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PROTECTOR OF CITIZENS
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REGULAR ANNUAL REPORT OF THE PROTECTOR OF CITIZENS FOR 2014

Belgrade, 14 March 2015

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FOREWORD, OVERALL ASSESMENT OF RESPECT FOR THE RIGHTS OF CITIZENS AND KEY INFORMATION ON THE ACTIVITIES CARRIED OUT BY THE PROTECTOR OF CITIZENS in 2014

The Annual Report contains general and specific assessments and information on the respect 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' position vis-à-vis public authorities and account of the activities carried out and the costs incurred by the Protector of Citizens.

Human rights situation in Serbia in 2014 was worrying. The situation with regard to rule of law and legal certainty, respect for principles of good governance, organisation and capacities of public administration, compliance with laws and, above all, economic situation was such that it was not possible to guarantee a level of respect for citizens' rights that would ensure a dignified life for everyone. Improvements on certain issues in fields such as health care, while not sufficient to change the overall evaluation, were nevertheless praiseworthy.

The disastrous floods in May claimed the lives of more than 50 citizens and rescuers. We would like to take this opportunity to once again offer our sincerest condolences to their families. Still thousands of others have suffered immensurable financial damage. It was only thanks to the solidarity of citizens, the swift response by public authorities, in particular the transparent activities of the Government's Office for Flood-affected Areas Assistance and Recovery, and international aid that the consequences have been somewhat alleviated.

Similarly as in previous years, organisational weaknesses in the operations of public administration have prevented citizens from exercising their rights enshrined in the country's legal system to the full extent and within a reasonable time.

Most of the complaints lodged by citizens (44% of the total number received) cite belated responses by public administration, negligence, blatant misconstruction of legislative provisions and other omissions falling under good governance.

And yet, some of the rights enjoyed by citizens are not only curtailed in practice, but also subject to further regulatory restrictions, in cases where applicable legislation has been amended to narrow the scope for the exercise of those rights, which more often than not tends to disproportionately affect the most vulnerable citizens in ways that are often contentious in terms of formal law. This was in no small part due to the fact that the National Assembly passed nearly all laws adopted during the reporting period in an expedited procedure – a worrying trend to which this authority has drawn attention on a number of occasions.

With regard to the *Law on Temporary Regulation of Pension Payment*¹, the “temporary regulation” of pension payments apparently means that “present and existing beneficiaries” will receive lower pensions than before! The title given to this legislation and the wording of its provisions are a thinly veiled attempt to obfuscate its legal and actual purpose, namely to reduce the amounts of pensions already earned and set pursuant to valid and enforceable

¹ Official Gazette of RS, No. 116/14.

administrative instruments. The new Law, which is less advantageous to the affected citizens, does not provide for a mechanism that would apply to individual cases through equivalent new administrative instruments which would set out the new amounts of pensions; instead, old-age pensioners are left with a thinner cheque without any underlying legal instrument that would demonstrate the soundness and lawfulness of this course of action taken by the public administration, which makes this practice all the more difficult to challenge and disprove on points of law and procedure. Thus, a single piece of legislation and the manner of its implementation have in effect curtailed and changed already existing rights, thereby undermining legal certainty.

Indeed, even the legislation which curtails rights or imposes new obligations, such as it is, has in some cases been applied in an utterly unlawful and unfair fashion:

*The Law on Net Income Reduction for Public Sector Employees*² (also known as the “Solidarity Tax Law”) was in effect from 1 January 2014 to 1 November 2014 and imposed an additional tax on public sector salaries which exceeded a certain threshold. However, in practice the solidarity tax was collected even from those employees who had not been paid for months and then at some point received the accumulated amount of back wages all at once. Those citizens were harmed in more ways than one: first they had been left without means to support their livelihood for months on end, and then they had the solidarity tax deducted from the accumulated amount paid to them in arrears as if they had received a single months’ worth of salary in excess of the specified threshold. This practice was all the more unfair, with an added dimension of discrimination against women, because most of those employees were in fact women on maternity leave. This authority found such practice of collecting solidarity tax to be unlawful, but our recommendation fell on deaf ears at the Ministry of Finance, which refused to comply and refund the amount of tax collected in those instances. Furthermore, the Law, which imposed a “solidarity” tax on salaries as the primary means of livelihood, envisaged no such taxation for other types of income that could much more easily lend themselves to taxation in the name of social solidarity, such as “bonuses” and “rewards” – the “reward” being an entitlement to a fixed amount per month in perpetuity for the lucky “winner”.

A high percentage of public authorities (≈90%) rectified omissions in their operations which harmed citizens’ rights and which were identified by the Protector of Citizens as the result of oversight procedures. However, there is still no fully functional horizontally and vertically ramified system for elimination of irregularities in which the Protector of Citizens would be called upon to act only on exceptionally huge irregularities and illegalities that harm citizens’ rights (which is in fact the underlying concept of the ombudsman institution). Left without recourse to an accessible and effective means of brining and resolving their grievances before a lower-instance authority, citizens have turned to the Protector of Citizens as the oversight authority of first, rather than last, instance in more than 50% of all cases.

The 2013 Annual Report highlighted a lack of organisation and inefficient operations of inspectorates at various governmental levels and recommended better regulatory arrangements applicable to inspection procedures, the status, rights and responsibilities of inspectors and organisations and coordination between inspectorates. As of the end of the reporting period, the law on

² Official Gazette of RS, No. 108/13.

inspection has not been passed, but it is awaiting parliamentary debate at the National Assembly.

Several years ago, the text of amendments to the Law on the Protector of Citizens was prepared and submitted to the Assembly for adoption, but it was withdrawn after formation of the new government and the new convocation of the National Assembly, as is customary in parliamentary practice. Those amendments imposed a duty on all public authorities to establish available and effective manner of reviewing citizens' complaints against their work, within the authority or an organisation. Two years after its withdrawal from the parliamentary procedure for customary reasons, the Bill on Amendments of the Law on the Protector of Citizens has not been returned to the National Assembly. After that, this authority submitted initiatives for amendments of the Law on the Protector of Citizens to the competent ministry after each new convocation or reconstruction of the Government. After the most recent initiative submitted in December 2014, the Ministry of Public Administration and Local Self-Government formed a working group to prepare the Law on Amendments of the Law on the Protector of Citizens.

The following groups and individuals have been particularly vulnerable: the extremely poor, children and the youth, persons with disabilities, national minorities (including the Roma as the most vulnerable), persons deprived of liberty (including persons held in psychiatric hospitals and users of residential social security institutions), severely ill persons, refugees and internally displaced persons, asylum seekers and illegal migrants, women, LGBT groups and individuals, organisations and individuals advocating human rights and organisations and individuals who criticise the public authorities (journalists and others).

Economic, Social and Cultural Rights

The exceptionally high unemployment rate and the aggravated economic situation have continued to deteriorate the material basis for the exercise of the citizens' economic, social and cultural rights. National, provincial and local social security and care mechanisms struggle to provide sufficient assistance for the growing numbers of socially vulnerable persons, at least to the extent necessary to guarantee them the barest minimum of human dignity and livelihood. The already inadequate level of social security has been further weakened following recent legislative amendments.

Under the Regulation on Social Inclusion Measures³, beneficiaries of social welfare are required to do public service work under vaguely defined conditions, or else they risk forfeiting their entitlement to social security. As the Constitution guarantees fair remuneration for work (an inalienable right of every citizen under the Constitution), and given the fact that the value of such work may well exceed the amount of social welfare payments to which a person is entitled, not least because the form and duration of the work remain unspecified, this appears to give public authorities a free hand to pay citizens unfair remuneration for work. In effect, citizens could find themselves in a situation to choose between acquiescing to free forced labour (in a clear violation of their right under the Constitution) or effectively forfeiting the entitlement to social welfare (except where the amount of benefits exceeds the amount of fair remuneration for the

³ Official Gazette of RS, No. 112/14.

work performed, in which case the value of the work would be effectively deducted from it). If the legislators opted for introducing a law that would govern this matter, after a consultative process that would involve all competent authorities and the professional community, the otherwise commendable intention of allowing and expecting persons to contribute productive work to the society could have been formulated and implemented properly, with greater legal certainty, better effects and less scope for further disenfranchisement of socially vulnerable persons in specific cases. This authority has filed a Motion for Constitutional and Legal Review of the contentious provisions of the Regulation with the Constitutional Court.

As a result of a failed public call for tenders for funding of civil society projects in the field of social security, the line Ministry has redirected the budget of two million euros for other purposes.

Once again, the National Assembly has failed to review and pass a number of legislative bills proposed by this authority that would give the most economically vulnerable persons a better chance of providing for their livelihood.

In May 2013, the Protector of Citizens submitted to the National Assembly the bills amending the Labour Law and the Law on Financial Support to Families with Children. The proposed amendments call for an arrangement that would allow parents of children with developmental problems and disabilities and severely ill children to work part-time and receive compensation up to the amount of the full-time equivalent of their salary even after their children turn five (which is the currently applicable cut-off age). Also, special safeguards in terms of working hours are proposed for employed parents, as well as a special allowance for parents who are unable to look for employment because they provide full-time care and assistance to a child in constant need of such assistance, in cases where no community-based support services are available. The Government dismissed these proposals and notified the Speaker of the National Assembly it would draft more sound proposals to improve the situation of these citizens as soon as possible. As of the date of writing of this Report, nearly two years later, this has not been done.

In December 2014, the Protector of Citizens filed an Initiative with the Government for amendments to the Law on Financial Support to Families with Children with a view to extending the entitlement to parenting allowance to fathers of children whose mothers are foreign nationals or stateless persons, in cases where the father and/or the child is a Serbian national. It has also been proposed that the entitlement to parenting allowance should be extended to the father if the mother is not a resident of Serbia and the father and the child are residents. Another proposal is that a child who is a Serbian national should be entitled to child allowance even if he/she is in the care of parents who are not nationals or residents of the Republic of Serbia. The initiative also included other proposals aimed at improving the position of children and families.

Tens of thousands of Serbian citizens are still prevented from fully exercising their constitutionally guaranteed and legally protected rights to health care and old-age pension through compulsory insurance provided for by the law. The competent authorities are not efficient enough in preventing employers to dodge their statutory obligation to pay contributions to the health and pension insurance funds, while the currently applicable regulations place the burden of the consequences of such actions on the shoulders of workers

and their families who are left without health insurance and full amount of their earned pensions. Employers who diligently meet their obligations also suffer adverse effects: they suffer a market disadvantage (their operation costs are higher and their products and services are more expensive than products and services of unfair competition and their insurance contribution rate is pushed far beyond the economically optimal level).

In 2013, the first step has been made with the enactment and implementation of the Law on Exercise of Health Care Rights of Children, Pregnant Women and Nursing Mothers⁴, which afford protection from the consequences of the inefficient contributions system to those particularly vulnerable groups. In 2014, no further improvements were made in improvement of legal protection of other categories of employees and citizens from consequences of employers' unlawful actions.

It has been officially announced that contribution collection rates have improved compared with the previous reporting period. As the applicable regulations governing the work of tax authorities in these matters have seen no significant amendments, it appears that tax authorities have stepped up their game in terms of efficiency and lawfulness of their actions taken in connection with these issues; however, the effort has not been sufficient to fully remedy the situation.

Persons with HIV/AIDS are stigmatised and discriminated against even by health care professionals. There is no systematic testing for HIV/AIDS in Serbia, especially not among children and youth.

Austerity measures have done away with some social security services, while reducing others to the bare minimum.

In Belgrade, the Decision on Social Security Rights and Services⁵ has terminated a number of social security services and curtailed a number of social security entitlements. Thus, the Decision has done away with the day shelter for children, the services of personal aides for children, youth and elderly persons with physical disabilities and subsidies for utility products, services and rent, while the entitlement to one-off financial assistance is no longer available to children without parental care, pupils and students. The rights of beneficiaries of emergency, one-off and permanent financial assistance have been reduced both in terms of the available amount and the eligibility criteria. Such "savings" brought about by affecting the livelihoods of the most vulnerable persons have not been limited to Belgrade, although there have been instances of municipalities and towns that have ring-fenced social security services from their austerity measures.

Some local self-governments that managed to secure funds for social security services have not been able to provide those services to citizens, because the restrictions on public sector employment imposed by the Government have prevented them from employing providers of such services.

Social dialogue at the national level (between workers' representatives, the Government and representative trade unions) remains haphazard. Trade union rights are in practice more

⁴Official Gazette of RS, No. 104/13.

⁵ Official Journal of the City of Belgrade, No. 37/14.

restricted than the applicable Constitutional and legal provisions would suggest, especially in the private sector.

The poorest citizens are denied full access to justice, because a modern law on free legal assistance is yet to be enacted.

Child Rights and Rights of the Youth

Children remain one of the most vulnerable groups. While there have been certain legislative and practical improvements in the protection and exercise of child rights (especially in the field of health care), many shortcomings have remained, although they have been clearly pointed out and could have been remedied by now. The youth unemployment rate is sky-high, forcing many of them, as a rule those who are highly educated, to seek their livelihoods abroad.

The line Ministries, notably the Ministry of Health, have accepted the opinion of the Protector of Citizens that the issue of the so-called “missing babies” can be addressed only by a special law, which would provide for strong investigative powers and clear independence and mandate of the relevant authorities, thus allowing for a review of all cases where the official documents evidencing a baby’s death after birth give rise to suspicion.

Many pupils have not been able to attend school classes of optimum duration. Classes have been shortened for extended periods of time due to strikes of education providers, who demand better pay for their work. Children’s right to education has suffered as a result.

The problems of child rights in the Republic of Serbia are presented in a separate part of this Report and, due to their importance, will not be addressed in greater detail in this section.

Rights of Persons with Disabilities

Persons with disabilities in Serbia continue to face complex problems on a daily basis which prevent them from exercising their recognised rights on an equal footing and being equally included in the society.

The most vulnerable among them are persons with mental disorders, who are still largely placed in specialised institutions, as an alternative to living with their biological families, because the system of community-based support services that should encourage and enable them to live in the community remain underdeveloped. The support services have still not become part of the official social security system and are not fully available to prospective users. Persons with intellectual disabilities placed in residential social security institutions are particularly vulnerable. These institutions are in fact understaffed asylums (particularly short of medical doctors), which isolate their users from the world.

The support that is partially available to persons with disabilities through social security, health care and education systems is far from sufficient for eliminating the many obstacles to their education, rehabilitation, employment and unassisted living.

Problems faced by the persons with disabilities are presented in a separate part of this Report and, due to their importance, will not be addressed in greater detail in this section.

Gender Equality

Women remain unequal, although there is growing awareness of the importance of gender equality and identification of manifestation of gender-based discrimination.

A Pride Parade, for the first time not met with violence, has been successfully held in the Serbian capital.

The case of a transgendered person who has been retired by the Ministry of Defence after gender reassignment surgery is the gravest and most illustrative example of violation of the right to gender identity by a state authority, on a scale not seen for many years in a system not particularly known for high administrative capacities for dealing with gender equality issues.

Due to the identified shortcomings in the implementation of the Law on Gender Equality and the need to bring Serbian legislation in compliance with the country's international commitments in the field of gender equality, a new model Law on Gender Equality has been drafted and will be submitted to the Government in the form of an initiative for further legislative process.

The problems of gender equality in the Republic of Serbia are presented in a separate part of this Report and, due to their importance, will not be addressed in greater detail in this section.

Rights of National Minorities

In October 2014, the second direct elections for National Councils of National Minorities were successfully held.

Application of the Law on National Councils of National Minorities⁶ in principle provided good results, but it has to be further improved to dedicate more attention to the improvement of exercise of individual rights of national minorities in specific living situations and to reduce the impact of political parties on national councils.

There is a threat that the new set of media laws could, if there is no focus and no incentives for media programming in the minority languages and on issues concerning minorities, in practice result in deterioration of the right of minorities to receive information in their own language.

The competent government (security) authorities have failed to fully protect the safety and property of persons of Albanian ethnicity in the wake of the provocations that occurred at the Euro cup qualifier between Serbia and Albania.

The Roma are still the most disadvantageous group. Underlying and exacerbating their discrimination is the issue of structural poverty.

Persons from national minority backgrounds, especially younger ones, are not fully fluent in Serbian, while Serbs in predominantly minority-populated areas are not sufficiently fluent in the language of their local communities, which creates obstacles for integration.

The problems of rights of national minorities are presented in a separate part of this Report and, due to their importance, will not be addressed in greater detail in this section.

Rights of Persons Deprived of Liberty

⁶ Official Gazette of RS, No. 72/09, 20/14 – decision of the Constitutional Court and 55/14.

The situation of persons detained at police stations, detention units, correctional facilities, psychiatric hospitals, residential social security institutions, shelters for foreigners and asylum centres has not improved significantly in the past period.

Notwithstanding individual adaptations, the accommodation conditions still fall short of applicable regulations and standards and the capacities remain insufficient. The institutions lack staff, especially medical doctors. Most of the complaints relate to (denial of) health care.

Users of social security institutions, especially children, are frequently put in solitary confinement, which constitutes the gravest form of inhuman treatment.

The problems in connection with rights of persons deprived of liberty are presented in a separate part of this Report and, due to their importance, will not be addressed in greater detail in this section.

Judiciary and Justice

The ill-advised, rushed and (for the citizens) costly exercise in introducing the profession of notary public in Serbia, coupled with an unwillingness of the Ministry of Justice to admit and remedy the mistakes in due time, although some of them dated many years back (from the time of first drafting of legislation that would regulate the work of notaries public), culminated in a strike by attorneys which all but paralysed the judiciary in Serbia for four straight months and left Serbian citizens even further from the goal of swift and accessible justice.

After the initial experiences with the implementation of the Law on Notaries Public, this authority issued an Opinion which identified problems and omissions harming the rights of citizens, which largely fell on deaf ears at the Ministry of Justice.⁷ Three months later, the strike ended with the enactment of the Law amending the Law on Notaries Public and the associated Law on Amendment to the Law on Non-Litigious Procedure, Law amending the Law on Real Estate Sales, Law amending the Family Law and the Law amending the Law on Inheritance, all of which reflected the Opinion almost word for word. In the meantime, thousands of trials have been postponed, along with justice for the citizens who sought it before courts; judges are facing an insurmountable backlog; attorneys, who unanimously went on strike and thus demonstrated a high level of awareness, solidarity and persistence, have sustained immensurable financial damage and, to top it all, suffered the ignominy of being publicly insulted by the Justice Minister's allegations they had a secret agenda to their strike and were being manipulated by one man; notaries public and their chamber have entered the institutional stage in Serbia under unnecessarily adverse circumstances; the national budget of the Republic of Serbia nearly lost a significant portion of its revenue... rather than providing an impetus to legal certainty of citizens, the introduction of the office of notary public has become yet another acrimonious and harmful episode in the all too well known saga that is the judiciary reform in Serbia.

⁷ In an official meeting with members of the Serbian Bar Association held on 1 November 2014, the Minister of Justice used an uncommonly harsh *ad hominem* attack to devalue the Opinion.

The newly-introduced profession of private bailiffs has also brought along a number of unnecessary negative effects along with the positive ones, as already indicated in a special opinion of this authority. The effects of engaging private bailiffs in certain circumstances (for relatively small debt) have been inefficient and unfair, the deficient system of assigning cases has been conducive to corruption and legal protection against unlawful or irregular conduct by private bailiffs has been reduced to a minimum.

The Protector of Citizens does not have mandate under the Constitution and the applicable Law to oversee the work of notaries public or private bailiffs, although these are private professions vested with public powers, i.e. members of those professions exercise public powers.

The Protector of Citizens has issued an opinion to the competent Ministry (of Justice) and the Chamber of Bailiffs in connection with the arrangements governing the remuneration and bonuses of bailiffs and other issues identified as contentious from the aspect of citizens' rights and interests.

With regard to respect for independence of the office of judge, it would appear there have been certain improvements, however small. The High Judicial Council (HJC Disciplinary Committee) has rejected the disciplinary reports which were highlighted in the previous reporting period as examples of undue pressure on judges. The High Judicial Council and the State Prosecutorial Council still include members who were officially found guilty of violating the principles of rule of law in the review of the (re)appointment of judges and in the making of strategic decisions.

The Ministry of Justice has publicly accused a judge of the Supreme Court of Cassation of being a "criticiser", after she questioned the government's ability to properly conduct the judiciary reform.

The key pillars of independence and integrity of judges and prosecutors remain their national professional associations - the Judges' Association of Serbia and the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia. A significant role in the protection of the legal order has also been played by the Serbian Bar Association, with its collective and individual members.

This authority is of the opinion that independence is key for achieving full impartiality of the judiciary and should be guaranteed by the Constitution and ensured in practice for holders of public prosecutorial offices.

Impunity for torture is still prevalent in Serbia. There are very few prosecutions and even fewer convictions for the criminal offences of abuse and torture and extortion of evidence.

Justice has not been served for all victims of crimes and human rights violations in connection with the 1990s armed conflicts. In their efforts to seek redress, members of their families not infrequently face unreasonable difficulties and restrictions based on the currently applicable legislation. Competent executive authorities continue to ignore civil sector initiatives to improve the legal framework in this respect.

