Protector of Citizens will use the premises in Deligradska 16 until it becomes possible to implement the Resolution 77 No. 361-3066/2010 of 27 April 2010 of the Commission for Allocation of Official Buildings and Offices of the Government, under which the Protector of Citizens should be allocated the building in Karadjordjeva 48 in Belgrade, which would provide this institution with the permanent office space it needs to function.

In the meantime, without any decision that would repeal the Resolution of the Commission for Allocation of Official Buildings and Offices of the Government 77 number 361-3066/2010 of 27 April 2010, the building in Karadjordjeva 48 in Belgrade has been reassigned to the Belgrade Waterfront project; however, no new decision has been passed that would provide the Protector of Citizens with the necessary office space.

Provision of adequate permanent premises for the institution of the Protection of Citizens is an activity envisaged under section 3.2.1.2. of the Action Plan for Chapter 23, the implementation of which was planned for the fourth quarter of 2015.

The premises in Deligradska 16 are no longer sufficient for the current number of employees at the institution and for providing services to the citizens. The premises also do not meet the minimum requirements necessary for the provision of services to the citizens and for work of civil servants, i.e. for respect of their right to safety and privacy of complainants, healthy working conditions and dignity of the authority. The current number of offices (57) includes the offices of civil servants who handle citizens' complaints, the offices of the HR, financial and IT departments and the cabinets of the Protector of Citizens, Deputy Protectors of Citizens, the Secretary General and the Assistant Secretary General, reception rooms, a waiting room, a registry office and a telephone switchboard. The room designated for archive material is too small and its structure is inadequate. In addition, the current conditions allow only for the barest minimum of protection measures to be applied to classified data. Video surveillance equipment has been procured and installed and a certified document safe box has been procured in order to increase the protection of classified data.

Activities to procure equipment have continued, including in particular computers and other technical devices, mostly from the funds allocated to the Protector of Citizens from the national budget, as well as from the funds received within the framework of projects funded by foreign governments and international organisations. The Secretariat has desktop and laptop computers, equipment for video presentations, telecommunication devices and necessary office equipment. The offices in Deligradska 16 are equipped with office furniture inherited from the previous occupant. To help rationalise publicly-owned assets and to manage them more economically, the Protector of Citizens reduced the fleet of vehicles from 12 to 9, of which eight (two SUVs, one van, one mid-range car and three city cars) were procured in the previous period (received from OSCE and Council of Europe grants within the framework of capacity building projects for the Protector of Citizens the Republic of Serbia and purchased from the budget of the Protector of Citizens for the work of the Secretariat in tasks within the Ombudsman's sphere of competence and in the capacity of the National Preventive Mechanism). One luxury car was made available by the Administration for Joint Affairs of Public Authorities after it received four city cars for its use. The official vehicles are used exclusively for the purposes and in the manner provided for in the Decree on the Manner of Use of Official Vehicles.⁶¹²

The premises have been fully adapted for access by persons with disabilities, which has made the work of this authority fully accessible to them just as all other citizens.

⁶¹² Official Gazette of RS, No. 49/14.

Local offices in Preševo, Bujanovac and Medvedja

Pursuant to the Law on the Protector of Citizens and the General Instrument on Organisation and Operations of the Secretariat, the Protector of Citizens passed the Decision on Establishment of Local Offices of the Protector of Citizens in Municipalities of Preševo, Bujanovac and Medvedja. The offices were established to improve availability of the institution of the Protector of Citizens and to ensure more efficient protection and improvement of human and minority freedoms and rights of citizens in that area.

The local offices are headquartered in:

1. Preševo, in the building of the Coordination Centre for the municipalities of Preševo, Bujanovac and Medvedja, Save Kovacevica 12;
2. Bujanovac, Karadjordjev trg bb, the premises in the building of the Primary Court in Vranje, Judicial Unit Bujanovac. On 6 December 2011, the office was moved to the new premises allocated with approval from the Ministry of Justice from its previous temporary headquarters in the building of the municipality of Bujanovac, in the press centre of the Coordination Body for the municipalities of Preševo, Bujanovac and Medvedja.
3. Medvedja, in the building of the Cultural Centre of the municipality of Medvedja, Jablanicka 63.

The Office employs two civil servants, junior advisors Ms Ana Glisic-Petrova and Mr. Bekim Ajdini. The Office is opened for complainants according to the following schedule: Monday and Tuesday – the municipality of Bujanovac; Wednesday and Thursday – the Municipality of Preševo and Friday – the Municipality of Medvedja. The Office was officially opened on 28 June 2011.

Office furniture, computer and communication equipment have been purchased for the offices from a UNDP donation granted within the framework of the PBILD project, “Strengthening Capacities for Inclusive Local Development in Southern Serbia”.

ANNEX III – FINANCIAL STATEMENT

Pursuant to the Law on Amendments to the Law on the Budget of the Republic of Serbia for 2015, funds in the amount of **RSD 171,416,000.00** have been allocated to the Protector of Citizens, which is a decrease of 3.01 % compared with **RSD 176,580,000.00** allocated in 2014.

In 2015, the Protector of Citizens spent a total of **RSD 154,792,573.14**, i.e. 90.30% of the allocated budget funds (the percentage of spending of the budget funds is the same as in 2014), which is a nominal decrease of 3.00 % compared with the funds spent in 2014, when he spent a total of **RSD 159,448,912.98**.

The funds allocated from the budget were used to finance regular activities of the Protector of Citizens, in accordance with the financial plan.

Table 55 - Execution of the budget for 2015

Account position	Description	Allocated	Spent	%
411	Salaries, benefits, allowances			
411111	Salaries based on cost of labour		90,144,094.02	80.89
411112	Allowance for overtime working hours		2,078,832.67	1.87
411115	Allowances for time spent at work (accumulated years of service)		4,327,682.84	2.84
411117	Sick leave up to 30 days		834,830.19	0.75
411118	Compensation wage during absence from work-annual leave, paid leave		6,427,175.95	5.77
411119	Other allowances and compensation for employees		1,820,982.53	1.63
Total		111,439,000.00	105,633,598.20	94.79
412	Contributions			
412111	Contributions for pension and disability insurance		11,683,251.74	58.49
412211	Contributions for health insurance		4,954,111.24	24.80
412311	Contributions for unemployment		721,472.57	3.61

Account position	Description	Allocated	Spent	%
Total 412		19,975,000.00	17,358,835.55	86.90
413	Compensations in kind			
413000	Compensations in kind		0	0
Total 413		1,000.00	0	0
414	Social benefits to employees			
414111	Maternity leave		2,505,558.94	50.11
414121	Sick leave longer than 30 days		417,124.96	8.34
414314	Assistance in case of death of an employee or his/her close family member		126,428.00	2.53
414411	Benefits in case of medical treatment of an employee or his/her close family member		36,123.00	0.72
414419	Other assistance to employees		101,455.55	2.03
Total 414		5,000,000.00	3,186,690.45	63.73
415	Compensation for employees			
415112	Transportation allowance (to and from work)		3,196,125.98	91.32
Total 415		3,500,000.00	3,196,125.98	91.32
416	Rewards for employees and other special expenses			
416111	Jubilee rewards		294,453.35	84.13
Total 416		350,000.00	294,453.35	84.13
421	Fixed expenses			
421121	Costs of banking services		32,460.11	0.65
421211	Electricity services		22,620.74	0.45
421225	Central heating		124,781.50	2.50
421323	Property protection services		412,035.15	8.24
421411	Telephone, telex and telefax		778,512.61	15.57
421412	Internet etc.		224,057.48	4.48