The Protector of Citizens supports the activities of the Humanitarian Law Centre (a human rights association) aimed at improving the existing legal framework governing the rights of civilian war victims. He has made attempts to engage with competent government authorities in connection with this initiative, but the response has been rather lacklustre. In late 2014, the Centre penned a model law which aims to regulate this matter in accordance with the recommendations given by international bodies and to give victims the right to redress. During the

same period, the line Ministry has produced its own draft law, which differs substantially from this one.

Certain, robust, swift and effective judicial protection of human rights is the cornerstone of a human rights protection system, which in Serbia remains on shaky foundations. This is why other authorities in charge of protecting citizens' rights, including this one, are asked to perform tasks they are not mandated to handle and for which they lack adequate capacities.

Media Freedom and Freedom of Expression

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.

The actions of public office holders and the circumstances in the media market are conducive to self-censorship or tendentious, partisan reporting, which undermines the right of citizens enshrined in the Constitution to receive true, complete and timely information on all issues of public importance.⁸

The Association of Serbian Journalists (UNS) has conducted a survey among its members:

“The most frequently cited problems in the journalist profession include low salaries (62.22%) and unprofessional reporting and lack of relevant education of journalists (54.36%). Arbitrariness of owners and unregulated relations are pointed out by 38.29% respondents, 27.86% of them are concerned because of threats and blackmails to journalists, while 20.51% of them cite unavailability of information. Ownership structure is seen as a major issue by 27.52% of respondents, while 14.02% believe other issues are the main concerns faced by the journalist profession. Constant exposure to censorship is reported by 5.98% of respondents, 40.68% of them have occasionally experienced censorship, 49.74% have never felt it, while the answer ‘other’, which usually meant self-censorship, was chosen by 3.59% of respondents. When asked ‘Do your co-workers revert to self-censorship out of fear from censorship?’ as many as 48.55% answered ‘yes, occasionally’, 28.89% believe their co-workers often do so, 15.56% have not witnessed it, 6.15% believe they never do so, while 0.85% answered ‘other’.”⁹

Every state party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, including of course the Republic of Serbia, has a twofold obligation with regard to freedom of expression: a negative one and a positive one. The government generally respects the negative obligation – to refrain from openly suppressing freedom of expression. Exceptions include certain actions and statements of public officials during and immediately after the disastrous floods, which could formally be justified by the emergency situation then in force. However, the positive obligation – to promote an atmosphere of freedom of public speech, critical review of public issues and diversity of opinion – is commonly breached by the executive government and certain holders of legislative powers.

⁸ Article 51, paragraph 1 of the Constitution of the Republic of Serbia.

⁹ the Association of Serbian Journalists, Report on Survey of Economic and Professional Position of Journalists – March/September 2014, available at: http://uns.org.rs/sw4i/download/files/article/Izvestaj%20UNS%20integracija%20podataka_FINAL%20.doc?id=371 (accessed on 13 March 2015).

Critical reporting has been labelled in 2014 as a “subversive”, dishonest anti-government activity which hampers reforms, slows Serbia’s progress and threatens the peace and welfare of its citizens.

Self-censorship has become prevalent in the media space because those who write or publish critical texts are denounced by the country’s top officials as puppets on the payroll of foreign governments or local tycoons, the enemy within, traitors, “opposition” ... This is then often followed by a shorter or longer period of lynching by certain media, with very real effects on the private lives of the individuals concerned. In addition, the papers or media outlets that dare to publish critical thoughts or fact-based claims which contradict the rhetoric of the ruling elite quite justifiably fear that advertisers might pull out, in a situation where their money is key to survival of many, if not all, actors in the Serbian media market.

It is not uncommon for top government officials to reply to questions which are not to their liking with personal smearing and allusions to alleged hidden agendas pursued by journalists or media outlets. An example for this is the press conference held on 8 October 2014, in which the Prime Minister, instead of answering the perfectly legitimate questions asked by a journalist, unleashed a flurry of accusations about the alleged political bias and ulterior motives of the journalists concerned and the paper where she is employed.

The self-regulation mechanisms (journalists’ associations, the Press Council...) are not strong enough and their decisions are either pushed aside or denounced as politicised, biased or unprofessional, thus undermining their authority in the eyes of the general public, who have neither time nor means to investigate all relevant circumstances by themselves and personally verify the accuracy of all publicly made claims.

The suspicion regarding cancellation of TV programmes and shifts in editorial policies expressed in the previous Annual Report has been confirmed in this reporting period in the most blatant manner by the decision of the B92 TV outlet to take off the air the immensely popular political programme “Utisak nedelje” (“Top Impression of the Week”) and terminate the contract with its author. The owner of the media outlet concerned obviously has the right to manage his company as he sees fit. The real question from the aspect of media freedoms here is not whether someone ordered the programme to be cancelled (this authority does not believe this was the case), but why would someone involved in the serious and expensive business of national broadcasting see any commercial logic in pulling off a programme that never failed to attract advertising revenue, the bread and butter of all TV channels? The cancellation of this programme has significantly reduced the media space available to proponents of different options and solutions for the much-needed public social dialogue about the pressing issues of the day.

Matters of undisputed national interest, such as assistance to Serbian citizens in Kosovo and Metohia or operations of the country’s oldest and most decorated sports clubs, can sometimes be used as a screen for unlawful, criminal activities. And yet, those journalists and editorial teams that dare to present viewers with facts or suspicions in this regard can count on being faced with covert and open threats, which the government has done precious little to stomp out. In situations like these, journalists are forced to choose between their personal safety and timely and complete presentation of information on topics of public importance. Self-censorship ensues, prompted by inefficiency of the government. As a result, media freedoms and availability of information to the public suffer. One journalist has been under round-the-clock police escort for six years. While her life has been saved, she has lost her freedom of movement, privacy and the right to work.

Competing for readership and viewership figures, while at the same time also under pressure from various centres of power, the media serve the citizens a mesh of accurate information and selective and incomplete half-truths, or sometimes even completely inaccurate (mis)information based on fabrications. The trend of the so-called “information leaks” to certain media outlets, which are in fact nothing more than a method of shaping public opinion by priming it with “exclusive” information from official, albeit anonymous, sources, has continued.

Citizens have been able to watch an incident involving members of two of the government’s armed formations not only in a recording made by a private TV outlet, but also in a (truncated and corrupted) recording of the same event made by a member of one of those two units as part of his regular assignments. That video should not have entered the public domain at all, especially given that the investigation is still pending. The only way this could have happened was if someone from “higher up” in the political hierarchy ordered the video to be made available to the media. The official operational recording of members of a special police unit on duty has been shown to the public in clear violation of the law in order to shape public opinion about a specific event, while at the same time the Protector of Citizens is denied access to information concerning the same event which other public authorities are required under the Law to make available to him so he could exercise his oversight function. “Tabloidization” of the government remains rampant.

Information from pending investigations, indeed even information which investigations would be initiated, continues to be published by certain media outlets. It is not known whether anyone has been held to account for such “leaking” of information to unauthorised recipients.

The economic situation and mechanisms safeguarding journalists’ employment rights remain poor and trade union membership is sparse.

A significant legislative step forward has been made with the enactment of three media-related laws – the Law on Public Information and the Media¹⁰, the Law on Electronic Media¹¹ and the Law on Public Broadcasting Services¹². Practical effects of their implementation should be seen in the coming months and years. Some of the challenges in their implementation include the survival of media with programmes in minority languages and covering minority-related issues and viability of the “small” media outlets.

The Ministry of Culture and Information has prepared a Draft Law on Culture and has initiated public consultations on a number of other legislative drafts.

The work of the independent Committee on Investigation of Unresolved Murders of Journalists has yielded first palpable results in 2014, the accuracy of which is verified before the court.

¹⁰ Official Gazette of RS, No. 83/14.

¹¹ Official Gazette of RS, No. 83/14.

¹² Official Gazette of RS, No. 83/14.

Information of Public importance and Personal Data Protection

The situation with regard to exercise of freedom of information and the right to personal data protection is covered by the report prepared by the Commissioner for Information of Public Importance and Personal Data Protection. The Commissioner's decisions (which are legally binding) are largely complied with – in some 90% of all cases – owing in no small part to the authoritative nature of that public body. Violations of the rights primarily protected by the Commissioner, in cases where offenders refuse to comply with the Commissioner's instruments and the Commissioner exhausts all available fines, continue unabated because competent authorities have so far been unwilling to enforce the Commissioner's decisions. Infringement charges brought by the Commissioner in the field of personal data protection are as a rule left until the statute of limitations expires and no improvements have been observed in this regard in comparison with the earlier reporting periods.

The legal framework must be improved in both of these fields, particularly in the field of personal data, in accordance with the initiatives prepared and submitted to the Government by the Commissioner.

Personal data of more than five million citizens (i.e. virtually the entire Serbian population of age) were at one point publicly available as a result of a security omission on the website of the Privatisation Agency. As soon as the Commissioner intervened, the hyperlink to those data was deleted. There is still an urgent need for public authorities and other data processors to pay significantly more attention of their own accord to compliance with the law and protection of the data they process. Furthermore, the citizens themselves need to be much more aware of their rights and the importance of protecting their personal data against unauthorised and unnecessary access.

Corruption

The National Assembly has adopted the Law on Whistleblowers¹³, an eagerly anticipated piece of legislation in the fight against corruption and in general against illegalities and irregularities that prejudice the public interest. The adopted text of the Law builds on the model prepared by the Commissioner for Information of Public Importance and Personal Data Protection. However, the final version has undergone a number of major changes that may seriously undermine its capacity for achieving the intended purpose. Protection of whistleblowers against reprisal by the employer in the form of unjustified termination of employment, transfer to a different or lower post etc. (which, from experience, tend to be the most frequent forms of reprisal) will continue to be exercised through labour disputes, rather than through lawsuits for protection against reprisal, which has been introduced by the Law on Whistleblower Protection as a novel feature intended to become the protection mechanism of choice.

Whistleblowers will only be afforded judicial protection, without recourse to other institutional protection mechanisms that could provide invaluable additional guarantees for effective whistleblower protection.

Serbia has been shaken by scandals concerning the ways in which certain vocational, academic and scientific titles have been awarded. The validity of one doctorate has been contested on the basis of hard facts, forcing the holder of the degree in question to resign as

¹³ Official Gazette of RS, No. 128/14.

dean of a private university. The existing mechanisms to ensure that academic and scientific titles are awarded in accordance with the law are clearly not sufficient.

The Protector of Citizens has sent an opinion to the Ministry of Science, Education and Technological Development, the National Council for Higher Education and the Accreditation and Quality Assurance Commission in which he highlighted the need for unbiased, meaningful and meritorious external oversight of higher education institutions in the award of vocational, academic and scientific titles.

Unreformed Administration

In the reporting period there has been no progress in terms of implementation of specific measures and activities towards achievement of the main objectives of public administration reform: professionalization, depoliticizing and rationalization. This, coupled with the lack of accountability for actions (and omissions), is seen as the main reason for the absence of good governance in Serbia, which results in large-scale daily violation of various rights of the citizens.

A commendable step in the right direction was the adoption of the Public Administration Reform Strategy in early 2014, which sets out measures and activities that should be taken to implement these principles. However, they have not been operationalised through an action plan.

The greatest challenge in public administration reform is how to ensure close coordination between the implementing agencies and monitoring and evaluation of outcomes.

There is a risk of hiring foreign consultants to develop, implement and evaluate the implementation of the Government's strategic documents. The fact that the tasks of policy creation, its implementation and measurement of its effects are all performed by the same international consultants will of course result in a conflict of interest and impair their impartiality in the evaluation of effects of reforms. Public administration reform is based on capacity building and continuity of professional engagement of civil servants. Shifting the burden of these activities to consultants does nothing but weaken the existing capacities of public administration.

The reports of this and oversight authorities should be incorporated in the Action Plan on implementation of the Strategy as an indicator for measuring the effects in specific areas of public administration reform.

During the reporting period, an overwhelming majority of legislative bills were sent to the National Assembly for adoption in an "expedited procedure", without public debate, although most of them introduce major changes in the legal regime applicable to specific areas or govern issues of particular interest to the public, both of which are identified by the law as situations where public authorities must open the matter to a public debate. The provisions of laws passed in this way are often unenforceable and non-harmonised with the provisions of other regulations, which poses a serious threat to the unity of the legal system and undermines legal certainty and the ability of citizens to exercise their rights guaranteed by the Constitution and laws.

The enactment of the Law on Public Notaries is one of the most dramatic examples of the host of problems that may occur in practice if a law that significantly changes the legal system is not enacted in a consultative process which involves other public authorities, the professional community and the general public.

To say that the Law on Temporary Regulation of Pension Payments was enacted in an expedited procedure would actually be an understatement: the public was never consulted, although the provisions of this Law fundamentally impinge on

the existing rights and derogate the provisions of the Law on Pension and Disability Insurance, which provides for the method of calculation and disbursement of pensions.

Amendments to the Law on Budget System, introduced to enable staff cuts in public administration, have created difficulties in the implementation of other laws and exercise of citizens' rights, particularly in the fields of social security and employment of persons with disabilities. Once again, government and public authorities were not appropriately consulted in the process of adopting the amendments, although they affect a number of sector-specific laws.

The process of public administration rationalisation is still reduced to simple measures to reduce the number of employees in public administration, with disputable effects.

No progress has been made in professionalization and depoliticizing.

The Government has taken initial steps towards establishing a mechanism for overseeing compliance with the recommendations given by the Protector of Citizens. However, so far no reports on compliance with the recommendations have been submitted to the National Assembly.

The situation is similar with regard to the Resolutions of the National Assembly, in which the parliament asked the competent authorities to provide reports on compliance with the recommendations given by the Protector of Citizens in the capacity of the National Preventive Mechanism.

The Public Administration Reform Strategy sets objectives and goals of the reform, which among other things also include improved work and actions of administration and improved services provided to citizens. If adopted, a Code of Good Governance, as a general framework for proper work and actions of public authorities, would contribute considerably towards the attainment of these objectives. Indeed, most of the complaints handled by this authority cite violations of the right to good governance.

As one of the primary functions of the ombudsman is to protect the right to good governance, this authority, following the model set by the European Ombudsman (and in cooperation with that body), submitted a Code of Good Governance to the National Assembly for adoption as early as in 2010. To this date, the National Assembly has not examined or discussed the said document in any way.

Democratic Civilian Oversight and Work of Security Services; Privacy

There is civilian oversight of the military and the security services, in the sense that they are subordinated and report to elected (civilian) authorities of the Republic of Serbia. There is, however, also a need to add more of the "democratic" element to the civilian oversight, i.e. to harmonise the practice with the highest democratic standards reflected in the requirements for political and ideological neutrality and neutrality of interest of members of the services and their operational independence.

Some of the 14 systemic measures recommended jointly by the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection to improve the respect for the citizens' rights in the work of the security sector have not been fully accepted or implemented. One of them calls for the formation of an agency that would be in charge of implementing technical measures available to all services, thus integrating the technical capacities for invasion of privacy, which are currently scattered among different services and authorities and are not fully subject to control.

The provision allowing invasion of communication privacy without a court order was removed from the Criminal Procedure Code¹⁴, as called for in the Motion for Constitutional Review filed jointly by the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection. This has removed the last remaining legislative provision in the legal system that allowed unconstitutional access to citizens' communication data. Similar provisions of the Law on Electronic Communications and the Law on Military Security Agency and Military Intelligence Agency had previously been declared unconstitutional and amended pursuant to motions filed by the Protector of Citizens and the Commissioner.

The Law on Security Information Agency¹⁵ has been amended following the decision of the Constitutional Court to provide for higher legal certainty in the event of application of special measures that derogate from the constitutionally guaranteed rights of citizens. The backer (the Government) took into account the opinion of the Protector of Citizens when formulating the new Articles of the Law. However, this authority had recommended as early as in 2010 that the Law should be replaced with a completely new piece of legislation, because the deficiencies of the existing one with regard to issues falling within the remit of the Protector of Citizens are such that they cannot be remedied through amendments.

The Security Information Agency (SIA) fully cooperated with the Protector of Citizens in inspection and prevention procedures, in full compliance with the law and according to the best European and world practice.

We have inspected in detail the manner of conducting "secret searches" by the Security Information Agency. Our conclusion was that the Agency respected the Constitutional human rights guarantees in the procedure. For its part, the Agency notified this authority it would address and remedy all omissions identified during the inspection in individual cases in the recommended fashion, which will be verified through follow-up inspections in the coming months. A report of the inspection, with recommendations and the response provided by the Security Information Agency, has been submitted to the competent committee of the National Assembly and made available to the public for information purposes, once any sections that cannot be disclosed on the grounds of national security were removed.

During the reporting period, a number of members and former members of the Military Security Agency addressed the Protector of Citizens pointing to possible serious unlawfulness and irregularities in operations of the Agency which impinged on the political, trade union and other rights of members of the public and employees of the Agency themselves. There were plans to conduct the first comprehensive inspection of lawfulness and regularity of operations of the Military Security Agency, during which the said allegations should have been investigated without prior notice.

Towards the end of the reporting period, an incident occurred which included a violation of citizens' rights through excessive use of force by members of the police; members of the Army of Serbia were also involved in the incident. In the inspection procedure initiated in connection with this issue, the Military Security Agency stated it had taken action following that incident, but refused to provide the information available to it and to be fully cooperative in the inspection procedure. Provision of documents, giving of statements and

¹⁴ Official Gazette of RS, No. 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14.

¹⁵ Official Gazette of RS, No. 42/02, 111/09, 65/14 - Decision of the Constitutional Court and 66/14.

all other forms of cooperation are statutory duties of every public authority, including the Military Security Agency, introduced as a means of shedding light on such events from all angles, including potential unlawful and irregular actions by public authorities to the detriment of citizens' right (in parallel with criminal proceedings initiated before judicial authorities, the purpose of which is to examine the potential criminal law aspects of such events).

The refusal of the Military Security Agency, and later also the Ministry of Defence (which incorporates the Military Security Agency as a public authority), to provide information available to it in connection with the incident which occurred during the Pride Parade is the first case in the seven years of operation of the Protector of Citizens in which the public authority concerned did not contest the inspection powers of the Protector of Citizens, but nevertheless refused to provide access to information available to it and to cooperate with this authority in other ways to ensure the objective of inspection is achieved.

Due to the refusal of the Military Security Agency to provide information in this specific case, inspection procedures pursuant to other complaints have been postponed until the Agency's management complies with its statutory duties in all inspection procedures conducted by this authority, without cherry-picking the ones that suit them.

By refusing to submit the requested information and cooperate in every aspect with this authority in the inspection procedure and in achievement of its preventative function, the MSA and the Ministry of Defence contravened the internationally recognized principle of democratic civilian oversight of security services and violated the Law on the Protector of Citizens, the Law on Serbian Army, the Law on Basic Principles of Regulation of Security Services the Law on Military Security Agency and Military Intelligence Agency and the Law on Protection of Whistleblowers in terms of supervision of the work of security services and the right of servicemen of the Army (and of security services) to address the Protector of Citizens. For a conscientious member of the security services, the consequences of disclosing potential unlawfulness or irregularities to oversight authorities and/or the media can in fact result in more stern repercussions than actually committing the offences concerned.

The Ministry of Internal Affairs has set an example for proper cooperation with the Protector of Citizens in the identification and remedying of omissions that harm citizens' rights, as well as in the activities taken by the Protector of Citizens on the capacity of the National Preventive Mechanism. There have been individual cases of police officers overstepping their powers and mistreating citizens. In addition, not all substantiated claims of irregular actions by police officers are timely and thoroughly investigated and examined through internal control.

There are still no adequate programmes for identification of and support to members of the armed forces (the police, the military and security services) and other citizens who suffer psychophysical consequences of exposure to stressful situations, including in particular involvement in armed conflicts. The Protector of Citizens requested assistance from foreign partners to launch the pilot program, but was rejected on the (quite reasonable) grounds that this should be done by the executive arm of the government.

Support and protection for persons suffering from post-traumatic stress disorder (PTSD) as a result of the armed conflicts in the Republic of Serbia is virtually non-existent and indeed in many ways resembles a form of punishment. This causes great suffering not only to the persons affected with PTSD, but also to their family members. One can only surmise how many cases of domestic violence and

violent incidents in general, suicides etc. can be attributed to the absence of any form of support to these persons.

The chairperson of the Bureau for Coordination of Security Services is still the public official who is at the same time also the president of the largest and ruling political party in the country. In previous reports we have already pointed to the increasing danger of (ubiquitous) politicisation of the work of security services in this context.

Secret service files from the past totalitarian period have not been opened. This authority has been advocating their opening since its formation. Opening of files is a necessary step both as a means of serving justice for those who were targeted by security services for their democratic beliefs and as a means of providing objective, professional insight into ways in which secret services can be abused towards political goals, as well as ways in which those services themselves abuse the special knowledge and means available to them.

Kosovo and Metohia

The Protector of Citizens is unable to exercise his powers as provided by the Constitution and the law in the territory of the Autonomous Province of Kosovo and Metohia. According to the available information and the allegations 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 freedoms.

Leader of SDP Civil Initiative, Mr. Oliver Ivanovic, was arrested in the territory of Kosovo and Metohia on accusations of war crimes against civilians in 1999, in a case which also involves four more Serbs. Mr. Ivanovic and his immediate family members complained of denial of certain guaranteed rights during detention and raised concerns about his safety. The Protector of Citizens was not able to visit him in detention because of the opinion expressed of EULEX, whose judiciary arm is prosecuting Mr. Ivanovic, that such visit would be outside the remit of the legislation governing the work of the Protector of Citizens. While the Protector of Citizens was making repeated requests to be allowed to visit Mr. Ivanovic, after several rejections, Mr. Ivanovic's new request to be transferred to a place of detention in Kosovska Mitrovica with better conditions was accepted.