Account position	Description	Allocated	Spent	%
421414	Mobile phone services (<i>mobile phones, Internet</i>)		1,248,210.13	24.96
421422	Delivery services		1,085,000.00	21.70
421512	Car insurance		405,639.00	8.11
421513	Equipment insurance		33,250.87	0.67
421521	Insurance for employees in case of work-related accidents		99,225.00	1.98
Total 421		5,000,000.00	4,465,792.59	89.32
422	Travel expenses			
422111	Travel allowances for business trips		788,805.00	18.78
422121	Transportation allowances for business trips		31,410.00	0.75
422131	Accommodation costs for business trips		290,447.00	6.92
422199	Other expenses for business trips in the country		85,911.00	2.05
422211	Travel allowances for business trips abroad		522,628.77	12.44
422221	Transportation allowances for business trips abroad		729,071.00	17.36
422231	Accommodation costs for business trips abroad		289,672.16	6.90
422299	Other expenses for business trips abroad		18,652.72	0.44
Total 422		4,200,000.00	2,756,597.65	65.63
Account position	Description	Allocated	Spent	%
423	Contracted services			
423111	Translation services		1,135,092.00	11.55
423212	Software maintenance services		6,475.00	0.07
423291	Other computer services		346,000.00	0.04
423311	Services of education and professional advancement of employees		74,500.00	0.76
423321	Seminar fees		177,210.00	1.80
423391	Expenditures for professional examinations		118,500.00	1.21

Account position	Description	Allocated	Spent	%
423399	Other expenditures for professional education		20,100.00	0.20
423413	Services of publication printing		1,345,471.83	13.68
423419	Other printing services		267,750.00	2.72
423432	Publishing of tenders and informative advertisements		27,027.00	0.27
423449	Other media services		394,200.00	4.01
423531	Technical evaluation services		203,088.74	2.07
423599	Other professional services (<i>outsourcing of NPM experts</i>)		977,614.21	9.95
423621	Catering services (<i>organisation of conferences, round tables, meetings</i>)		801,046.79	8.15
423711	Representation (<i>organisation of conferences, round tables, meetings</i>)		563,411.67	5.73
423712	Gifts (<i>symbolic gifts –books, pencils, badges with the logo of the Protector of Citizens</i>)		279,196.90	2.84
423911	Other general services		507,688.36	5.16
Total 423		9,830,000.00	6,173,624.19	62.80
425	Repairs and maintenance			
425211	Mechanical repairs		15,852.57	1.76
425219	Other repairs and maintenance of transport equipment		10,356.00	1.15
425222	Computer equipment		6,192.00	0.69
425229	Other repairs and maintenance of administrative equipment		107,646.00	11.96
425291	Current repairs and maintenance of products, engine-powered, immovable and engineless equipment		321,386.12	35.71
Total 425		900,000.00	461,432.69	51.27
426	Material			
426111	Office stationery		1,325,418.51	23.25
426191	Other administrative material		34,380	0.60
426311	Professional literature for regular needs of employees		698,843.55	12.26

Account position	Description	Allocated	Spent	%
426312	Professional literature for education of employees		20,389.21	0.36
426411	Petrol		2,949,741.58	51.75
426413	Oils and lubricants		4,590.00	0.08
426491	Other material for means of transport		130,898.92	2.30
426819	Other material for cleaning		274,066.80	4.81
426911	Supplies		6,700.00	0.12
426912	Spare parts		85,437.60	1.50
426919	Other material for special purposes		58,296.00	1.02
Total 426		5,700,000.00	5,588,762.17	98.05
462	Grants to international organisations			
462121	Current grants for international membership fees		1,220,408.37	96.10
Total 462		1,270,000.00	1,220,408.37	96.10
482	Taxes, compulsory fees, fines and penalties			
482131	Vehicle registration		84,970.00	42.49
482331	City fees		51,870.00	25.94
Total 482		200,000.00	136,840.00	67.49
485	Compensation for injuries or damage caused by public authorities			
485119	Other damage compensation		145,056.00	96.06
Total 485		151,000.00	145,056.00	96.06
512	Machinery and equipment			
512221	Computer equipment		2,659,099.20	68.18
512222	Printers		319,242.00	8.19
512231	Telephone switchboard with related installations and devices		51,737.88	1.33
512241	Electronic equipment		147,112.56	3.77

Account position	Description	Allocated	Spent	%
512242	Photography equipment		49,872.00	1.28
512251	Household equipment		21,600.00	0.55
Total 512		3,900,000.00	3,248,663.64	83.30
TOTAL		171,416,000.00	154,792,573.14	90.30

In addition to the funds specified by the Law on the Budget, in 2015 the Protector of Citizens also used funds from donations of international organisations and certain foreign countries. The column *Project budget for 2015* presents only the funds managed by the Protector of Citizens, while in other cases the funds are managed by the donors who make direct payments for the costs.