Asylum Seekers and People on the Move (Migrants)

The majority of more than 200,000 internally displaced persons are still struggling to eke out a living, far from the public eye and breaking news in the media, despite the modest financial support provided by the Commissariat for Refugees and Migrations. There have been virtually no returnees to Kosovo and Metohia.

More than 50,000 refugees from Croatia and Bosnia and Herzegovina live in Serbia, two decades after the war turmoil that forced them out of their homes. Hundreds of thousands of them became Serbian citizens and thus forfeited their refugee status, but many of them lack basic economic and social means. The government's efforts to provide better accommodation and employment opportunities to refugees have been limited in scope and reach, but have not gone unnoticed.

The problem of finding adequate housing for refugees and internally displaced persons is only becoming more complicated with the passage of time, which further exacerbates their already difficult situation. From all available indicators it would appear that the target to close collective centres (by the end of 2015) will not be met.

The exercise of the right to legal subjectivity of all citizens has been significantly improved and the addressing of this issue is in the final stage; consequently, the supporting right to personal identity documents has also been improved because of implementation of the laws passed on initiative of the Protector of Citizens. The implementation of these laws is also supported by close institutional cooperation between the Protector of Citizens, the Ministry of Public Administration and Local Self-Government, the UN High Commissioner for Refugees, local self-government authorities and specialized non-governmental organizations.

Thousands of people pass through Serbia on their way to Western or Northern Europe without being subject to laws and procedures applicable to such cases. The Protector of Citizens gave detailed recommendations for improvement of the situation to competent authorities. Taking into account that this problem increases every year, it is necessary to evaluate the migration policy in a strategic manner. It is also necessary to adopt a regional approach to this problem. It is necessary to significantly improve the functionality of state mechanisms for asylum applications and to evaluate regularity and applicability of the existing regulations.

Electoral Rights

According to the assessment of international observer bodies, snap parliamentary elections were generally perceived as free. There have been reports of isolated incidents and frightening of voters. It is necessary to improve transparency of financing of political parties and electoral campaigns.

This authority has, together with the Commissioner for Information of Public Importance and the Anti-Corruption Agency, urged political parties not to use public services or resources in electoral campaigns and to refrain from inappropriately exploiting the unavailability of health care and difficult social position of some citizens. Many voters expressed their dissatisfaction, even fear, because of the aggressive “door to door” campaigns, during which activists of political parties compiled lists of citizens.

Local elections were held in certain local self-governments and were accompanied by violent incidents; an unusually high presence of executive government officials and activities of public authorities were also reported during periods coinciding with the elections. This was not much different from previous elections.

In spite of the initiative of the Protector of Citizens (to which the competent ministry has never provided its opinion), many persons deprived of liberty still cannot exercise their electoral right on elections.

The Environment and Climate Change

Citizens’ rights with regard to environmental protection and climate change are not sufficiently exercised and improvements are also insufficient.

Under the Law on Flood Relief in the Republic of Serbia¹⁶ and supporting regulations, Serbia regulated the procedure for flood and activated land-slide sites relief in the areas that suffered floods in May 2014, but this Law does not provide for other natural disasters and will only remain in force for one year after the date of its entering into force. The lack of appropriate legislation results in different responses to identical or similar situations, legal uncertainty for citizens who suffered damage, inefficient and non-transparent procedures

¹⁶ Official Gazette of RS, No. 75/14.

and the ever-present risk or suspicion of abuse and inappropriate spending. The damage evaluation procedure is conducted on the basis of a regulation passed almost three decades ago.¹⁷

Serbia does not have an adequate general legal regime for state aid in case of natural disasters which would precisely specify who, under what conditions and criteria, in which procedure and under what kind of supervision is entitled to state aid and in what amount. This authority has committed to submitting an initiative to the Government to pass a Law on State Aid in Case of Natural Disasters and to provide an appropriate model for this piece of legislation.

The Protector of Citizens conducted inspections in the case of the so-called “smelly buildings” in Belgrade, constructed by the Building Directorate of Serbia. Inefficient supervision of works resulted in dozens of families moved in the apartments the walls of which are painted with paint hazardous for their health with unpleasant odour. After subsequent involvement of line ministries and other public authorities and services, following compliance with recommendations given by the Protector of Citizens and with the intermediation of this authority, the problem was alleviated to a reasonable extent.

Religious Freedoms

With regard to the exercise of religious freedoms, the situation has remained unchanged from the previous reporting period and the Protector of Citizens did not carry out special activities.

¹⁷ the Instruction on Single Methodology for Evaluation of Damage Caused by Natural Disasters, Official Gazette of SFRY, No. 27/87.

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 internal organisation and to improve legislative framework governing the work of the Protector of Citizens.

Table 1 - Information on implementation of recommendations in 2014

	Issued	Received	Accepted	% of accepted among those received
Recommendations issued as the result of oversight procedure	212	182	114	62.64
Recommendations issued as the result of expedited oversight procedure	587	587	587	100
Recommendations issued in the preventive capacity (National Preventive Mechanism)	345	196	157	80.10
Total accepted recommendations	1144	965	858	88.91

Table 2 - Comparison of implementation of recommendations in 2013 and 2014

	Issued		Received		Accepted		% of accepted among those received	
	2013	2014	2013	2014	2013	2014	2013	2014
Recommendations issued as the result of oversight procedure	230	212	198	182	135	114	68.18	62.64
Recommendations issued as the result of expedited oversight procedure	560	587	560	587	560	587	100	100
Recommendations given in the preventive capacity (National Preventive Mechanism)	263	345	231	196	185	157	80.09	80.10
Total accepted recommendations	1053	1144	989	965	880	858	88.89	88.91

Table 3 - Information on contacts with citizens

Type of contact	2013	2014	%
No. of citizens received in person	5099	4913	-3.65
No. of phone conversations with citizens	13338	12288	-7.87
Various citizens' submissions other than complaints	1220	1262	3.44
No. of complaints	5025	4877	-2.95
Total number of contacts with citizens	24682	23340	-5.44

Table 4 - Investigations completed by the Protector of Citizens in 2014 and comparison with 2013

Type of activities	2013	2014	%
Pursuant to complaints and on own initiative	4,707	4,798	1.93
Pursuant to legislative initiatives submitted by citizens	349	76	-78.22
Pursuant to other contacts with citizens	17,959	16,989	-5.40
Total activities completed	23,015	21,863	-5.03

Table 5 - Number of investigations completed in 2013 and 2014

Work on complaints submitted in the current and previous years	2013	2014	%
Total number of complaints with completed investigations	4707	4798	1.93

Table 6 - Information on other activities in 2014 and comparison with 2013

Type of activities	2013	2014	%
No. of legislative initiatives submitted	18	15	-16.67
No. of legislative initiatives adopted	2	0	-100.00
No. of investigations initiated against authorities	1,273	1113	-12.57
No. of inspections and preventive visits to authorities	188	99	-47.34

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

Sector	No. of complaints	%
1 Justice	466	9.55
2 Child rights	417	8.55
3 Local self-government	409	8.38
4 Labour	337	6.91
5 Persons deprived of liberty	334	6.85
6 Internal affairs	330	6.76
7 Finance	285	5.84
8 Pension and disability insurance	269	5.51
9 Persons with disabilities and the elderly	254	5.21

10	Real estate cadastre	237	4.86
11	Consumer protection	217	4.45
12	Construction, transport and infrastructure	190	3.89
13	education and science	155	3.18
14	Rights of national minorities	153	3.14
15	Economy and transport	151	3.09
16	Health	136	2.79
17	Gender equality	132	2.71
18	Defence	84	1.72
19	Energy and mining	82	1.68
20	Agriculture and environmental protection	74	1.52
21	Social security	44	0.90
22	Natural disasters	31	0.64
23	Restitution	29	0.59
24	Independent oversight authorities	16	0.32
25	Youth and sport	15	0.31
26	Security services	12	0.24
27	Culture and information	8	0.16
28	Foreign affairs and diaspora	7	0.14
29	Protection of whistleblowers	3	0.06
Total		4877	

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

Authority	No. of issued recommendations	No. of unimplemented recommendations	%
National directorates	3	3	100.00
Social security institutions	24	11	45.83
Administration within ministries	9	4	44.44
Ministries	54	22	40.74
Local self-government	54	20	37.04
Police administrations and stations	7	2	28.57
Compulsory social security organizations	10	2	20.00
Prisons	12	2	16.67
Special organizations	8	1	12.50
Educational institutions	15	1	6.67

The largest ratio of non-compliance relative to the number of recommendations issued to various authorities has been identified in the case of the Board of Directors of the Civil Aviation Directorate: it was issued a total of three 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 inspection.

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

- The Ministry of Construction, Transport and Infrastructure (114)
- Local self-government authorities (85)
- The Republic Pension and Disability Insurance Fund (70)

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.¹⁸ The position of this institution was substantially reinforced by the by the Constitution of the Republic of Serbia¹⁹ of 2006, which made the Protector of Citizens a constitutional category, in line with best international practices. 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 Punishment²⁰, 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 Serbia²¹ *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**²², 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 Serbia²³ stipulates that the Protector of Citizens conducts democratic civilian oversight of the Army.

¹⁸ Law on the Protector of Citizens – hereinafter referred to as “LoPoC” (Official Gazette of RS No. 79/05 and 54/07).

¹⁹ 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).

²⁰ Official Gazette of RS – International Treaties No. 07/11.

²¹ Article 5 paragraph 1 the Constitutional Law on Implementation of the Constitution of the Republic of Serbia (Official Gazette of RS No. 98/06)

²² Article 15, Official Gazette of RS No. 09/10.

²³ 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**²⁴, 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 Code²⁵ 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 Crime²⁶ *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**²⁷, 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.²⁸

The Law on Data Confidentiality²⁹ 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 Serbia³⁰ 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 Authorities³¹ 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**³², the Protector of Citizens cannot be a member of any political party.

²⁴ Official Gazette of RS - International Treaties, No. 07/11.

²⁵ 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)

²⁶ 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).

²⁷ 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)

²⁸ Article 16 paragraph 2 of the Law amending the Law on Civil Servants (Official Gazette of RS No. 99/2014).

²⁹ Law on Data Confidentiality (Official Gazette of RS No. 104/09).

³⁰ 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).

³¹ Article 1 of the Law on the Seal of State and Other Authorities (Official Gazette of RS No. 101/07).

³² Article 21 of the Law on Political Parties (Official Gazette of RS No. 36/09).

The Law on Anti-Corruption Agency³³ 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**³⁴, 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**³⁵, government authorities and organisations within the meaning of that Law are deemed to include the Protector of Citizens.

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 Serbia³⁶, the National Anti-Corruption Strategy of the Republic of Serbia for the Period 2013-2018³⁷, the Public Administration Reform Strategy of the Republic of Serbia³⁸, the Strategy for Improvement of the Status of Roma³⁹, the Strategy for Prevention and Protection against Discrimination⁴⁰, 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 Convention⁴¹, the Penal Sanctions Enforcement System Development Strategy of the Republic of Serbia by 2020⁴², the National Youth Strategy⁴³, the National Strategy for the Prevention and Protection of Children from Violence⁴⁴, 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 Convention⁴⁵, the Action Plan for Implementing the National Sustainable Development Strategy for the Period 2011-2017⁴⁶ 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 Assembly⁴⁷, the Government's Rules of Procedure⁴⁸, Decision on Formation and Operation of the Secretariat of the Protector of Citizens⁴⁹, the Decision on Formation of Local Offices in Presevo, Bujanovac and Medvedja⁵⁰, the Decree on Organisation of an Internal Open Competition to staff Public Authorities⁵¹, the Special Collective Agreement for Public Authorities⁵², the Bylaw on Administration in Public Prosecution Offices⁵³, the Bylaw on the Code of Conduct of

³³ 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).

³⁴ Article 42, Official Gazette of RS No. 45/13.

³⁵ Article 47 paragraph 1 of the Law on Public Property (Official Gazette of RS Nos. 72/11 and 88/13).

³⁶ Official Gazette of RS No. 88/09.

³⁷ Heading 4, objective 4.8 (Official Gazette of RS No. 57/13).

³⁸ Official Gazette of RS No. 09/14.

³⁹ Official Gazette of RS No. 27/09.

⁴⁰ Official Gazette of RS No. 60/13.

⁴¹ Official Gazette of RS No. 103/11.

⁴² Official Gazette of RS No. 114/13.

⁴³ Official Gazette of RS No. 55/08.

⁴⁴ Official Gazette of RS No. 122/08.

⁴⁵ Official Gazette of RS No. 103/11.

⁴⁶ Official Gazette of RS No. 62/11.

⁴⁷ Article 150, (Official Gazette of RS Nos. 52/10 and 13/11 and 20/12- officially consolidated text).

⁴⁸ 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).

⁴⁹ Article 150, (Official Gazette of RS Nos. 52/10 and 13/11 and 20/12- officially consolidated text).

⁵⁰ Official Gazette of RS No. 91/09.

⁵¹ Official Gazette of RS No. 41/07-consolidated text and 109/09.

⁵² Article 1. (Official Gazette of RS No. 23/98, 11/09 and 15/12- agreement).

⁵³ Article 60 paragraph 1 (Official Gazette of RS No,110/09, 87/10 and 5/12).

Correctional Facilities and District Prisons⁵⁴, the Bylaw on the Code of Conduct of Juvenile Correctional Facilities⁵⁵ etc.

In his work, the Protector of Citizens adheres to the principles and standards adopted between ombudsmen and national human rights institutions at joint forums, 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.⁵⁶ Independence of the Protector of Citizens, which is in line also with relevant international standards applicable to the ombudsman institution and/or national human rights institutions⁵⁷, 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."⁵⁸

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."⁵⁹ 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

⁵⁴ Official Gazette of RS No. 72/10 and 06/12..

⁵⁵ Official Gazette of RS No. 71/06.

⁵⁶ 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 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).

⁵⁷ UN General Assembly Resolution 48/134, 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).

⁵⁸ Resolution 48/134 containing the Paris Principles available at: <http://www.un.org/documents/ga/res/48/a48r134.htm>.

⁵⁹ 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>;

resources, enabling them to effectively carry out their tasks.”⁶⁰ 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.”⁶¹ 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.⁶²

Under the Law amending the Law on Budget System⁶³, the Protector of Citizens has to obtain approval of the committee of the National Assembly in charge of administrative and budgetary issues before hiring or employing each new person, regardless of the fact that the post in question is provided for in the human resources plan and the funds are secured in the budget of the Republic of Serbia. Although the National Assembly never fails to offer its declarative support to building the capacity of the Protector of Citizens, in practice this approval 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 seven 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 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 of Public Administration and Local Self-Government in late 2014.

The purpose of the prepared amendments is to secure full independence for the Protector of Citizens (primarily financial independence), 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 imposes a duty on all public authorities and organisations to review citizens’ complaints

⁶⁰ 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..>

⁶¹ Ibid.

⁶² 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).

⁶³ Official Gazette of RS Nos. 54/09, 73/10, 101/10, 101/11, 93/12, 62/13, 63/13-corrigendum and 108/13.

against their work in an organised fashion and to report thereon; 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, as the new powers, the manifold increase in the workload, the identified shortcomings and the reasonable expectations of the citizens place demands before this institution that cannot be addressed satisfactorily within the existing legal framework.

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. The discretionary power left to the Protector of Citizens under the current Law to consider whether repeated behaviour of officials or employees is motivated by their decision to refuse to cooperate with the Protector of Citizens should be narrowed down. 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 inspection 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, 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 general instrument 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.

Independence

The independence of the Protector of Citizens, enshrined in the Constitution and provided for by the Law, in compliance with applicable international standards pertaining to the institution of ombudsman and national human rights institutions⁶⁴, is a key distinctive feature of this public authority, one without which it would have no substance. The legislation of the Republic of Serbia 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 Coordination Committee of National Human Rights Institutions and the opinions of other relevant institutions and organisations.⁶⁵

Under the Constitution, the Protector of Citizens is subject to oversight by the National Assembly. However, the National Assembly in its oversight role is not authorised – and neither is any other authority, organisation or individual – to influence the work and actions of the Protector of Citizens⁶⁶. 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.

There is a need to reinforce the constitutionally proclaimed independence of the Protector of Citizens in terms of human resources and in financial terms.

Under the provisions of the Law amending the Law on Budget System (Article 6 Paragraph 3), 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.

The same Law does of course stipulate that “*the total number of fixed-term employees due to an increased volume of work, persons hired under a service contract or a temporary or occasional work contract, persons working through youth or students’ cooperatives and other types of engagement at budget spending units cannot be higher than 10% of the total number of employees*” and that “*by way of exception from paragraph 36 of this Article, the number of fixed-term employees due to an increased volume of work, persons hired under a service contract or a temporary or occasional work contract, persons working through youth or students’ cooperatives and other types of engagement at budget spending units can be higher than 10% of the total number of employees, subject to approval by the Government’s bodies, on the proposal of the competent Ministry or other competent authority, upon obtaining a prior opinion of the Ministry.*”

However, with regard to the Protector of Citizens and other independent public authorities, Article 6 paragraph 3 of the Law provides that new employment and hiring of persons under

⁶⁴ UN General Assembly Resolution 48/134, the so-called “Paris Principles”, available at: <http://www.un.org/documents/ga/res/48/a48r134.htm>; 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).

⁶⁵ US Department of State, *Country Report on Human Rights Practices for 2013 – Serbia*, available at: <http://www.state.gov/documents/organization/220539.pdf>.

⁶⁶ Article 2 paragraph 2 of LoPoC.

a service contract or a temporary or occasional work contract, persons working through youth or students' cooperatives and other types of engagement requires the consent of the committee of the National Assembly in charge of administrative and budgetary issues. Thus, the quoted provision puts the Protector of Citizens and other independent authorities at a disadvantage compared to other budget spending units, **because of different regimes applicable to the maximum number of fixed-term employees who can be hired due to an increased volume of work or on other grounds (without the consent of a competent body) in accordance with Article 1 of the Law.**

Furthermore, the effective dates of these provisions are different for the budget spending units referred to in Article 1 of the Law (*The provisions of Article 1 of this Law pertaining to the restrictions on the total number of fixed-term employees due to an increased volume of work, persons hired under a service contract or a temporary or occasional work contract, persons working through youth or students' cooperatives and other types of engagement at budget spending units shall apply as from 1 March 2014*).

The Protector of Citizens and other independent public authorities are subject to a less favourable regime applicable to fixed-term employment and hiring under service contracts and on other grounds compared with other budget spending units.

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"⁶⁷). 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 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

⁶⁷ 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".

accepted rules of international law⁶⁸. The Protector of Citizens controls the legality, as well as the regularity⁶⁹, 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.⁷⁰

In the reporting year, the High Judicial Council once again refused to accept that the Protector of Citizens had the power to inspect the work of that authority, although it is not listed as one of the authorities exempted from the Protector's control powers under the Constitution. In its submissions to the Protector of Citizens after the launching of investigations due to failure of its disciplinary bodies to act on citizens' complaints against the work of judges, apart from explaining that the complainants were answered, the High Judicial Council continues to challenge the power of the Protector of Citizens to control the legality and regularity of work of the said authority.

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.⁷¹

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.

⁶⁸ Article 2 paragraph 2 of LoPoC.

⁶⁹ Article 17 paragraph 2 of LoPoC.

⁷⁰ Article 138 paragraph 2 of the Constitution of the Republic of Serbia, Article 17 paragraph 3 of the Law on the Protector of Citizens.

⁷¹ Article 38 paragraph 1. and 2 of the Law on Data Confidentiality (Official Gazette of RS No. 104/09).

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.

Relationships 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 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 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 employee).

With the support of the Norwegian Government, libraries in 15 cities and towns in Serbia⁷² have been equipped and trained to receive citizens, establish video links with the head office of the Protector of Citizens and forward complaints filed by citizens in writing.

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.

⁷² Bačka Palanka, Bor, Čačak, Dimitrovgrad, Jagodina, Kragujevac, Leskovac, Novi Pazar, Požarevac, Prijepolje, Sombor, Užice, Valjevo, Vršac, Zaječar.

PART II: OVERVIEW BY AREAS / SECTORS

2.1. CHILD RIGHTS

I BACKGROUND

1. Government's achievements

- 1.1. The Law on Public Information and the Media⁷³ and the Law on Electronic Media⁷⁴ have been enacted.
- 1.2. The Law on Medical Documentation and Records⁷⁵ has been enacted.
- 1.3. The Government has passed the Decision on Establishment of a Budget Fund for Treatment of Diseases, Conditions or Injuries that cannot be successfully treated in the Republic of Serbia.⁷⁶
- 1.4. An Inclusive Education Coordination Unit has been formed within the Ministry of Education, Science and Technological Development.⁷⁷
- 1.5. The Ministry of Education, Science and Technological Development has prepared a Draft Law on Textbooks and Other Teaching Aids.
- 1.6. A Model Protocol for the Protection of Children and Youth against Violence in Sports and Recreational Activities⁷⁸ has been prepared.

2. Results achieved by the Protector of Citizens

- 2.1. By complying with 55 recommendations given by the Protector of Citizens, public authorities have secured the exercise of rights of the child to protection from violence, mistreatment and neglect, the right to education, the rights of children with developmental disorders and disabilities, including in particular the right to inclusive education, the right to health and health care, the right of the child to maintain personal relations with parents, the right to sport, the right to participation and the right to respect for the best interest of the child.
- 2.2. The competent ministries (Health and Justice) have begun drafting a special law on the so-called "missing babies" cases, which would set up an interim independent body with strong investigative powers, in compliance with the recommendation given by the Protector of Citizens and in accordance with the judgement of the European Court of Human Rights.
- 2.3. A recommendation of the Protector of Citizens contributed towards remedying the situation which occurred during the floods which struck Serbia in May 2014 as a result of failure of competent authorities to respond properly and helped remove Roma children and their families from the extremely poor conditions in which they lived in provisional accommodation.
- 2.4. On a proposal of the Protector of Citizens, it has been agreed that a Memorandum of Understanding would be signed with all competent authorities to whom recommendations

⁷³Official Gazette of RS No. 83/14.

⁷⁴Official Gazette of RS No. 83/14.

⁷⁵Official Gazette of RS No. 123/14.

⁷⁶Official Gazette of RS, No. 92/14, 122/14 and 131/14.

⁷⁷ "Formation of Inclusive Education Coordination Unit", the Ministry of Education, Science and Technological Development, 30 December 2014, available at: www.mpn.gov.rs/vesti/1694-uspostavljanje-jedinice-za-koordinaciju-inkluzivnog-obrazovanja.

⁷⁸ Available at: http://www.cpd.org.rs/Data/Files/Model_protokola_sr-latin.pdf.

have been addressed in order to define activities aimed at preventing children from living and working on the streets and ensuring the full social inclusion.

2.5. The Panel of Young Advisors has taken various peer-to-peer activities in the field to raise awareness of the problem of children living and working on the streets, both among their peers and among adults.

2.6. Preventive actions taken by the Protector of Citizens have raised public awareness of the harmfulness of corporeal punishment of children and the alternatives to this method of educating and disciplining children.

2.7. The Protector of Citizens has taken preventive action against the idea of lowering the minimum age for criminal prosecution of children by informing the public of ineffectiveness of solitary confinement and deprivation of liberty as penalties imposed on children in conflict with the law, of the commitments taken by the Republic of Serbia in the field of juvenile justice, of the importance of prevention in the fight against juvenile delinquency and of the need to rehabilitate and reintegrate children in conflict with the law.

2.8. In 2014, the Protector of Citizens received 417 complaints in this field about 689 violations of rights. In the same period, he completed the investigations in a total of 394 cases received in 2014 and in earlier years of the 142 investigations, 34 (23.94%) were closed by issuing of recommendations as the result of expedited oversight procedures. In the remaining cases, the Protector of Citizens conducted inspections and issued 46 recommendations, of which 21 (45.65%) have been accepted, 16 (34.78%) have not been complied with and 9 are still pending compliance. Based on the numbers of identified (71) and remedied (55) omissions, the efficiency rate in this field is 77.46%.

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.⁷⁹

3.3. 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.

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. 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 and neglect.

3.7. Austerity measures have further reduced the already limited scope of services available to children with developmental disorders and children living and working on the streets.

⁷⁹ 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 19/09).

3.8. Children who are crime victims are not sufficiently protected from secondary traumatising and victimisation in proceedings before law enforcement agencies and judicial authorities.

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. Corporal punishment of children is still not outlawed as a form of education and information on the harmfulness of corporal punishment of children and the alternatives to this method of disciplining children is not widely available to the citizens.

3.11. Media reporting on children and images of children in the media are burdened with sensationalism and the media do not pay sufficient attention to ensuring that the content and texts intended for children are age-appropriate.

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. The citizens of Zajaca, including the youngest ones, 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.

3.14. Competent authorities have not responded properly to the spreading of unverified information about alleged harmfulness of vaccines and parents were not given appropriate information about the reasons for compulsory vaccination of children against certain diseases and about the harmful effects of non-vaccination.

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 2013 Annual Report of the Protector of Citizens:

- **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.

- **The Ministry of Justice** should continue and step up its efforts to harmonise the relevant regulations with the provisions of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, to ensure full protection of child victims from secondary traumatising and victimisation.

- **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.

- 6. 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 Ministry of Education, Science and Technological Development** should provide regular trainings at education institutions aimed at increasing the sensitivity of the staff to children with developmental disorders and adoption of practical skills and knowledge in the work with them.

- **The Government** should prepare and propose to the National Assembly to enact a law that would outlaw corporal punishment of children in all environments.

- **The Ministry of Labour, Employment and Social Policy, 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 Sport** should amend the Law on Sports and regulate contracts between sport clubs/organisations and underage athletes.

- **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 initiative of the Protector of Citizens to draw up and send to the National Assembly a Bill on Ratification of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure. The Protector of Citizens had already highlighted the need to ratify this international document in the 2013 Annual Report.

4.3. The Government has not considered the initiative launched by the Protector of Citizens to amend the Law on Financial Support to Families with Children.

4.4. The Ministry of Justice has not considered the initiatives launched by the Protector of Citizens to amend the Criminal Code⁸⁰ with a view to its harmonisation with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

⁸⁰ The initiative was submitted to the Ministry of Justice and Public Administration on 13 October 2011 and 19 November 2011 and is available at: http://www.xn--80aneakq7ab5c.xn--90a3ac/index.php/lang-sr_YU/zakonske-i-druge-inicijative/1529-2011-10-14-09-40-39.

4.5. Even after three 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".⁸¹

4.6. The Ministry of Agriculture and Environment Protection and the Ministry of Health have not complied with the recommendations of the Protector of Citizens aimed at removing the sources of pollution in the town of Zajaca and constant monitoring of water and soil pollution.

4.7. The competent authorities of the city of Belgrade and the city of Kragujevac have not fully and unambiguously remedied the omissions made in earlier years when determining the co-financing paid by parents for the placement of children in pre-school institutions.

5. Explanation

The Law on Public Information and the Media and the Law on Electronic Media have provided a better legislative framework for the protection of privacy, best interests, the right to information and protection of the child from content that is or may be harmful for his/her wellbeing and proper development. In practice, however, the media still display a propensity for sensationalism in reporting and a disregard for the privacy of the child and tend to broadcast programmes not suitable for children.

The new Law on Medical Documentation and Records provides for keeping of proper and more complete records of child victims of violence and of children with developmental disorders, which allows more effective exchange of information between authorities, organisations and institutions and better planning of assistance and support services.

The Budget Fund for Treatment of Diseases, Conditions or Injuries that cannot be successfully treated in the Republic of Serbia has been established for the purpose of treating curable diseases that cannot be successfully treated in the Republic of Serbia and for which the Republic Health Insurance Fund cannot provide sufficient funding. Children and the youth are priority recipients of funding from the Fund.

The Draft Law on Textbooks and Other Teaching Aids, which the Ministry of Education, Science and Technological Development has made available to the public through a public debate, largely builds on the recommendations given 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 earlier years.⁸²

With the establishment of the Inclusive Education Coordination Unit within the framework of the Ministry of Education, Science and Technological Development, it has become possible to provide additional forms of support to educational institutions in the implementation of inclusive education and the principles of inclusion of the child in education and the community at the earliest possible age. However, inclusive education remains fraught with numerous problems and weaknesses, due to a lack of proper 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

⁸¹ Report prepared and published in 2011, available at: http://www.zastitnik.rs/attachments/1597_brosura_Final%20ddd.pdf

⁸² Enactment of the Protector of Citizens No. 11-1170/11 of 17 January 2012, available at <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/2110-2012-01-19-08-58-38>; enactment of the Protector of Citizens No. 14-1619/11 of 21 November 2012, available at <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/2595-2012-11-23-12-54-23>; enactment of the Protector of Citizens No. 14-529/12 of 12 May 2014, available at <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/3300-2014-05-13-13-18-20>.

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 2012.⁸³

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. Although such investigative mechanism is still not in place, an encouraging sign is that the competent Ministries (of Health and Justice) have announced they would draft a special law which would set up a provisional independent body with strong investigative powers.

Public and other authorities made efforts to provide adequate assistance to children after the floods which struck Serbia in May 2014. However, the provision of this assistance was fraught with numerous shortcomings and an apparent lack of organization. Thanks to selfless volunteer efforts by citizens, adverse outcomes of those shortcomings and omissions for children have been averted, although there have been cases of mishandled responding, placement of children in facilities with extremely poor conditions and without proper care and assistance and even refusals to admit children and their families to collective makeshift shelters.

Acting in compliance with the recommendations of the Protector of Citizens, the Secretariat for Education and Child Protection of the City Administration of the City of Belgrade has formed a special body (committee) at city level that will be in charge of planning and providing food for children in pre-school institutions, taking into account any specific dietary needs children may have for health-related, religious or other justified institutions. The Secretariat has informed all pre-school institutions in Belgrade of the recommendations of the Protector of Citizens and reminded them of their duty to provide appropriate meals to children with specific dietary needs.

The competent authorities have not complied with the recommendations aimed at improving the status of children living and working on the streets, which the Protector of Citizens gave already in 2011. The working meeting held on 24 November 2014 in Belgrade between the Protector of Citizens and members of the National Assembly Committees on Child Rights, on Labour, Social Affairs, Social Inclusion and Poverty Reduction and on Human and Minority Rights and Gender Equality, line Ministries and other authorities has revealed there is still no comprehensive response to the issue of children living and working on the streets, which renders all activities taken in this regard ineffective and futile.

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. 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.

⁸³ Enactments of the Protector of Citizens No. 14-2755/12 of 06 December 2012, ref. No. 31802 and No. 14-1737/12 of 6 December 2012, ref. No. 31832, 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>.

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.

It has been three years since the Protector of Citizens filed an initiative with the Ministry of Justice to amend the Criminal Code⁸⁴ 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 the said authority has not yet taken that initiative into consideration. Although the so-called "Marija's Law"⁸⁵ has been enacted, for the criminal law status of child victims to be actually improved it will be 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.

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. Austerity measures have put an end to some social security services and reduced others to a bare minimum of activities, which means that parents are increasingly assuming the role of support-givers. It will soon be two years since the Protector of Citizens first submitted bills of amendments to the Labour Law and the Law on Financial Support to Families with Children and they have still not been examined and debated.

Austerity measures are also threatening the services provided to vulnerable children. Thus, the City of Belgrade has excluded the services of the shelter for street children from the scope of its Decision on Social Security Rights and Services⁸⁶, although they have so far produced positive effects in terms of integration of children living and working on the streets. Similarly, the city has left children with developmental disorders without access to personal aides. Restrictions put on public sector employment have slowed down the implementation of new services and continue to threaten the existing ones. Some local self-governments (for example the municipality of Aleksinac) have not been able to provide services for which they had already secured funding, because the "employment restrictions" prevented them from hiring persons who would provide those services.

Full application of the Regulations on the Protocol of Actions taken by Institutions in Response to Violence, Abuse and Neglect 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. 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.

Media reports about children and programs on which children appear often do not take sufficient account of the child's privacy, risk of additional traumatising of child victims of traumatic events and the damage a child may suffer as a result of exposure to inappropriate

⁸⁴ 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-i-druge-inicijative/1529-2011-10-14-09-40-39.

⁸⁵ Law on Special Measures for the Prevention of Crimes against Sexual Freedom against Minors, Official Gazette of RS No. 32/13.

⁸⁶ Official Journal of the City of Belgrade No. 55/11, 8/12, 8/12, 42/12, 65/12, 31/13, 57/13 and 37/14.

content. Although the regulatory framework protecting the rights of children in the media has been improved, the media continue to invade children's privacy and expose them to repeat victimization and harmful content, while the authorities responsible for overseeing the media are still not efficient enough.

Court decisions awarding the sole custody to one parent, allowing the child to maintain personal relations with the other parent, ordering a parent to surrender the custody of the child, ordering protection of the child from violence and ordering a parent to pay child support are still often not enforced even after time-consuming and exhausting executory and criminal proceedings. In such cases there is no functional cooperation between judicial and other authorities (primarily the police and of centres for social work), final and enforceable decisions are sometimes reviewed in executory proceedings, while children become victims of the system that was supposed to protect them. It is not uncommon for judicial proceedings to end in a reversal of the original decision to the benefit of the parent who violated and abused the rights of the child, either because the parent takes advantage of loopholes, because of expired statute of limitations, because the parent manipulates the child or because public authorities tend to be rather inefficient when it comes to enforcing their own decisions.

Although they had announced they would comply with the recommendations of the Protector of Citizens and eliminate the source of pollution in the town of Zajaca and arrange for continual air, water and soil pollution monitoring, the Ministry of Agriculture and Environment Protection and the Ministry of Health have not done so. The landfill identified as the primary source of pollution has not been remedied and arrangements for continual water and soil pollution monitoring have not been put in place.

The entitlement to parenting allowance and the entitlement to child allowance are conditional upon the child's mother, or the parent who cares for the child, being a Serbian national, even in cases when the other parent and the child are both Serbian nationals. This arrangement unjustifiably denies the entitlement to parenting allowance to families whose children are nationals of the Republic of Serbia (as confirmed by the Constitutional Court of Serbia in its decision⁸⁷) and denies child allowance (as a type of income specifically intended for improving the child's standard of living) to those children who are in need of this form of social support and assistance. The Government the Republic of Serbia has not discussed the initiative to rectify these and other deficiencies by amendments to the Law, submitted by the Protector of Citizens.

A cross-departmental working group, with members from a number of different authorities, institutions and organisations, has prepared a Model Protocol for the Protection of Children and Youth against Violence in Sports and Recreational Activities. The Model Protocol is harmonized with the previously adopted General and Special Protocols for the Protection of Children from Abuse and Neglect. It defines what is deemed to constitute violence in sports and recreational activities and sets out specific steps that have to be taken in such cases.

Although the National Assembly maintains 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"⁸⁸, the Ministry of Education, Science and

⁸⁷ Decision No. IUz 40/12 of 11 July 2014, published on 1 October 2014 in the Official Gazette of RS No. 104/14.

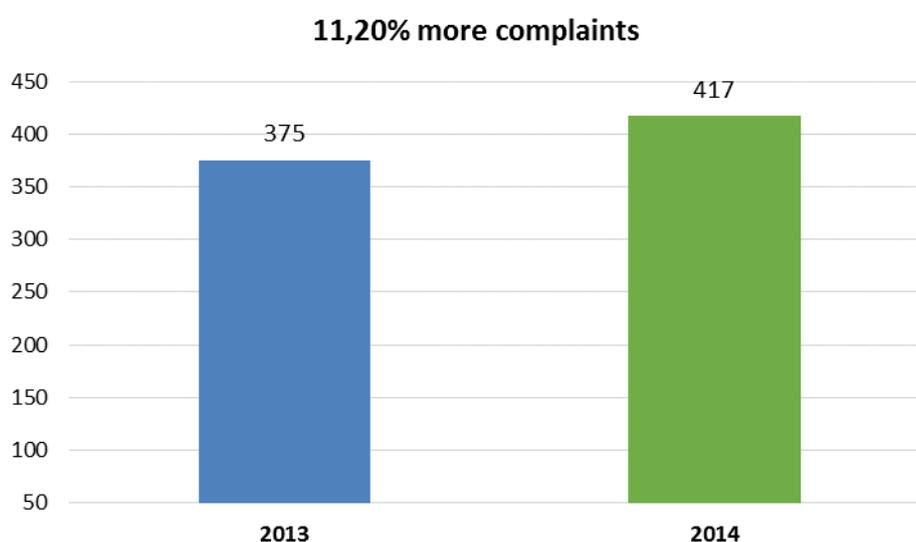
⁸⁸ Conclusion of the National Assembly after reviewing the 2013 Annual Report of the Protector of Citizens, Official Gazette of RS No. 57/13.

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.⁸⁹

II COMPLAINTS

In the field of child rights, in 2014, the Protector of Citizens received 394 complaints and investigated 23 cases on own initiative. Together, these accounted for 8.55% of the total number of complaints received by the Protector of Citizens in 2014. The number of complaints in this year has been 11.20% higher than last year.

Chart 1 - Child rights - Number of complaints received compared to 2013



In 2014, the Protector of Citizens investigated a total of 417 cases in the field of child rights. 241 cases received in 2014 have been closed, while 176 are pending.

In 2014, the Protector of Citizens closed a total of 394 cases in the field of child rights, including 241 cases received 2014, with the remaining cases carried forward from earlier years, as shown in the following table.

Table 9 - Child rights - outcome of cases handled in 2014 and in earlier years

Dismissed complaints	183	46.45%
Unfounded complaints	147	37.31%
Cases covered by recommendations issued as the result of expedited oversight procedure	34	8.63%
Cases covered by recommendations issued as the result of oversight procedure	16	4.06%
Complaint dropped by complainant	7	1.78%
Announcement by PoC	6	1.52%

⁸⁹ See 2013 Annual Report of the Protector of Citizens.

Opinion of PoC	1	0.25%
Total	394	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 10 - Child rights - reasons for dismissal of complaints in 2014

Premature complaint - complainant advised on available remedies	71	38.80%
Declined jurisdiction by PoC - referred to competent authority	49	26.78%
Formally deficient complaint	42	22.95%
Complaint filed by unauthorised person	17	9.29%
Belated complaint	2	1.09%
Anonymous complaint	2	1.09%
Total:	183	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 11 - 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 12 - Child rights - violations reported by complainants

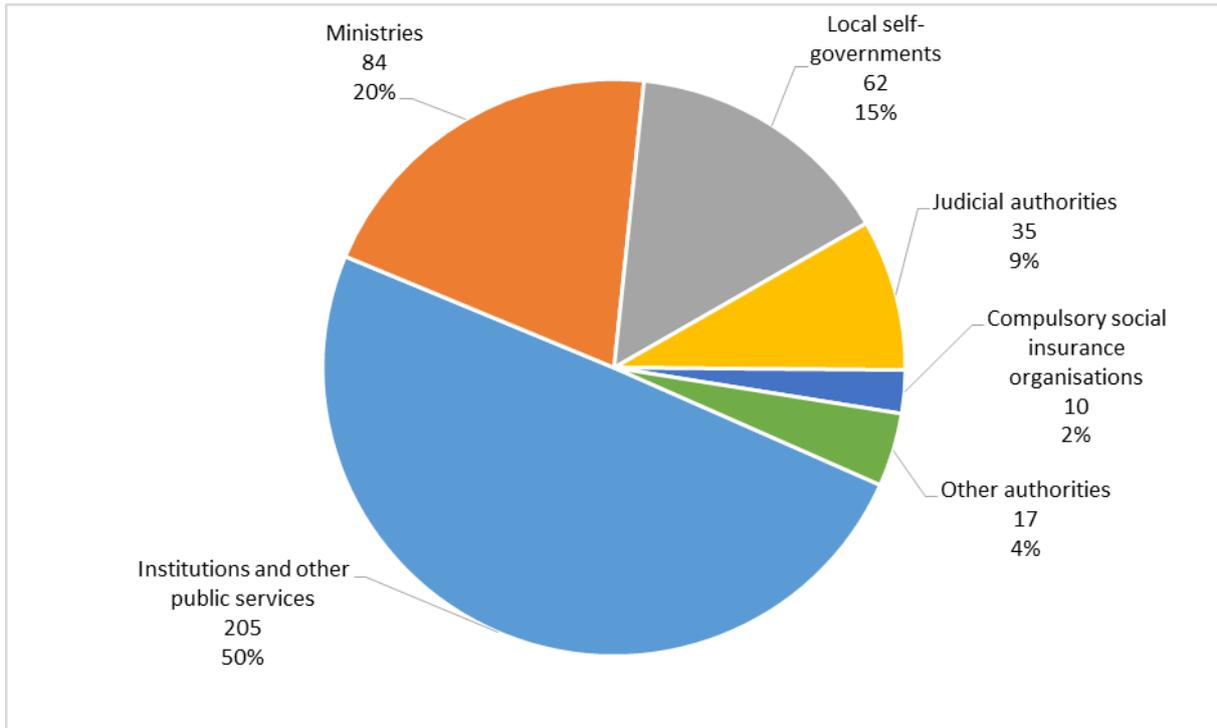
Special rights in the field of child rights	532	77.21%
Economic, social and cultural rights	114	16.72%
Civil and political rights	28	4.11%
Right to good governance	15	2.20%
Total	689	

The following table shows the structure of special rights in the field of child rights based on 532 reported violations of these rights.