Table 56 - Ongoing projects

No.	Project	Financed by	Project budget for 2015	Project duration	Short description / Purpose
1	Judicial Reform and Government Accountability (JRGA)	USAID		2011 - 2016	The Protector of Citizens is a beneficiary of the project component dedicated to the promotion of responsible and efficient government, strengthening of the capacity of independent institutions and strengthening of cooperation between independent institutions and civil society organisations. During 2015, the focus was on improving the capacity of the Protector of Citizens for improved and more efficient reporting.
2	Promoting Human and Minority Rights through more Intense Contact between the	Government of the Kingdom of Norway	€ 141,841.90	December 2012 - June 2015	To contribute to the improvement of protection and respect of human rights of the citizens, particularly those living in towns and small municipalities in Serbia. The main activities in 2015 were development of the Accessibility Map for persons with disabilities, contacts between citizens and the

	Protector of Citizens and Citizens			Protector of Citizens from fifteen local libraries and introduction of an electronic document management system of the Protector of Citizens.
3	Support to Strengthening of the Institution of the Protector of Citizens	OSCE Mission to Serbia	January – December 2015	To contribute to strengthening of the capacity of the Protector of Citizens. In 2015, the focus was on the improvement of the legal framework in the field of gender equality and an analysis of the existing trainings for employees in competent authorities in the field of prevention, elimination and protection of women from domestic violence and intimate partner violence.
4	Improvement of the Position of the Most Vulnerable Child Groups	United Nations Children’s Fund (UNICEF)	March 2014 – December 2015	To contribute to more efficient protection of the rights of children on the move and of children who are victims of sexual violence, as well as strengthening the Panel of Young Advisors of the Protector of Citizens as a mechanism for participation of children. The majority of activities implemented in 2015 were dedicated to protection of children from violence, with a focus on sexual abuse and exploitation.
5	Support to improvement of the situation of the elderly in Serbia	United Nations Population Fund (UNFPA)	June – December 2015	To contribute to improvement of the situation of the elderly in Serbia and their full social inclusion. As part of the project, a report was prepared which contains an analysis of the Serbian regulatory framework and a comparative analysis of the international legal framework in the field of rights of the elderly. This analysis will be an integral part of a special report on the position of the elderly which should be published in 2016.
6	Annual conference of the Children's Rights Ombudspersons' Network in South and Eastern Europe (CRONSEE)	Save the Children International North West Balkans Office	September 2014 - October 2015	The Protector of Citizens was a host of the regular annual conference of the Network which addressed sustainability of services and programmes for children in the circumstances of austerity measures. The conference was followed by a thematic meeting which addressed protection of children on the Internet. A collection of selected works from the conference was published in October 2015.
7	Preparation of the Model Law on Government Assistance	Embassy of the Kingdom of Denmark	November 2014 – March 2015	To contribute to improvement of citizens’ safety and ensuring clearer and more transparent procedure for the award of government assistance in cases of natural disasters. As part of the project, the Model Law was prepared and

	in Cases of Natural Disasters			presented to the public and submitted to the Serbian Government for review.
8	Improvement of the System for Protection of Confidential Data of the Protector of Citizens	Embassy of the Kingdom of Denmark	November 2014 – March 2015	To contribute to the improved protection of confidential data held by the Protector of Citizens and higher security of premises where such data are kept. The project included purchase and installation of necessary equipment and software.
9	Strengthening the Capacity of the Protector of Citizens for Legislative Initiatives through Cooperation with Civil Society Organisations	British Embassy	June 2015 – December 2016	The purpose of the project is to contribute to the improved legislative framework for protection of human rights in accordance with the relevant international standards and the <i>acquis communautaire</i> . Non-governmental organisations dealing with human rights were hired to submit to the Protector of Citizens analyses of draft laws in predetermined fields. On the basis of the expert analysis, the Protector of Citizens will give opinions on draft laws and amendments to laws in the parliamentary procedure and initiate other types of legislative initiatives. The project will be implemented in cooperation with the House of Human Rights which will provide administrative and technical support in its implementation.