Table 13 - 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	195	36.52%	Right to personal identity	3	0.56%
Right to protection against violence, abuse and neglect	106	19.85%	Right to review of treatment in care	3	0.56%
Right to proper development	50	9.36%	Right of the child in case of adoption	2	0.37%
Rights of children with developmental disorders to quality of life and special protection by the state	50	9.36%	Right to protection against exploitation	2	0.37%
Right to maintain personal relations with the parent with whom he/she does not live	47	8.80%	Right to the preservation of personal identity	2	0.37%
Right to live with parents	18	3.37%	Right to family reunification	1	0.19%
Parenting assistance to parents	12	2.25%	Special protection of maternity	1	0.19%
Right to an adequate standard of living	10	1.87%	Right to a healthy environment	1	0.19%
Right to express his/her own opinion	9	1.69%	Rights of refugee children	1	0.19%
Assistance to families in the exercise of children's right to an adequate standard of living	8	1.50%	Right to know the identity of his/her biological parents	1	0.19%
Right to protection against parental abduction	6	1.12%	Right to leisure and recreation	1	0.19%
Right to maintain personal relations with the biological family and close persons	5	0.94%			

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



III OTHER ACTIVITIES

Panel of Young Advisors

Members of the Panel of Young Advisors have carried out children-to-children and children-for-children activities through direct work with the children whose lives and work are linked with the streets. They have visited the places where children work on the streets and the informal settlements where most of those children live in three large cities: Belgrade, Novi Sad and Nis. Through interaction with those children and time spent in making friends, playing and engaging in cultural activities, they wished to help alleviate the social exclusion of this group of children. In doing so, the young advisors of the Protector of Citizens have shown it does not take much money to improve the situation of this most vulnerable group of children. To draw the attention of the general public and the expert community to the plight of these children, they have documented in the form of a video their impressions, experiences, details and information that best illustrate the cruel reality of children living and working on the streets, their struggle to survive and the various ways in which their rights are violated, without any response from the competent authorities. The young advisors of the Protector of Citizens had previously been trained on the rules and skills of workshops activities and peer education in working with children with difficult experiences, with the support of UNICEF. They also attended interactive lectures which introduced them to the concepts of social justice, social exclusion, discrimination and unequal starting positions, the mechanisms of stereotypes and prejudice, the problems and situation of children on the move and the possibilities for improving children's standard of living. In the course of these activities, members of the Panel cooperated with other organisations and activities involved in providing various forms of assistance and support in the field to children living and working on the streets, which gave them an opportunity to exchange experiences and knowledge, identify the reasons and causes of the difficult situation of children on the move and identify the risks and challenges faced by this vulnerable and marginalised group of children and the difficulties they experience in the exercise of their rights.



Photo 1: *Activities of the Panel of Young Advisors in the field of child rights*

*Other activities*⁹⁰

The Deputy Protector of Citizens for child rights has taken part in a public hearing on the situation of children living and working on the streets, organised by the Committee on the Rights of the Child of the National Assembly.

Within the framework of the campaign titled “Parent Plus = Beating Minus” implemented by the Network of Organisations for Children of Serbia (MODS), with the support of the Protector of Citizens, an event was held at the youth cultural centre “Dom omladine” in Belgrade in which children had an opportunity to spend time engaging with their parents through various workshops. The aim of the event was to remind of examples of good parenting practices and give visibility to all those parents who raise their children without resorting to corporeal punishment. The celebrities who endorsed the campaign and all attending parents signed the “Declaration of Serbian Parents” and sent a strong message that children can be raised by non-violent means if we build a relationship with them based on trust, respect and love. Members of the Panel of Young Advisors reminded the participants of the opinions of children and the youth who took part in their peer research about the harmfulness and ineffectiveness of corporeal punishment, good parenting practices and the need to teach parents how to raise their children.

Within the framework of the project “Promoting Human and Minority Rights through more Intense Contact between the Protector of Citizens and Citizens”, implemented with financial support of the Government of the Kingdom of Norway, the Protector of Citizens held a prize competition for primary school pupils in 15 municipalities and towns on the topic “Human Rights as seen from my Angle.” The aim of the competition was to sensitise children to the situation of persons with disabilities and members of national minorities and to issues of gender equality. The scoring criteria and the medium (visual art) were chosen by members of the Panel of Young Advisors, whose four-member jury selected 19 winning entries of a total of 724, including two special prizes for pupils with developmental disorders.

Child rights in the field of education, health, social security and protection from violence and mechanisms for the protection of child rights were subjects covered by a training event organised by the Protector of Citizens, in cooperation with UNICEF, for the members of ten female Roma organisations from a number of towns/cities and municipalities in Serbia.⁹¹

The Protector of Citizens also introduced patient rights advisors and members of local health councils in 98 municipalities and towns/cities to the rights of the child in the health care system.⁹²

To mark the Children’s Week, the Protector of Citizens and members of the Panel of Young Advisors visited schools in Jagodina, Sabac and Vrsac and the Deputy Protector of Citizens for child rights visited the Shelter in Belgrade.

With the support of Save the Children, in September 2014 the Protector of Citizens organized a regular annual regional conference of the Children’s Rights Omudspersons Network in South and Eastern Europe (CRONSEE). This year’s conference was dedicated to the survival of services and programmes for children in the circumstances of restrictive economic policies. The Conference was attended by members of the Network, including: the ombudsmen of Greece, Croatia, Macedonia, Albania, Montenegro, Bosnia and Herzegovina,

⁹⁰ International activities of the Protector of Citizens in the field of child rights are presented in the section *International Cooperation and Projects*.

⁹¹ For more details see section of this Report titled *Gender Equality and Rights of LGBT Persons*.

⁹² For more details see section of this Report titled *Health Sector*.

the Republic of Srpska, Bulgaria, Slovenia, Kosovo⁹³ and the Provincial Ombudsman, as well as representatives of relevant public institutions and civil society organisations dealing with child rights. At the end of the Conference, a thematic meeting was held to discuss the issues of online reputation and protection of children's safety on the Internet. The Network's joint stand on these issues is published on the website of the Protector of Citizens.

At the international conference titled "National Human Rights and Child Rights Institutions" organized in Sarajevo by the Ombudsman for Human Rights of Bosnia and Herzegovina and the international organization Save the Children, the Deputy Protector of Citizens for child rights presented the role of the Protector of Citizens in the exercise and protection of child rights and some of the results achieved so far. Two members of the Panel of Young Advisors, together with children from various organisations in the region, analysed the role of the ombudsman in the protection of child rights, identified the most frequently violated child rights in the region and presented the models and effectiveness of methods in which national institutions in the region engage children and allow the participation of children in their work. After an exchange of experiences and coordination of opinions, the children prepared joint presentations with messages and recommendations concerning these issues, which they distributed to all participants.⁹⁴

The Deputy Protector of Citizens held civic education lessons for primary school pupils in Vranje and the Comprehensive Secondary School in Vladicin Han, in which she and the pupils discussed the rights and status of LGBT persons and the opinions of children and the youth about the prejudice and stereotypes faced by this group of citizens.

Successful cooperation with international organisations and civil society organisations in the field of child rights, primarily UNICEF and the Network of Organisations for Children of Serbia (MODS).

The Protector of Citizens received 107 questions from children and adults through the interactive portal www.pravadeteta.rs. Most of the questions concerned the issues of education and upbringing, protection of the child from violence and respect for the child's best.

IV TYPICAL CASES

Deciding on a child's entitlement to allowance for assisted living requires clear, comprehensible and substantiated expert capability assessment

The Provincial Secretariat for Health, Social Policy and Demographics rejected a complaint filed by the mother of a visually impaired child, upholding the findings, opinion and evaluation made by the capability assessment bodies of the Republic Pension and Disability Insurance Fund, although the physicians who gave them were not specialists in this or indeed any related field and the findings, opinion and evaluation are not clear, substantiated and comprehensible. The Protector of Citizens recommended that the administrative authority revoke its decision in connection with the administrative dispute initiated in this case and to demand expert capability assessment, opinion and evaluation that would comply with the law and the rules of capability assessment. The authority has not complied with the recommendation within the specified period.

⁹³ This designation is without prejudice to the status and in accordance with the UN Security Council Resolution 1244 and the opinion of the International Court of Justice on the Kosovo declaration of independence.

⁹⁴ Available at:

http://www.ombudsman.pravadeteta.com/attachments/394_SARAJEVO%20Child%20rights%20-%20Turning%20concept%20into%20reality%20-%20Conference%20Report.pdf.

Makeshift flood shelter refuses to accept Roma children, authorities place them in a nuclear shelter

During the May floods, many Roma children and their families were placed in a nuclear shelter in Novi Beograd after their homes had been destroyed or flooded but the makeshift shelter to which they had originally been sent refused to accommodate them for openly discriminatory reasons. Although the nuclear shelter lacks even the most basic of conditions for a prolonged accommodation of people, the children and their families spent the next three weeks there. Only after the Protector of Citizens gave a recommendation were these families placed in adequate accommodation.

New public sector hiring "procedure" does away with services for children

The Municipality of Aleksinac had introduced a day care service for children and youth with developmental disorders and its 2014 budget included funding for this purpose. However, children and youth with developmental disorders have been left without this service after the effective dates of the Law on Budget System⁹⁵ and the Decree on the Procedure for obtaining Approval for New Employment and Additional Staff Engagement by Public Spending Units⁹⁶. Under these regulations, the Centre for Social Work of Aleksinac, as the provider of the day care service, was unable to hire technical staff under fixed-term employment contracts without obtaining prior approval. Although the Centre for Social Work has sent a request for approval to competent authorities as early as in January 2014, the Government's Committee in charge of granting approval for new employment and additional staff engagement by public spending units⁹⁷ has not passed a decision pursuant to it even after one whole year.

Best interests of the child – a duty of public authorities

Acting on request of the Ministry of Internal Affairs in connection with various activities of that Ministry which involved children, the Protector of Citizens gave an opinion that the police and public authorities should organize their work with the best interest of children in mind, in an environment that is safe for children and in conditions that guarantee proper growth and development, inviolability of physical and mental integrity of the child, protection against discrimination, protection of the child's privacy and protection from harmful content, with full respect for the child's dignity and taking into account the age, vulnerability and sensibility of the child and his/her mental, emotional and social maturity. The Protector of Citizens is of the opinion that the activities, the informational and educational material used and the means and techniques deployed by public authorities should be accessible, understandable, clear and suitable for children, communicated and presented in a manner appropriate to their age and focused on personal safety, participation of children and social inclusion of children.

V PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT 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.
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

⁹⁵Official Gazette of RS No. 54/09, 73/10, 101/10, 101/11, 93/12, 62/13, 63/13 and 108/13.

⁹⁶Official Gazette of RS, No. 113/13 and 21/14.

⁹⁷Decision on Formation of the Committee on Approval of New Employment and Additional Staff Engagement by Public Spending Units (Official Gazette of RS No. 113/2013)

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 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.

4. **The Government should propose and the National Assembly should enact** a special law that would put in place a mechanism to investigate the cases of the so-called “missing babies”, in accordance with the judgement of the European Court of Human Rights.

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

6. **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.

7. **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 traumatising and victimisation and should furthermore consider the initiatives for amendments to the Criminal Code filed by the Protector of Citizens.

8. **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.

9. **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.

10. **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.

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

12. **The Ministry of Labour, Employment and Social Policy, 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.).

13. **The Ministry of Agriculture and Environment Protection and the Ministry of Health** should comply with the recommendations of the Protector of Citizens aimed at ensuring continual monitoring of air, water and soil pollution in the town of Zajaca and ultimate elimination of the source of pollution.
14. **The Ministry of Youth and Sports** should step up its efforts to amend the Law on Sports and regulate contracts between sport clubs/organisations and underage athletes.
15. **The Ministry of Youth and Sports** should adopt a Protocol for the Protection of Children and Youth from Violence in Sports and Recreational Activities.
16. **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.
17. **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.

2.2. RIGHTS OF NATIONAL MINORITIES

I BACKGROUND

1. Government's achievements

1.1. Amendments to the Law on National Councils of National Minorities have been enacted.⁹⁸

1.2. The Administrative Court⁹⁹ has overturned the decision of the competent Ministry which rejected the request of the Tzintzar national minority for a separate electoral roll and the case has been referred back to the authority of first instance.

1.3. Administrative authorities have demonstrated a willingness to remedy the results of many years of persistent omissions in their work regarding the official use of the Serbian language and the Cyrillic script, within the mandate of the Protector of Citizens.

1.4. The Ministry of Labour, Employment and Social Policy has issued an opinion in connection with the registration of names of children or spouses in the languages of national minorities in birth, marriage and death registers by municipality and town/city administrations in those languages where the female form of a surname is formed by a suffix.

1.5. The Ministry of Public Administration and Local Self-Government has reissued to town/city and municipal authorities its opinion on registration of names of members of national minorities in birth, marriage and death registers.

1.6. Irregularities have been remedied and pupils of Bosniak ethnicity have been interviewed to determine in which language they would like to hear their lessons in all schools situated in the local self-governments where the Bosnian language is officially used.

1.7. The Ministry of Education, Science and Technological Development has initiated the preparation of a curriculum and syllabus for bilingual teaching for members of national minorities and a syllabus for teaching Serbian as a second language.

1.8. Affirmative measures applied in school enrolment procedures have resulted in higher rates of enrolment of pupils of Roma ethnicity in secondary schools.

1.9. With the aim of increasing the representation of national minorities in its staff, the Ministry of Internal Affairs has been implementing a police recruitment campaign targeted at members of national minorities.

1.10. A Framework Agreement on Implementation of a Regional Programme for Provision of Permanent Housing to Refugees was signed between the Republic of Serbia and the Council of Europe Development Bank (CEB) on 25 October 2013.¹⁰⁰

2. Results achieved by the Protector of Citizens

2.1. In compliance with the recommendation given by the Protector of Citizens, certain provisions of the Law on National Councils of National Minorities have been amended.

2.2. The Protector of Citizens has sent an Opinion¹⁰¹ to the Ministry of Public Administration and Local Self-Government, advising the latter that the number of members

⁹⁸ Official Gazette of RS, No. 72/09, 20/14 – decision of the Constitutional Court and 55/14.

⁹⁹ Uip. 1/14 of 17 December 2014.

¹⁰⁰ Official Gazette of RS - International Treaties No. 08/14.

¹⁰¹ For more information see: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/606-miljenje-zatitnika-graana-upueno-ministarstvu-dravne-uprave-i-lokalne-samouprave>.

of an ethnic community alone cannot serve as the sole criterion for recognizing the right to form a National Council, as explained by the Administrative Court in the statement of reasons for its judgement which quashed the original decision of the competent Ministry.

2.3. Through compliance with the recommendation given by the Protector of Citizens and during the exercise of his oversight powers, public authorities have remedied the identified omissions in connection with the use of the Latin script and have ensured the use of the Serbian language and the Cyrillic script in their work.

2.4. The Recommendations¹⁰² given by the Protector of Citizens and the investigation initiated before this authority have significantly improved the situation regarding the right of members of national minorities to official use of their language and script.

2.5. Through compliance with the recommendation¹⁰³ given by the Protector of Citizens, obstacles to teaching in the Bosnian language for those pupils who have opted for it have been eliminated.

2.6. After the initiation of an investigation by the Protector of Citizens, the Ministry of Education, Science and Technological Development has passed a new decision appointing a working party for drafting regulations on bilingual teaching in Serbian and in a language of a national minority.

2.7. Through the use of intermediary powers, the Protector of Citizens has intensified the efforts of competent authorities towards introducing systemic arrangements for affirmative action aimed at providing education to the Roma.

2.8. Recommendations given by the Protector of Citizens have contributed to planning and implementation of affirmative action aimed at increasing the number and share of members of national minorities among the employees of the Ministry of Internal Affairs.

2.9. The Protector of Citizens has issued recommendations¹⁰⁴ to the National Employment Service and its Vranje Branch which will improve the results already achieved in the granting of self-employment subsidies to persons of Roma ethnicity.

2.10. In 2014, the Protector of Citizens received 153 complaints in this field in which complainants alleged 186 violations of rights. In the same period, he completed the investigations in a total of 177 cases received in 2014 and in earlier years. Out of the total of 25 investigations conducted, 12 (48%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 17 recommendations, of which 10 (58.82%) have been accepted, 7 (41.18%) have not been complied with and 0 are still pending. Based on the number of identified (29) and remedied (22) omissions, the efficiency rate in this field is 75.86%.

3. Shortcomings at the national level

3.1. There is still no legal certainty that would guarantee the national councils of national minorities the full exercise of their rights irrespective of any political will or other public interests, because, in violation of the constitutional principle of the rule of law:

¹⁰² For more information see: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/462-preporuka-ministarstvu-za-dravnu-upravu-i-lokalnu-samoupravu-u-vezi-sa-upisom-u-matine-knjige-linog-imen-a-na-jeziku-nacionalne-manjine-i-prema-njegovom-pravopisu>.

¹⁰³ For more information see: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/611-povreena-prava-uenika-bonjake-nacionalnost-da-se-obrazuju-na-maternjem-jeziku>.

¹⁰⁴ For more information see: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/625-vranjska-filijala-nsz-ne-primenjuje-afirmativne-mere-za-zapoljavanje-graana-romske-nacionalnosti>.

- relevant provisions of laws in the fields of education, culture and information have not yet been harmonized with the provisions of the Law on National Councils of National Minorities;

- There is no effective mechanism at municipal and town/city level that would guarantee that any decisions passed by competent authorities are in accordance with the recognised rights of national councils of national minorities.

3.2. Public authorities still do not always comply with the duty to use the Serbian language and the Cyrillic script.

3.3. No uniform practice has been adopted in the work of competent authorities of local self-governments where citizens exercise their right to have their name registered in the language and according to the orthographic rules of their national minority.

3.4. The issues concerning official use of the Bosnian language in administrative, judicial and other procedures have not been eliminated.

3.5. The Ministry of Education, Science and Technological Development has not taken measures to harmonise the relevant provisions of the basic law and special laws within its sphere of competence which contradict one another with regard to bilingual teaching for members of national minorities.

3.6. The education system has not ensured that all members of national minorities, once they complete their education in their native tongue, have a functional knowledge of Serbian.

3.7. There are still no system arrangements in place that would govern the use of affirmative action in the education of Roma pupils.

3.8. Members of national minorities with dual citizenship are not eligible for police training and subsequent employment in the police because the Ministry of Internal Affairs has not adopted an implementing regulation within the statutory period that would specify which posts in the police force can be staffed solely by persons who hold only the citizenship of the Republic of Serbia.

3.9. Even after more than twenty years since the outbreak of the refugee crisis in the former Yugoslavia, not all refugees have been provided with adequate housing and the process of closing of collective camps has not been going according to plan.

3.10. No plan has been adopted to address the issue of informal collective camps or to provide housing for the internally displaced Roma who dwell in in unsanitary settlements.

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 2013 Annual Report of the Protector of Citizens:

- The recommendation that the **Ministry of Public Administration and Local Self-Government** should amend all provisions of the Law on National Councils of National Minorities;

- The recommendation that the Government should propose amendments to the Law on Official Use of Languages and Scripts;

- The recommendation to provide to the largest possible extent the protection and exercise of the rights relevant for preservation of ethnic and cultural identity 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.

4.2. **The competent authorities** did not respond by the end of the reporting period to the Opinion of the Protector of Citizens concerning the need to develop other social housing programmes.

4.3. **The Ministry of Justice** has not responded to the opinion given by the Protector of Citizens in 2013 and has not taken available measures to eliminate the problems caused by the lack of translators for the Bosnian language.

4.4. **The Ministry of Education, Science and Technological Development** has not taken into account the Opinion given by the Protector of Citizens in 2010 and has not taken measures to put in place a new curriculum and syllabus that would give pupils a functional knowledge of the Serbian language after they complete their education in the language of the national minority to which they belong.

4.5. **The Ministry of Internal Affairs** has not complied with the recommendations of the Protector of Citizens and has not taken measures to ensure that members of national minorities and any other persons who hold both Serbian citizenship and the citizenship of a foreign country are eligible for police training and employment at the said Ministry.

5. Explanation

The second direct elections for national councils of national minorities have been held. The adopted amendments to the Law on National Councils of National Minorities take into account the Recommendations¹⁰⁵ given by the Protector of Citizens and have contributed to democratic elections, without major illegalities or irregularities comparable to those identified in the 2010 elections, in particular with regard to registration of citizens with special electoral rolls and protection of citizens' personal data.

The elections have drawn attention to the fact that funding of election campaigns should be regulated by a law, as well as to the fact that electoral rolls of national minorities had not been updated. The opinion of the Protector of Citizens, repeated time and again over the years, namely that every effort should be made to resolve the issue of politicisation and party-political bias of national councils and their decisions, is being increasingly supported both by the general public and by the national councils themselves.

The rejection of the request for a separate electoral roll for the Tzintzar national minority, justified by the claim that Tzintzars cannot be considered a national minority in the Republic of Serbia due to their small number, is reason enough to question whether Serbia even has a minority policy and, if it does, which objectives it pursues, given the fact that other relatively minor ethnic groups have already been granted the status of national minorities and have formed their national councils. The Protector of Citizens has issued an Opinion in which he stated that sheer numbers cannot and should not be the sole criterion for recognising the collective right of an ethnic community to form a national council. Furthermore, with regard to the size of ethnic communities, one thing that should be borne in mind is that smaller communities tend to have a higher need for protection of their identity and continued survival. The Ministry has not responded to the Opinion of the Protector of Citizens, but it will nevertheless have to review its decision following the said judgement of the Administrative Court, which references the Opinion of the Protector of Citizens in the statement of reasons.

Due to non-harmonised laws, since the very first year of implementation of the Law on National Councils of National Minorities there have been lingering uncertainties as to whether and under what circumstances the national councils would be able to exercise their

¹⁰⁵ For more information see: <http://www.ombudsman.pravamanjina.rs>.

powers. Furthermore, during the reporting period the Constitutional Court passed its Ruling¹⁰⁶ which declared certain provisions of the Law on National Councils of National Minorities non-compliant with the Constitution and those provisions have since been deleted. However, the corresponding provisions of special laws (essentially identical to the provisions that have been declared unconstitutional) pertaining to the powers of national councils have remained in force. For reasons of legal certainty and expediency it is necessary to harmonise all laws, not least because it would be highly impractical to conduct a constitutional and legal review of each individual provision that contains identical or similar wording on these matters as the provisions that have already been found to be unconstitutional, regardless of the legislative instrument in which such provisions are contained.

Pursuant to a ruling of the Constitutional Court, the provision of the Law on National Councils which stipulates that a national council must give prior approval for the appointment of principals in education institutions where most classes provide teaching in the language of the national minority concerned or which are found to be of special interest for that national minority, has been declared unconstitutional. Contrary to the stand taken by the Constitutional Court, a complaint received from a candidate for the principal of a school of special importance for a national minority has revealed that the applicable provision of the Law on Basic Elements of the Education System still stipulates that the appointment of a principal requires prior approval from the relevant national council of a national minority.

As already stated in the last year's Annual Report, since the first year of implementation of the Law the Protector of Citizens has been drawing attention to facts and reasons why legislative provisions governing the work and public powers of national councils need to be improved. The situation warrants either comprehensive amendments of the Law or the enactment of a new one with clear and precise provisions, which would be consistently applied and would eliminate all obstacles and issues identified so far in the exercise of public powers of national councils, in the interest of protection and exercise of rights of members of national minorities.

The Ministry of Public Administration and Local Self-Government has informed the Protector of Citizens it would either undertake systemic amendments to the Law or enact a new Law after the elections for national councils, once a functional analysis of the four years of implementation of the current Law has been completed.

Eight years after the enactment of the Constitution, the government has not succeeded in ensuring the official use of the Serbian language and the Cyrillic script in accordance with the law. The recommendations¹⁰⁷ given by the Protector of Citizens in connection with the official use of the Serbian language and the Cyrillic script have not been complied with and there is no competent executive authority at the national level that would be in charge of overseeing compliance with the law and proposing and taking steps to improve the situation with regard to the official use of languages and scripts. For this reason, citizens apparently believe the Protector of Citizens to be the government authority that has the power to enforce the official use of the Serbian language and the Cyrillic script in the work of public authorities. This is evident from the number of complaints filed every year by citizens who seek protection for their right to language and script, as well as the number of complaints by

¹⁰⁶ Official Gazette of RS No. 20/14.

¹⁰⁷ 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>.

citizens who voice their displeasure with the ubiquity of the Latin script in official use and in all spheres of the public life.

Since 2011, following a preliminary investigation by the Protector of Citizens, the Republic Pension and Disability Insurance Fund has taken a number of measures to eliminate the unlawful use of the Latin script in the work of this authority, including technical solutions for the use of the Cyrillic script. However, the Protector of Citizens has found that citizens still receive decisions written in the Latin script, the official explanation for this being that it takes time and considerable financial resources to transcribe all data.

During the reporting period, the Protector of Citizens has issued Recommendations¹⁰⁸ to the public enterprise “Gradska toplana” (district heating utility company) in Jagodina. The Recommendations have been complied with and the citizens now receive their bills in the Cyrillic script. However, it is rather telling that in 2013 the company had purchased new billing software that supported only the Latin script.

Through the use of intermediary powers, the Protector of Citizens informed the Transport Secretariat of the City of Belgrade about the complaints received from citizens because the official identification documents of public transport ticket inspectors were written in the Latin script. These were soon replaced with new identification documents, in which the inspectors’ names were also written in the Cyrillic script.

It is worrying that town/city and municipal authorities have not adopted a uniform practice in procedures in which members of national minorities exercise their right to have their names written in the language and script of the national minority to which they belong in birth, marriage and death registers, given that the recommendations given by the Protector of Citizens and the Provincial Ombudsman of the Autonomous Province of Vojvodina in 2011 have been complied with and the competent Ministry had immediately sent its opinion to relevant departments with a view to introducing a uniform practice. Thus, the ministry in charge of labour, employment and social policy has informed the Protector of Citizens it had, during the investigation by this authority, issued an opinion to all town/city and municipal authorities on how to handle situations when the name of a member of a national minority is to be determined or changed. Furthermore, the Ministry of Public Administration and Local Self-Government has informed of the Protector of Citizens it has once again sent its opinion to town/city and municipal authorities with a view to creating a uniform practice with regard to registration of names of members of national minorities in their own language and script.

The Ministry of Justice has not responded to the Opinion of the Protector of Citizens concerning the lack of sworn-in-court translators for the Bosnian language. In the 2013 Annual Report the Protector of Citizens explained that the lack of translators for the Bosnian language for Bosniak national minority prevented citizens from using their language and script in administrative, judicial and other proceedings before public authorities, while some citizens, as parties in the proceedings, used this shortcoming to avoid or delay implementation of certain regulations which would be unfavourable for them under certain circumstances. Furthermore, the Protector of Citizens has learned during the reporting period that the lack of translators for the Bosnian language prejudices the lawfulness and regularity of proceedings, in particular those conducted by the Ministry of Internal Affairs, while on the other hand citizens are increasingly using the right to their own language and

¹⁰⁸ For more information see: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/3429-2014-08-18-13-24-41>.

script as a defence. Unfortunately, although they had announced their participation, representatives of the Ministry of Justice did not attend the round table and the working meeting with the Ministry of Internal Affairs, which was organised by the Protector of Citizens to address, among other things, this issue of great importance for the citizens' right to lawfulness and regularity of proceedings.

The Ministry of Education, Science and Technological Development, acting in compliance with the recommendations of the Protector of Citizens, took measures within its sphere of competence to remedy the omissions identified in the school year 2013/2014 and to provide pupils of Bosniak ethnicity with education in the Bosnian language.

The Ministry of Education, Science and Technological Development has chosen to offer bilingual teaching in Serbian and in Bosnian in this school year. The model of bilingual teaching for members of national minorities in the Republic of Serbia is not based on a long-standing practice and for this reason it will be necessary to determine which conditions bilingual teaching must meet in order to achieve the same educational purpose as teaching only in the language of the national minority. Another issue that should be considered is whether bilingual teaching should be provided as an exception and, if so, under which conditions, since the Law on Basic Elements of the Education System stipulates that bilingual teaching can be provided in exceptional cases, while the laws on primary and secondary education do not provide for bilingual teaching as an exception.

Although the statutory period for adoption of implementing regulations has not yet expired, bilingual teaching in the Bosnian language has been introduced in schools without any curriculum or syllabus adopted in advance. After the initiation of an investigation following a complaint filed by the National Council of the Bosniak National Minority, the Ministry informed the Protector of Citizens it had expanded the Working Party tasked with preparing a draft implementing regulation that would, before the beginning of the new school year, set out detailed requirements and criteria for the provision of bilingual teaching in Serbian and in the language of a national minority.

With a view to improving the quality of teaching so as to ensure that pupils from national minorities have acquired active knowledge of the Serbian language upon completing their education, while at the same time also enabling pupils of Serbian and other ethnicities to learn languages of national minorities, in 2010 the Protector of Citizens issued an Opinion¹⁰⁹ with preventive recommendations, which was not taken into consideration at that time. Now, four years later, the public is becoming increasingly critical of the existing situation. The information that national councils of national minorities and international organisations provide project support for pupils from national minorities to learn Serbian, although they have been learning Serbian as a second language throughout their education, has prompted the Protector of Citizens to hold a working meeting, in which the Ministry of Education informed this authority it had begun preparing a new curriculum and syllabus for Serbian as a second language and was considering the possibility of teaching the dominant language of each individual community in schools.

As already explained in the 2013 Annual Report of the Protector of Citizens, the affirmative measures referred to in Article 21 of the Constitution of the Republic of Serbia have not been fully elaborated and there are no system provisions that would govern their application. For

¹⁰⁹ For more information see: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/452-miljenje-i-preventivna-preporuka-ministarstvu-prosvete-radi-unapreenja-kvaliteta-nastave-na-srpskom-jeziku-i-jezicima-nacionalnih-manjina>.

this reason, and also because competent authorities and institutions lack sufficient knowledge about the reasons and objectives of affirmative measures, we are often presented only with statistical figures. It is impossible to measure the attainment of the expected or desired outcomes solely by the number of citizens covered by an affirmative measure.

In 2014 there has been much debate about the use of affirmative measures in the enrolment of Roma pupils and students, who were unlawfully required to demonstrate their ethnicity by providing extracts from the special electoral roll for the Roma national minority. On the other hand, there is reason to believe that some pupils of other ethnicities have been abusing this affirmative measure because of the lack of a clearly developed procedure, criteria for its implementation and mechanisms that would prevent any such abuse. In connection with this issue, the Protector of Citizens held a joint meeting with all competent authorities and the National Council of the Roma National Minority. The participants agreed to set a precise, transparent and predetermined procedure before the beginning of the new school year which would guarantee that the purpose of this affirmative measure is achieved.

Although the Ministry of Education, Science and Technological Development has instructed universities that the affirmative measure for the enrolment of Roma students is mandatory, certain faculties persist in refusing to comply with this duty and set a 2% quota of the total number of students funded from the budget for the enrolment of Roma students (including persons with disabilities). The Protector of Citizens has pointed to these issues and given recommendations on the desired course of action to deal with them in the special Report on Implementation of the Strategy for Improvement of the Status of the Roma¹¹⁰, which have not been complied with.

In connection with the use of affirmative employment measures to ensure proportional representation of national minorities in public administration, the Protector of Citizens has issued Recommendations to public authorities¹¹¹ and the Ministry of Internal Affairs¹¹². One of the measures implemented by the Ministry is a promotional campaign designed to motivate as many members of national minorities as possible to apply for enrolment in the Centre for Basic Police Training, with the ultimate goal of finding employment with the police after the training. The Ministry has reported about the implementation of this measure by presenting the figures on enrolment of members of national minorities in police training.

However, after learning that the candidates for enrolment were required to give a statement that they do not hold dual citizenship, although the text of the Public Call did not specify this condition, the Protector of Citizens inspected the work of the Ministry and has issued Recommendations¹¹³ on how to remedy the omissions. In the inspection procedure it was found that candidates were asked to provide a statement they did not hold dual citizenship because an implementing regulation that would specify which posts in the police force can be staffed solely by persons who hold only the citizenship of the Republic of Serbia had not been adopted. Members of national minorities, many of whom hold dual citizenship, are not eligible to apply, undergo the training and then enter into an employment relationship, although after the amendments of 2011 the Law on Police does not specifically bar persons

¹¹⁰ For more information see:

<http://www.pravamanjina.rs/attachments/IZVESTAJ%20ZG%20O%20SPROVODJENJU%20STRATEGIJE.pdf>.

¹¹¹ For more information see: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/420-preporuka-organima-dravne-uprave>.

¹¹² For more information see: <http://www.ombudsman.rs/index.php/lang-sr/2012-02-07-14-03-33/1451-2011-08-05-12-57-00>.

¹¹³ For more information see: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/623-mup-trai-dodatni-uslov-za-prijem-kandidata-koji-nije-naveden-u-konkursu>.

with dual citizenship from employment with the police. The Ministry has not complied with the recommendations; instead, it has informed the Protector of Citizens it intends to comply with them in the future.

As the plan for gradual phasing-out of collective camps is implemented, fewer and fewer of these camps remain. However, the fact that only one refugee camp has been closed in 2014 seems to indicate that the process of their closing will not be completed according to schedule, i.e. by the end of 2015. Thus, it remains uncertain when the collective camps would be finally closed and all refugees placed there provided with adequate housing.

The number of complaints about delays in the procedures conducted pursuant to calls for applications for the provision of housing to refugees beyond statutory deadlines, about unjustifiably long procedures and about referrals of cases back to the authority of first instance due to irregularities. Another issue that has emerged is the provision of housing and finding solutions to all problems faced by the inhabitants of informal collective camps due to resettlement. A large number of citizens, mostly of Roma ethnicity, have been living in informal settlements without any infrastructure since their displacement from the territory of the Autonomous Province of Kosovo and Metohia in 1999. Similarly as in the current case of the Roma settlement “Cukaricka suma”, these are socially vulnerable families whose members are sometimes denied the fundamental human rights because they do not hold identity documents.



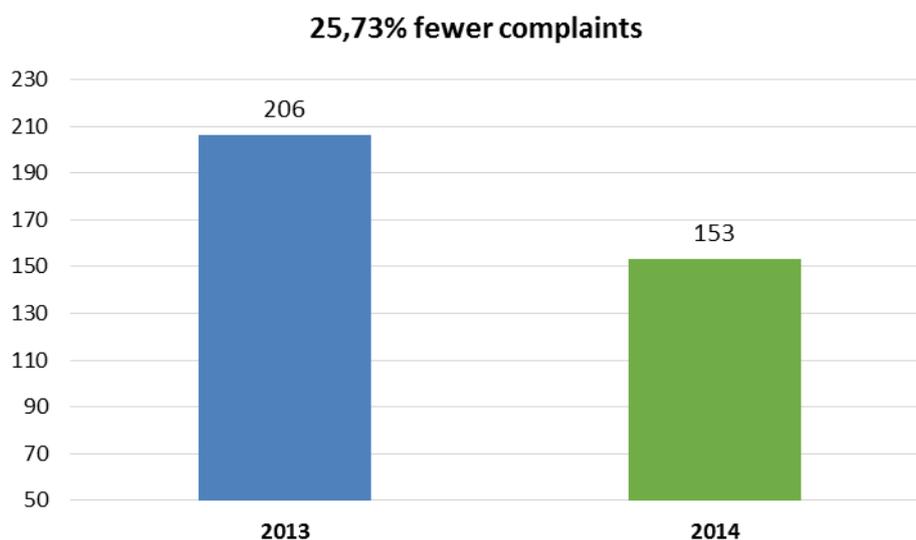
Photo 2: Receiving complaints at the Roma settlement in Vlasotince

The Protector of Citizens has issued an Opinion¹¹⁴ to the competent authorities concerning the need to introduce and develop different programmes of social housing for the most vulnerable Serbian citizens. He highlighted the fact that the government had failed to provide the essentials required for social housing of refugees and IDPs, as well as other vulnerable social groups, including families living in informal settlements, persons with disabilities, homeless persons, victims of domestic violence, children without parental care etc. The Protector of Citizens has received no response from the competent authorities in connection with this Opinion by the end of the reporting period which would clarify which measures have been planned or implemented or explain the reasons why the Opinion was not accepted.

II COMPLAINTS

In the field of rights of national minorities, the Protector of Citizens received 146 complaints and investigated 7 cases on his own initiative. These 153 complaints account for 3.14% of the total number of complaints received by the Protector of Citizens in 2014. The number of complaints in this year is 25.73% lower compared with the previous year.

Chart 3 - Rights of national minorities - Number of complaints received compared to 2013



In 2014, the Protector of Citizens closed a total of 177 cases, of which 95 were received in 2014, while the remaining ones were carried forward from previous years.

Table 14 - Rights of national minorities - outcome of cases handled in 2014 and in earlier years

Unfounded complaints	90	50.85%
Dismissed complaints	47	26.55%
Cases covered by recommendations issued as the result of oversight procedure	21	11.86%
Cases covered by recommendations issued as the result of expedited oversight procedure	12	6.78%

¹¹⁴ For more information see: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/589-nadleni-organi-da-preduzmu-sve-mere-kako-bi-se-obebedili-uslovi-za-stanovanje-u-zatienim-uslovima-zajugroenije-graane>.

Opinion	1	0.56%
Complaint dropped by complainant	6	3.39%
Total	177	

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 15 - Rights of national minorities - reasons for dismissal of complaints in 2014

Declined jurisdiction - complainant referred to competent authority	27	57.45%
Premature complaint - complainant advised on available remedies	13	27.66%
Formally deficient complaint	4	8.51%
Anonymous complaint	2	4.26%
Belated complaint	1	2.13%
Total:	47	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 85.11% of dismissed complaints the Protector of Citizens gave the citizens legal assistance in the exercise of their rights before the competent authorities.

Table 16 - Rights of national minorities - assistance provided in the form of legal advice

	number	percentage
Dismissed complaints	47	100%
Declined jurisdiction - complainant referred to competent	27	57.45%
Premature complaint - complainant advised on available	13	27.66%
Total: assistance provided in the form of legal advice	40	85.11%

In the field of rights of national minorities, 186 different violations of special rights have been identified pursuant to 153 complaints. Most of the complaints in this field were against violations of civil and political rights, including in particular violations of rights of refugees and internally displaced persons. 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 17 - Rights of national minorities - violations of rights reported by complainants

Special rights in the field of members of national minorities	59	32.07%
Civil and political	78	42.39%
Right to good governance	29	15.76%
Economic, social and cultural rights	20	10.87%
Total	186	

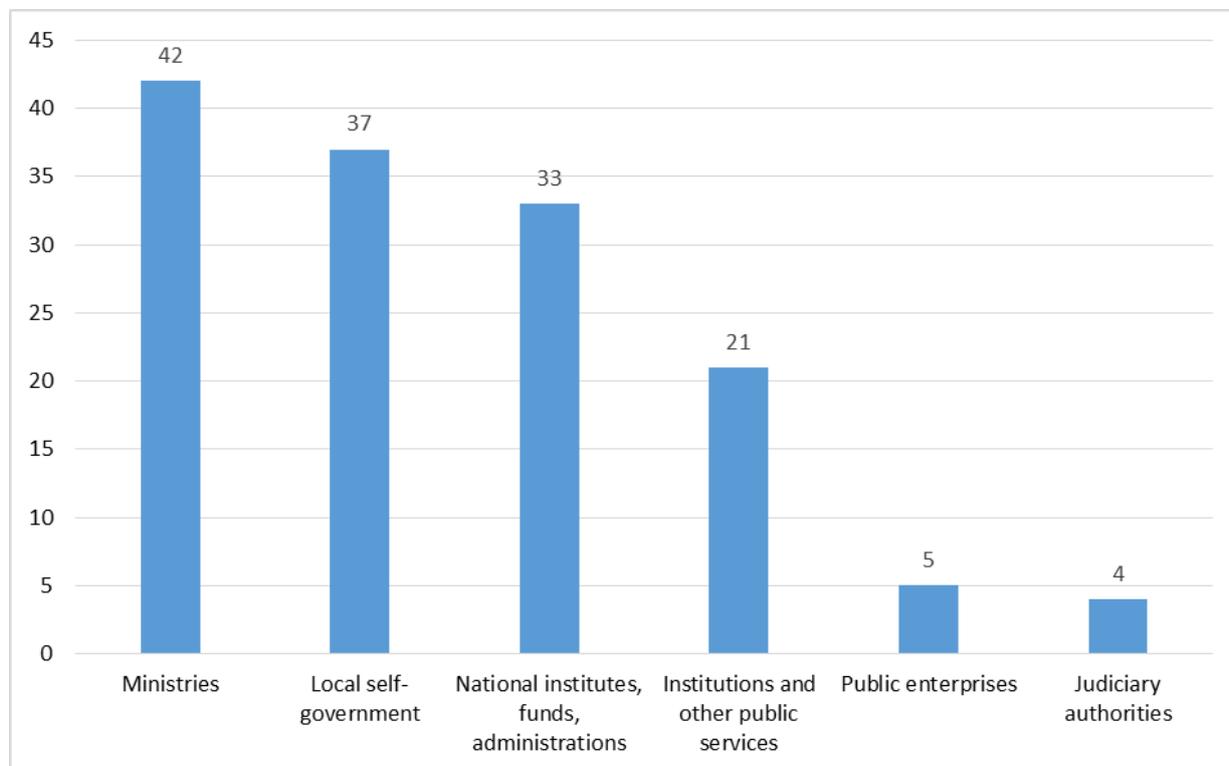
The following table shows the structure of special rights based on 186 registered violations of these rights.

Table 18 – Violations of special rights of members of national minorities, their number and percentage

Type of right violated	Number	%
Special rights of the Roma	27	14.67%
Right to education in mother tongue	7	3.80%
Right to direct elections for National Councils of National Minorities	6	3.26%
Equality in the conduct of public affairs	5	2.72%
Right to official use of languages and scripts national minorities	4	2.17%
Right to exercise the powers of the National Councils of National	4	2.17%
Right to information in mother tongue	2	1.09%
Legally invisible persons	2	1.09%
Prohibition of discrimination based on ethnicity	2	1.09%
Total	59	

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 ACTIVITIES¹¹⁵

In 2014, the Protector of Citizens continued his regular practice of receiving complaints in multinational communities and in Roma settlements in Belgrade, Kovacica, Temerin, Vranje and Vlasotince. Members of the Protector's secretariat visited 11 Roma settlements in Belgrade.

The Protector of Citizens marked the International Roma Day by holding a press conference in which he presented the conclusions set in the "Report on Implementation of the Strategy for Improvement of the Status of the Roma with recommendations" submitted to the Speaker of the National Assembly in December 2013.

In May, the Protector of Citizens held a round table titled "Exercise, Issues and Improvement of Citizens' Linguistic Rights under the Law on Official Use of Languages and Scripts"¹¹⁶, which addressed all issues of official use of languages and scripts and effective normative improvements in the legislative framework, as well as the demands of and mechanisms of improving the protection and exercise of citizens' linguistic rights a.

The Protector of Citizens had working meetings with representatives of the Ministry of Education, Science and Technological Development, the Provincial Secretariat for Education, Regulations, Administration and National Minorities/National Communities and the Government's Office for Human and Minority Rights to discuss possible improvements in the system of education for members of national minorities.

Members of the Secretariat of the Protector of Citizens held interactive lectures at the seminar "I know my Rights", attended by ten Roma organisations. The aim of the seminar was to introduce the CSOs which advocate improvements in the status of the Roma national minority to their rights concerning status-related issues, health, education and social security, as well as the mechanisms for exercising and protecting those rights.

Regular cooperation with NGOs was continued, particularly with Urban IN, the Forum for Ethnic Relations, the Belgrade Centre for Human Rights, the Standing Conference of Roma Civic Associations, the Centre for Civil Society Development and the Network for Intercultural Relations.

Cooperation between the United Nations High Commissioner for Refugees (UNCHR) and the Ministry of Justice and Public Administration was successfully continued on further addressing of the issue of "legally invisible persons", i.e. persons who are not registered with registers of birth. It has been decided to extend the implementation of the Memorandum of Understanding to 31 December 2016.¹¹⁷ The second round of training for judges, registrars, employees of centres for social work and Roma organisations was also held during the reporting period.

¹¹⁵ 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"

¹¹⁶ For more information see: <http://www.pravamanjina.rs/index.php/sr/aktivnosti/610-problemi-efikasne-zatite-i-ostvarivanja-prava-na-slubenu-upotrebu-jezika-i-pisama>.

¹¹⁷ For more information see: <http://www.pravamanjina.rs/index.php/sr/component/content/article/524>.

IV TYPICAL CASES

The right of national councils of national minorities to participate in the management of cultural institutions may depend on the will of the political majority in the local self-government

The National Council of the Albanian national minority complained to the Protector of Citizens against the work of competent authorities in the municipalities of Bujanovac and Presevo, which failed to decide on their request for amendments and harmonisation of statutes of the cultural institutions identified by the Council as being particularly important for the Albanian national minority. The two municipalities neither replied to the National Council nor provided any reasons for their failure to act for more than a year.

After the Protector of Citizens opened an investigation procedure, the municipalities remedied the omission and informed the National Council of their intention to convene a session of their Municipal Assemblies. However, it was only after the elections were held and the new convocation of the National Council took office and nearly two years after the initial request from the National Council that the Municipal Assembly of Bujanovac actually held a session in which it harmonised the statutes of those cultural institutions with the Law on National Councils of National Minorities. As of the end of the reporting period, the municipality of Presevo has not informed the Protector of Citizens whether its Municipal Assembly held a session and remedied this omission. The procedure is still underway.

Improper use of affirmative measures for employment of citizens of Roma ethnicity

The Protector of Citizens received a complaint from a citizen of Roma ethnicity who voiced his dissatisfaction with the fact that he had been prevented from exercising his right under an affirmative measure, alleging there had been irregularities in the operations of the Vranje Branch of the National Employment Service. Upon inspection, several omissions by competent authorities were identified.

The first omission was that the National Employment Service had not provided sufficient funds for self-employment subsidies to unemployed persons of Roma ethnicity, which would be allocated separately and independently of any other quotas applicable to self-employment subsidies.

The second omission is merely a logical extension of the first one, since the Vranje Branch had passed the Decision on Allocation of Self-Employment Subsidies in two public calls (the Public Call for Applications for Self-Employment Subsidies from Unemployed Persons and the Public Call for Applications for Self-Employment Subsidies from Unemployed Persons of Roma Ethnicity) one whole month before the expiration of the submission period stated in the Public Call for Unemployed Persons of Roma Ethnicity.

The third omission was the fact that the said Decision had allocated all available funds, so the complainants' application and the applications of other citizens of Roma ethnicity which had been filed on time, but after the Decision was already passed.

For the purpose of remedying these omissions and achieving the purpose of this affirmative measure, the Protector of Citizens has issued recommendations, which have been fully complied with: the National Employment Service has allocated separate funding for the self-employment programme aimed at persons of Roma ethnicity.

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

1. **The Government, in cooperation with other competent authorities,** should make a clear decision whether amendments should be made to the Law on Official Use of Languages and Scripts to improve the existing situation with regard to official use of the Serbian language and the Cyrillic script.
2. **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.
3. **The Ministry of Public Administration and Local Self-Government** should, after a comprehensive analysis and public debate and taking into account any comments made by the professional community and the general public, consider the possibility of drafting a new legislative instrument that would govern the rights and freedoms of national minorities.
4. **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.
5. **The Ministry of Justice,** together with other competent authorities, should address the issue of official use of the Bosnian language and script.
6. **The Ministry of Education, Science and Technological Development** should harmonise the relevant provisions of all laws and clearly define the status of bilingual education for members of national minorities, i.e. it should decide whether such education should be introduced in schools in exceptional circumstances or not, and should adopt relevant implementing regulations in this context.
7. **The Ministry of Education, Science and Technological Development** should intensify its work on an implementing regulation that would improve the quality of teaching and achieve the objectives of teaching Serbian as a second language to members of national minorities who are educated in their mother tongue.
8. **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.
9. **The Ministry of Education, Science and Technological Development** should adopt regulations that would contain system provisions on all issues concerning affirmative measures of enrolment and education of pupils of Roma ethnicity.
10. **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.
13. **The National Employment Service** should review the results achieved by affirmative measures so far and, taking into account the outcome of the review, plan and implement active employment policy measures aimed at the Roma.
14. **The Commissariat for Refugees and Migration** should expedite the closing of refugee camps and provide sustainable housing solutions. Also, it should cooperate with other competent authorities to draw up a plan for addressing the issue of informal camps and providing housing arrangements for internally displaced persons who dwell in unsanitary settlements.
15. **The Commissariat for Refugees and Migration** should act expediently and with efficiency in the conduct of public calls for the allocation of housing to refugees and the

Government's Commission on Provision of Housing to Refugees should act expediently and with efficiency in appellate proceedings.

2.3. GENDER EQUALITY AND RIGHTS OF LGBTI PERSONS

I BACKGROUND

1. Government's achievements

- 1.1. The Law amending the Labour Law has been enacted.¹¹⁸
- 1.2. The Law on Electronic Media¹¹⁹, the Law on Public Broadcasting Services¹²⁰ and the Law on Public Information and the Media¹²¹ have been enacted.
- 1.3. The Special Protocol for the Judiciary in cases of Domestic Violence and Intimate Partner Violence against Women has been adopted.¹²²
- 1.4. The Action Plan¹²³ on implementation of the Strategy of Prevention and Protection from Discrimination¹²⁴ has been adopted.
- 1.5. The National Action Plan on Employment for 2015¹²⁵ has been adopted.
- 1.6. The Action Plan¹²⁶ for Implementation of the Strategy for Development of the System for Enforcement of Criminal Sanctions in the Republic of Serbia by 2020.¹²⁷
- 1.7. Competent authorities have enabled the Belgrade Pride Parade to be held in peace.

2. Results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens has prepared a Special Report on Implementation of the General Protocol and Special Protocols on Protection of Women against Violence and has presented it to the National Assembly and the public.¹²⁸
- 2.2. Acting pursuant to a recommendation of the Protector of Citizens¹²⁹, the Ministry of Justice and Public Administration has adopted the Special Protocol for the Judiciary in Cases of Domestic Violence and Intimate Partner Violence against Women.
- 2.3. The Protector of Citizens has drawn attention to deficiencies in the legal framework and operation of gender equality mechanisms in local self-government authorities.
- 2.4. The Protector of Citizens has prepared the first working draft of the Model Law on Gender Equality.¹³⁰
- 2.5. The Government has enabled the Belgrade Pride Parade to be held in peace. For several years now, the Protector of citizens has been drawing attention to the need to enable

¹¹⁸ Official Gazette of RS No. 75/14.

¹¹⁹ Official Gazette of RS No. 83/14.

¹²⁰ Official Gazette of RS No. 83/14.

¹²¹ Official Gazette of RS No. 83/14.

¹²² Available at: <http://www.mpravde.gov.rs/sekcija/54/pozitivno-zakonodavstvo.php>.

¹²³ Resolution of the Government the Republic of Serbia No. 90-11489/2014 of 02.10.2014, available at http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678.

¹²⁴ Available at: http://www.ljudskaprava.gov.rs/images/Akcioni_plan_-_srpski.pdf.

¹²⁵ Official Gazette of RS No. 101/14.

¹²⁶ Resolution of the Government the Republic of Serbia No. 021-8527/2014 of 7. 8. 2014, available at http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678.

¹²⁷ Official Gazette of RS No. 85/14.

¹²⁸ Available at: <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebni-izvestaji/3710-2015-02-24-13-35-38>.

¹²⁹ Opinion with recommendations of the Protector of Citizens, available at: http://www.ombudsman.rodnaravnopravnost.rs/attachments/022_Microsoft%20Word%20-%20Miš%20%20sa%20preporukama-uz%20saglasnost%20za%20potpis.pdf.

¹³⁰ Available at: <http://www.ombudsman.rs/index.php/lang-sr/component/content/article/3621>.

LGBTI persons to exercise their right of peaceful assembly and the importance of the Pride Parade in his opinions, positions and recommendations. Through his activities, the Protector of Citizens has raised awareness of the situation of LGBTI persons and the need to improve the exercise and protection of their rights.

2.6. By holding meetings with relevant government authorities and participating in public debates, the Protector of Citizens has raised awareness of the situation of women in rural communities.

2.7. A joint working party on gender equality formed by the Protector of Citizens and the Equality Commissioner has issued recommendations to the competent authorities¹³¹ for amendments to regulations relevant for the legal status of transgendered persons.

2.8. In 2014, the Protector of Citizens received 132 complaints in this field in which complainants alleged 180 violations of rights. In the same period, he completed the investigations in a total of 121 cases received in 2014 and in earlier years. Out of the total of 26 investigations conducted, 16 (61.54%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 10 recommendations, of which 7 (70%) have been accepted, 3 (30%) have not been complied with and 0 are still pending. Based on the number of identified (26) and remedied (23) omissions, the rate of efficiency in this field is 88.46%.

3. Shortcomings at the national level

3.1. The Law on Gender Equality¹³² needs to be improved.

3.2. Protection of women from domestic violence and intimate partner violence is ineffective.

3.3. Equal access to justice for all citizens has not been ensured because the citizens' right to free legal assistance has still not been regulated.

3.4. 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.

3.5. Health care services are not sufficiently available to all women.

3.6. The National Assembly has not debated the Bill of Amendments to the Law on Financial Support to Families with Children submitted by the Protector of Citizens.¹³³

3.7. The rights of citizens with different sexual orientation and gender identity are not fully protected.

3.8. 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.

3.9. The Law on Basic Elements of the Education System in the Republic of Serbia¹³⁴ does not provide for an explicit prohibition of discrimination based on sexual orientation and gender identity.

¹³¹ Ministry of Internal Affairs, Ministry of Public Administration and Local Self-Government, Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Education, Science and Technological Development, Ministry of Health and the Republic Health Insurance Fund

¹³² Official Gazette of RS No. 104/09.

¹³³ For more details see section Child Rights.

¹³⁴ Official Gazette of RS Nos. 72/09, 52/11 and 55/13.

3.10. 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.

3.11. There are no normative provisions that would regulate the legal consequences of sex and gender reassignment.

3.12. The Criminal Code has not been harmonised with the Council of Europe Convention on preventing and combating violence against women and domestic violence.¹³⁵

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 2013 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 **Ministry of Justice** should consider the Initiative of the Protector of Citizens to amend the Criminal Code and initiate work to harmonise Serbian legislation with the Council of Europe Convention on preventing and combating violence against women and domestic violence;
- That the **Ministry of Justice, the Ministry of Labour, Employment, Veteran and Social Affairs** and the **Ministry of Education, Science and Technological Development** should prepare draft regulations that would govern the legal consequences of sex and gender reassignment;
- That the **Ministry of Education, Science and Technological Development** should propose amendments to the Law on Basic Elements of the Education System in the Republic of Serbia by including a provision that would explicitly outlaw discrimination based on sexual orientation;
- That the **Ministry of Education, Science and Technological Development**, in cooperation with the **Ministry of Public Administration and Local Self-Government** should 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** should include in the curricula and syllabuses of primary and secondary schools, and subsequently also the textbooks, content that would acceptably, but professionally cover all major issues relating to the rights of the LGBTI population;
- That the **Ministry of Labour, Employment, Veteran and Social Affairs** should prepare and submit to the Government a Draft Law amending the Law on Gender Equality, to define the mechanisms of gender equality protection in local self-governments, the manner of choosing a mechanism and appropriate sanctions in case a mechanism is not chosen;

¹³⁵ 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).

- That the **Ministry of Labour, Employment, Veteran and Social Affairs** should, in cooperation with local self-governments, put in place measures to provide adequate shelter services to victims of acute domestic violence;
- That the **Ministry of Public Administration and Local Self-Government 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 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;
- That the **Ministry of Health** should put in place measures to provide gynaecological tables for the provision of health care and prevention services to women with disabilities 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

The Law on Gender Equality has not been harmonised with the international treaties ratified by the Republic of Serbia after 2009 and the regulations enacted or amended after the effective date of this Law. The Law does not provide for any implementation instruments, certain mechanisms are not regulated properly and it does not consistently reflect the rights enshrined in the Constitution.

Upon examination of compliance with the Law on Gender Equality, the Protector of Citizens found a number of deficiencies in the legislative provisions and the modes of establishing and applying mechanisms for gender equality. The Law does not set a deadline for establishing these mechanisms and there are no penalties for those local self-governments that fail to do so. The practice of forming permanent working bodies on gender equality and equal opportunities or appointing gender equality and equal opportunity officers has been inconsistent. While there have been some good examples of establishment and functioning of these mechanisms, in many municipalities and towns/cities there are either no gender equality mechanisms at all or they are not functional, and virtually no local self-government has allocated budget funds for its gender equality mechanisms.

Due to the identified deficiencies in the implementation of the Law on Gender Equality and the need to harmonise Serbian legislation with relevant international commitments in the field of gender equality and subsidiary legislation, the Protector of Citizens has prepared the first working draft of the Model Law on Gender Equality and presented it to the National Assembly, the Assembly of the Autonomous Province of Vojvodina and representatives of local self-governments and local gender equality mechanisms, in cooperation with the Standing Conference of Towns and Municipalities. The Model Law contains implementing instruments and sets out penalties, provides for the status of local institutional mechanisms for gender equality and is harmonised with the Constitution and other regulations. The Model is based on equal opportunity policy and specifies in detail the duties and responsibilities of public authorities and employers in its implementation. It also provides for special measures in each of the fields relevant for the exercise of gender equality principles, including instruments for their implementation and monitoring of compliance, and sets out a number of standards for the protection against gender-based violence.

Amendments to the Labour Law have introduced new provisions which afford better protection to employed women during pregnancy and early maternity. The prohibition of

hazardous or harmful work, overtime work and night work has been extended to include nursing mothers. Also, employed pregnant women are not entitled to paid leave when they have to undergo medical examinations during working hours.

The Law on Electronic Media, the Law on Public Information and the Media and the Law on Public Broadcasting Services have introduced an explicit prohibition of hate speech, which was highlighted as a matter of great concern because of its ubiquity in the media sphere in the 2009 and 2010 Annual Reports of the Protector of Citizens and his Special Report "LGBT Population in Serbia - Human Rights Situation and Social Status"¹³⁶. The media laws enacted in the reporting period stipulate that media content cannot contain information promoting discrimination, hate or violence based on, *inter alia*, sex, gender identity, sexual orientation and other personal characteristics; public broadcasting services are required to contribute to the exercise of human rights and freedoms and promote gender tolerance and understanding in their activities (which are deemed to include production, purchase, processing and broadcasting of radio, television and multimedia content).

Acting in compliance with the Opinion of the Protector of Citizens with Recommendations¹³⁷, on 14 January 2014 the Ministry of Justice and Public Administration passed the Special Protocol for the Judiciary in Cases of Domestic Violence and Intimate Partner Violence against Women. It sets out detailed internal procedures for judicial authorities to following in cases of violence against women, in accordance with the core principles and objectives of the General Protocol on Acting and Cooperation between Institutions, Authorities and Organisations in Situations of Domestic Violence and Intimate Partner Violence against Women.

By adopting the Action Plan on Implementation of the Strategy for Prevention of and Protection from Discrimination, the Government has put in place specific measures to prevent discrimination and improve the situation of nine vulnerable population categories, including women and LGBTI persons. This document sets out specific activities, a timeframe for their implementation, indicators for measuring progress and an estimate of the funds required for their implementation.

The Government has adopted the Action Plan on Implementation of the Strategy for Development of the System for Enforcement of Criminal Sanctions in the Republic of Serbia by 2020, which provides for specific activities aimed at improving the situation of female convicts - a concern highlighted in the 2011 Annual Report of the Protector of Citizens. Some of the planned measures are designed to improve the education and professional advancement of female convicts, with the ultimate goal of preparing them for unassisted living after they have served their sentence.

In his Annual Reports for 2009, 2010 and 2012, The Protector of Citizens has already pointed to the poor economic status of women and the large number of unemployed women, in particular those belonging to vulnerable groups. The National Action Plan on Employment for 2015 envisages a new measure of subsidised employment and measures aimed at economic empowerment of women from vulnerable categories and improvement of their status.

¹³⁶ Report available at: http://www.zastitnik.rs/attachments/2107_Izvestaj%20LGBT.doc.

¹³⁷ Enactment of the Protector of Citizens No. 13 - 632/12 of 13. 05. 2013, ref. No. 13421, available at: http://www.ombudsman.rodnaravnopravnost.rs/attachments/046_2840_Preporuka%20Ministarstvu%20rada.doc

A Pride Parade has been held in Belgrade without any major incidents. This has enabled persons of different sexual orientation and gender identity to exercise their freedom of assembly and the government has thus complied with the recommendations given by the Protector of Citizens in his 2013 Annual Report and his Special Report “LGBT Population in Serbia – Human Rights Situation and Social Status” of 2011. It is, however, incumbent upon the competent authorities to demonstrate in their day-to-day work and their treatment of this group of citizens that they are actively committed to eliminating stereotypes and prejudice and preventing exclusion, discrimination and any form of violence against persons of different sexual orientation and gender.

The Protector of Citizens has prepared a Special Report on Implementation of the General Protocol and the Special Protocols on the Protection of Women against Violence. The Report sums up the results of monitoring compliance with the General Protocol and the Special Protocols by competent authorities in cases of domestic violence and intimate partner violence against children and the analysis of activities taken by the competent authorities included in the system for protection of women against violence, conducted by the Protector of Citizens from May to October 2014. Insufficient recognition of violence against women, lack of understanding for the situation of the victims, insufficient awareness of the existence and content of the General Protocol and the Special Protocols, lack of appropriate records, poor cooperation between competent authorities - these are just some of the shortcomings of the system for protection of women against violence identified by the Protector of Citizens.



Photo 3: *Participation of representatives of the Protector of Citizens and other independent oversight bodies in marking the International LGBT Pride Day*

A meeting held between a Deputy Protector of Citizens and the competent authorities to address the situation of women in rural communities has revealed that, while there have been certain encouraging signs regarding protection of their rights compared with earlier years, women in rural communities still do not benefit from full adherence to the principle of gender equality. They remain mostly unemployed, access to health care remains an issue,

they often perform hard manual labour on farms and often suffer multiple discrimination. The aim of the meeting was to agree on common grounds for future continual cooperation towards protecting and improving the situation of women in rural communities.

The Deputy the Protector of Citizens also spoke with the deputy mayor of the town of Uzice, members of the Gender Equality Council of Uzice and members of an association of rural women and female entrepreneurs from rural communities who work in agribusiness, with the aim of presenting examples of good practice and providing support to women in their efforts to improve the living and working conditions in rural communities.

A joint working party formed by the Protector of Citizens and the Equality Commissioner recommended that competent authorities put in place measures to improve the status and exercise of rights of transgendered persons. Among other things, the working party recommended commissioning a research on transgenderedness with the aim of collecting relevant data, discontinuing the practice of compulsory sterilisation of transgendered persons and amendment of a number of regulations in order to improve the situation of these citizens and ensure their better protection from discrimination.

In 2011, 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. The Ministry of Justice has not yet considered the aspect of the Initiative that concerns amendments to the Criminal Code with regard to criminal law protection of victims of domestic violence, which calls for the introduction of criminal law protection from the criminal offence of stalking, more stringent penalties, compulsory psychosocial treatment of violent offenders and other provisions aimed at preventing violence. This in spite of the fact that the Republic of Serbia made a commitment to harmonise its criminal law with the Council of Europe Convention on preventing and combating violence against women and domestic violence once it ratified the said instrument.

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 families 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.¹³⁸

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

¹³⁸ The complexity of the family situation of LGBTI persons was raised as a concern during the initial seminar of the Office for Human and Minority Rights in December 2012, as well as 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.

regulation that would set out detailed criteria for recognising forms of discrimination by the staff, the pupils or third parties in education institutions.

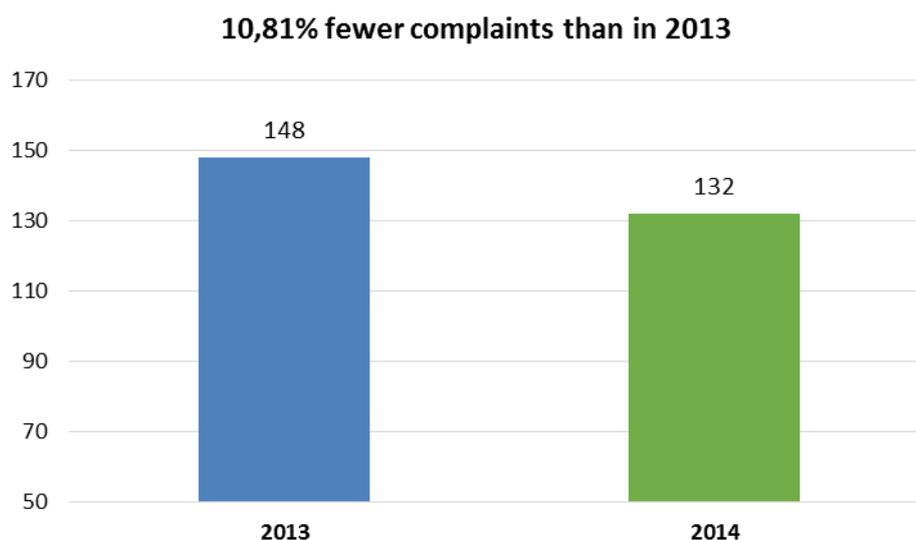
Health care remains insufficiently inaccessible to vulnerable women, in particular women of Roma ethnicity, women in rural environments and women with disabilities, while it is completely inaccessible to women who have lost their health insurance through a fault of their employer or another person.

the National Strategy on Promotion on Gender Equality and Promotion of Women's Position, the National Strategy for Combating Gender- and Sexuality-based Violence and the National Action Plan on Implementation of UNSC Resolution 1325 have been adopted for the period until 2015. It is therefore crucial to adopt new strategic documents in a timely fashion, so as to avoid any discontinuity in the efforts to improve the status of women in the Republic of Serbia.

II COMPLAINTS

In the field of gender equality, the Protector of Citizens received 127 complaints and investigated 5 cases on own initiative. The said 132 complaints accounted for 2.71% of the total number of complaints received by the Protector of Citizens in 2014. The number of complaints in this year was 10.81% lower than last year.

Chart 5 - Gender equality - Number of complaints received compared to 2013



In 2014, the Protector of Citizens closed a total of 121 cases, of which 78 were received in 2014, while the remaining ones were carried forward from previous years.

Table 19 - Gender equality - outcome of cases handled in 2014 and in earlier years

Dismissed complaints	62	51.24%
Unfounded complaints	27	22.31%
Cases covered by recommendations issued as the result of expedited oversight procedure	16	13.22%
Cases covered by recommendations issued as the result of oversight procedure	9	7.44%
Complaint dropped by complainant	7	5.79%
Total	121	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 20 - Gender equality - reasons for dismissal of complaints in 2014

Premature complaint - complainant advised on available remedies	31	50.00%
Declined jurisdiction - complainant referred to competent authority	11	17.74%
Complaint filed by unauthorised person	9	14.51%
Jurisdiction of a local ombudsman	4	6.45%
Jurisdiction of the Equality Commissioner	3	4.84%
Belated complaint	2	3.23%
Anonymous complaint	2	3.23%
Total:	62	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 67.74% of the dismissed of complaints the Protector of Citizens provided the citizens legal advice in the exercise of their rights before competent authorities.

Table 21 - Gender equality - assistance provided in the form of legal advice

	number	percentage
Dismissed complaints	62	100%
Premature complaint - complainant advised on available remedies	31	50.00%
Declined jurisdiction - complainant referred to competent authority	11	17.74%
Total: assistance provided in the form of legal advice	42	67.74%

In the field of gender equality, 180 different violations of rights have been identified pursuant to 132 complaints. The largest number of complaints pointed to violations of special rights in the field of gender equality.

Table 22 - Gender equality - violations of rights reported by complainants

Special rights in the field of gender equality	111	61.67%
Economic, social and cultural rights	53	29.44%
Civil and political rights	9	5.00%
Right to good governance	7	3.89%
Total	180	100.00%

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.

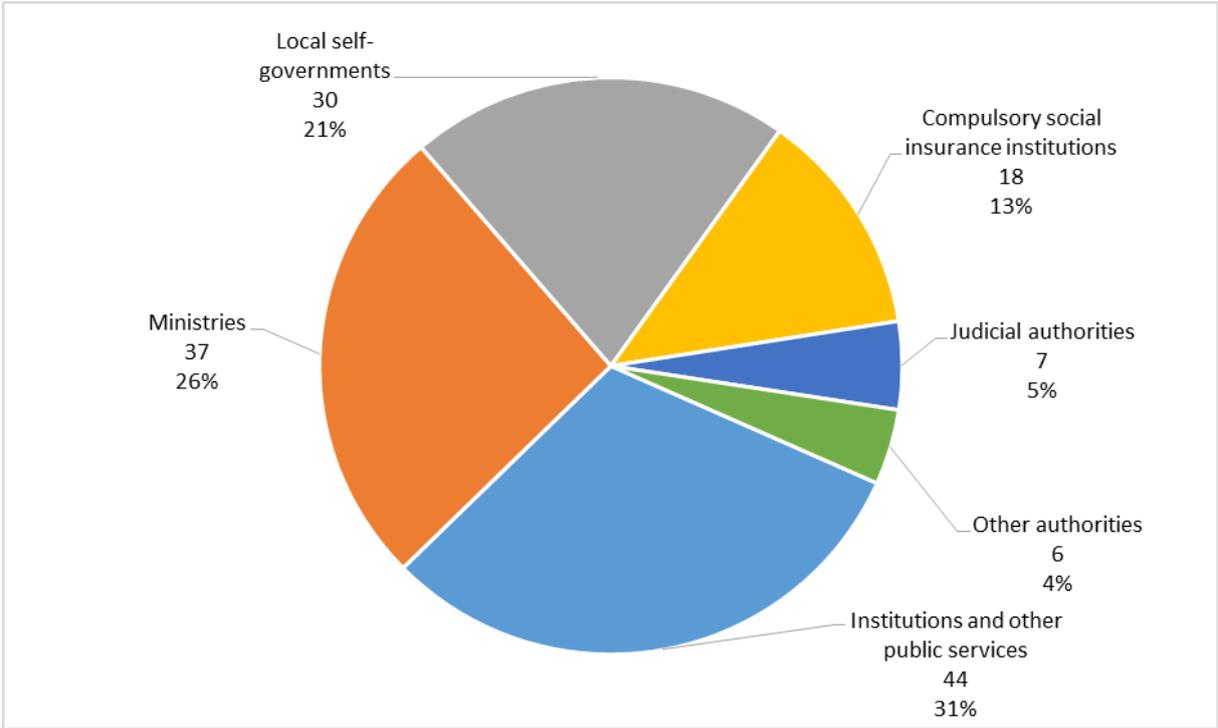
The following table shows the structure of special rights based on 111 registered violations of these rights.

Table 23 - Special rights in the field of gender equality, their number and percentage

Type of right violated	Number	%
Rights of pregnant women and nursing mothers	62	55.86%
Domestic violence	31	27.93%
Right to compensation of salary during pregnancy leave	11	9.91%
Special rights of marginalised categories of women	3	2.70%
<i>In vitro</i> fertilisation	3	2.70%
Sexual violence	1	0.90%
Total	111	100%

Most of the complaints pointed to violations of rights by institutions in the field of social security and of the Ministry of Labour, Employment and Social Policy and of the Ministry of Internal Affairs, as shown in the following chart.

Chart 6 - Authorities and organisations most frequently complained against by the citizens in the field of gender equality



III OTHER ACTIVITIES

The Protector of Citizens and his deputy for gender equality took part in the work of the Committee on Human and Minority Rights and Gender Equality the National Assembly, in a session which addressed the rights of persons of different sexual orientation and gender identity, and worked together with the Committee and members of the Women's Parliamentary Network.

In the session of the Committee on Human and Minority Rights and Gender Equality convened to commend the 25th of November, the International Day for the Elimination of Violence against Women, the Protector of Citizens presented his Special Report on Implementation of the General Protocol and Special Protocols on Protection of Women against Violence.

In a session of the Committee convened to mark the 10th of December, the International Human Rights Day, the Protector of Citizens also presented the first working draft of the Model Law on Gender Equality.

The Committee on Human and Minority Rights and Gender Equality and the Committee on European Integration of the National Assembly, the Protector of Citizens and the Equality Commissioner have called on the competent authorities to become more involved in ensuring better exercise and protection of rights of LGBTI persons, more effective judicial protection in cases of violence and discrimination against LGBTI persons and hate speech, enabling the right to free and safe assembly, education of children in schools and employees in public and other authorities and public awareness raising about the situation of this group of citizens. The joint stand of the National Assembly, the Protector of Citizens and the Equality Commissioner is that a Declaration on Prohibition of Hate Speech and Hate Crimes should be adopted as soon as possible.

A representative of the Secretariat of the Protector of Citizens took part in the National Conference of the Female Parliamentary Network.

On the invitation of the European Institute for Gender Equality in Vilnius, Lithuania, the Deputy Protector of Citizens for gender equality paid a visit to this Institute with the aim of establishing cooperation, learning about European standards and exchanging experiences. The Protector of Citizens recognised the relevance of this Institute when he called for cooperation with this EU institution in his 2010 Annual Report.

A Deputy Protector of Citizens held a presentation in the meeting of the NGO "Iz Kruga" ("Out of Circle") dedicated to the Week of Women with Disabilities, held from 3 to 7 November 2014.

A Deputy Protector of Citizens took part in a number of activities organised as part of the campaign "16 Days of Fight against Violence against Women", while members of the Secretariat of the Protector of Citizens participated in a street action aimed at preventing violence against women, raising public awareness of the issues faced by women exposed to violence and dissemination of information about whom women exposed to violence could and should contact. The street action was held in the Republic Square in Belgrade on the 25th of November, the International Day for the Elimination of Violence against Women.

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. The Council meets once a month in the offices of the Protector of Citizens. Last year it held nine sessions. Among other things, members of the Council took part in the commendation of the 27th of June, the International Pride Day, in activities surrounding the Pride Parade, in the commendation of the Week of Women with Disabilities and in the commendation of “16 Days of Activism against Violence against Women.” Members of the Councils have taken part in supervisory visits to local self-governments to observe compliance with the General Protocol and the Special Protocols on the Protection of Women against Violence. They have also taken part in the presentation of 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 and have contributed to the drafting and presentation of the Model Law on Gender Equality prepared by the Protector of Citizens.

In cooperation with UNICEF and Roma Women’s Centre “Bibija”, the Protector of Citizens held a two-day training for members of ten Roma women’s organisations based in various towns/cities and municipalities across Serbia. The aim of the training was to build the capacity of Roma civil society organisations for providing support to citizens of Roma ethnicity, in particular with regard to the rights of women and children and mechanisms for their exercise and protection. The training covered a number of segments: health and health care, registration with birth, marriage and death registers and issuing of documents, protection of children from violence, education of children and protection of women from domestic violence and intimate partner violence. A special part of the training addressed available remedial mechanisms, the modes of their use and the possibility of recourse to the Protector of Citizens.

The Protector of Citizens introduced patient rights counsellors and members of local health care councils from 98 municipalities and towns/cities to specific rights of women in the health care system through a number of one-day training sessions about patient rights.¹³⁹

The Protector of Citizens held a prize competition for the best work of art by primary school pupils from 15 municipalities and towns/cities titled “Human Rights as seen from my Angle”, with gender equality as one of the topics.¹⁴⁰

A Deputy Protector of Citizens held civic education lessons for primary school pupils in Vranje and the pupils of the general secondary school in Vladicin Han, in which she and the pupils discussed the rights and status of LGBTI persons and the opinions of children and young persons about the common misconceptions and stereotypes about this group of citizens.

A Deputy Protector of Citizens with associates took part in a procession organised by the Gay-Straight Alliance to mark the 27th of June, the International Pride Day, paying tribute to Dusan Jovanovic, a Roma boy who lost his life as a victim of a hate crime.

A rainbow flag was flown on the building of the Protector of Citizens to mark the International Pride Day, as a symbolic gesture of support to members of the LGBTI community.

The Protector of Citizens and his associates took part in the Pride Parade held on 28 September 2014.

¹³⁹ For more details see section *Health Sector*.

¹⁴⁰ For more details see section *Child Rights*.

The Protector of Citizens has continued his cooperation with the OSCE Mission to Serbia, which began in 2012, with the aim of improving the situation in the field of gender equality.

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, 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, "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.

IV TYPICAL CASES

Inconsistent interpretation and application of the law

A married couple had begun an *in vitro* fertilisation, but the husband became severely ill during the procedure. The *in vitro* fertilisation procedure was subsequently discontinued and the complainant's husband passed away soon afterwards. Before dying, he froze his sperm and wrote a statement of consent which allowed his wife to use them in the then-ongoing *in vitro* fertilisation procedure after his death. The complainant's request for the *in vitro* fertilisation procedure to be continued after the husband's death was rejected because the Ministry of Health and the Biomedicine Administration took the stand that cases like these required the consent of the Minister, which is a requirement imposed by the law for cases when a request for *in vitro* fertilisation is made by a woman who is not married or in a *de facto* relationship. In the investigation initiated by the Protector of Citizens, the Ministers in charge of health and family relationships green-lighted the resumption of the *in vitro* fertilisation procedure, but different competent authorities continue adhering to divergent interpretations of the law and acting according to their interpretation in cases where one of the partners dies during an *in vitro* fertilisation procedure. Another issue that has emerged is whether the Law on Treatment of Infertility with Biomedically Assisted Fertilisation is harmonised with other laws.

Girls in the town of Loznica denied equal opportunities, conditions and resources for taking up sports

The town administration of Loznica has treated the "Loznica" Female Handball Club unequally and inappropriately for years, denying it access to public funds from the town budget in public calls for funding proposals in the field of sport. The administration thus failed to provide the girls with equal opportunities and conditions and equal access to funding for sports, thereby acting in violation of the commitments made by the Republic of Serbia by ratifying the Convention on the Elimination of all Forms of Discrimination against Women, as well as the commitments set out in the Law on Gender Equality and the Law on Sports.

The Protector of Citizens recommended that this public authority ensure its rating system in public calls for funding of sport teams is impartial, transparent, independent and unbiased, in compliance with the constitutional rights of citizens to equal treatment and in accordance with the duty to affirm female sports and other duties imposed on local self-governments by the Law on Gender Equality.

Guardianship authority urges a victim of violence to accept the traditional role and return to a violent family setting

Instead of providing the support and assistance she needed, the Centre for Social Work of Bujanovac urged a woman who was a victim of domestic violence to return to her primary family, in accordance with the traditional customs of her community. In his recommendations issued to this guardianship authority, the Protector of Citizens recalled that the said authority had a duty to act in a gender-sensitive way when protecting women from domestic violence, bearing always in mind the imbalance of power between the perpetrator and the female victim of violence; that the perpetrator is always the sole culprit in cases of violence; and that culture, customs, religion, tradition and honour are not valid reasons for allowing any form of violence against women, in accordance with the binding provisions of the ratified international treaties and the national laws in force. The Centre for Social Work has fully complied with the recommendations of the Protector of Citizens.

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

1. **The Government** should begin drafting new strategic documents aimed at protecting and improving the status of women, since the relevant strategic documents all cover the period until 2015, and should provide for effective implementation and enforcement of the measures set out in those documents.
2. **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.
3. **The Government** should ensure full exercise and protection of the rights of LGBT persons, in particular their physical and mental integrity and freedom of assembly, in particular by holding a Pride Parade.
4. **The Government** should continually implement measures and activities aimed at raising awareness of gender equality and measures to improve the status of women.
5. **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.
6. **Public authorities** should continually implement measures and activities aimed at raising public awareness of the need to respect the rights of LGBTI persons.
7. **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-government 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.
8. **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.
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 Human Resources Management Office** should include gender equality issues in the technical training material for all public administration staff.

2.4. RIGHTS OF PERSONS WITH DISABILITIES

I BACKGROUND

1. Government's achievements

- 1.1. The Bylaw on Medical Technology Devices funded from Compulsory Health Insurance¹⁴¹ has been amended.
- 1.2. The Law on Planning and Construction¹⁴² has been amended.
- 1.3. The Law on Public Broadcasting Services¹⁴³ has been enacted.

2. Results achieved by the Protector of Citizens

- 2.1. An opinion with recommendations has been issued to the Republic Health Insurance Fund for amendments to the Bylaw on Medical Technology Devices funded from Compulsory Health Insurance.
- 2.2. The Protector of Citizens has prepared the document *Roadmap for Deinstitutionalisation in the Republic of Serbia*.
- 2.3. In 2014, The Protector of Citizens received 254 complaints in this period, in which complainants alleged 290 violations of rights. In the same period, he completed the investigations in a total of 294 cases received in 2014 and in earlier years. Out of the total of 75 investigations conducted, 53 (70.67%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 10 the recommendation, of which 6 (60%) have been accepted, 2 (20%) have not been complied with and 2 are still pending. Based on the number of identified (61) and remedied (59) omissions, the rate of efficiency in this field is 96.72%.

3. Shortcomings at the national level

- 3.1. There is still no clear commitment of the Government and no clear plan for the "deinstitutionalisation" process.
- 3.2. The system of community-based support services for persons with disabilities is insufficiently developed.
- 3.3. The regulations providing for incentives for employment of persons with disabilities conflict with the regulations restricting public sector employment.
- 3.4. The Law on Guide Dog Assistance has not been enacted.
- 3.5. The Law on Sign Language has not been enacted.
- 3.6. The Bylaw on Formation and Operation of Capability Assessment Bodies of the Republic Pension and Disability Insurance Fund¹⁴⁴ and the Bylaw on Detailed Manner, Costs

¹⁴¹ Official Gazette of RS, No. 52/12, 62/12,-corrigendum, 73/2012-corrigendum, 1/13, 7/13-corrigendum, 112/14 and 114-corrigendum

¹⁴² 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.

¹⁴³ Official Gazette of RS No. 83/14.

¹⁴⁴ Official Gazette of RS, No. 59/08, 75/08-corrigendum, 24/11 and 7/12.

and Criteria for Capability Assessment and Assessment of the Possibility of Employment or Remaining in Employment for Persons with Disabilities¹⁴⁵ are not mutually harmonised.

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 2013 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 Transport, Construction 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;
- 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 systems of community-based support to persons with disabilities.

4.2. The Government has not passed clear decisions and plans for transformation of residential and psychiatric institutions.

4.3. The National Assembly has not considered 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

Amendments to the Bylaw on Medical Technology Devices funded from Compulsory Health Insurance have ensured partial compliance with the Opinion with Recommendations which the Protector of Citizens issued to the Republic Health Insurance Fund. This is a step in the right direction in terms of accessibility of new devices and technologies and shorter useful lives of medical devices (the period after which users are entitled to a new device is now shorter). The amendments have also enabled insurance beneficiaries with cochlear implants to replace their BTE processors on the basis of the Expert Committee on Cochlear Implants, regardless whether their implant was paid by health insurance or out of pocket. Notwithstanding these amendments that have certainly improved the existing Bylaw, there

¹⁴⁵ Official Gazette of RS, No. 36/10 and 97/13.

is still much room for improving the basic functioning and quality of life for persons with disabilities and facilitating their social inclusion.

The amendment to the Law on Planning and Construction has specified which types of buildings must be accessible by design for normal movement, stay and work to users, including in particular children and the elderly, in accordance with the applicable technical standards of accessibility. However, while improvements to the normative framework are commendable, the government needs to ensure its consistent implementation. In 2014, the Protector of Citizens collected information on accessibility of public buildings from local self-governments. What he learned is that most towns/cities and municipalities have put in place certain actions and measures to provide an accessible environment, but the majority of public buildings remain physically inaccessible, which impede and at times even prevent the exercise of specific rights by persons with disabilities.

The Law on Public Broadcasting Services has introduced amendments to the regime of funding public broadcasting services and has provided for exemptions from the licence fee for persons with disabilities. Namely, it specifically states that this entitlement is exercised on the basis of a request filed on a statutory form with supporting documentation; that a decision to exempt a person from the licence fee is to be passed by the public broadcasting service in accordance with the Law on General Administrative Procedure; and that such decisions are final, but may be contested in an administrative dispute. This has remedied the shortcomings which citizens with disabilities had been pointing to the attention of the Protector of Citizens, namely that there was no appeal mechanism against a decision of the public broadcasting service to reject a request for exemption from the licence fee because such decisions were served in the form of a notice. Under the new legislative provisions, requests for exemption from the licence fee are handled in an administrative procedure.

The decision of the Protector of Citizens to prepare the *Roadmap for Deinstitutionalisation in the Republic of Serbia*¹⁴⁶ and present it to the National Assembly was driven by a desire to promote the deinstitutionalisation process and underscore its inevitability, while at the same time reminding public authorities that its course should be planned in advance through their mutual coordination, with gradual phasing out of the institutions, which must of course be coupled with more robust support services in order to be effective. The document is based on an assessment of the current situation in local self-governments and it proposes nine stages for the deinstitutionalisation process: (1) reaching a broad consensus and making a clear decision on the deinstitutionalisation process and determining the way in which it will be managed; (2) assessment of the current situation at national and local levels, which would involve an assessment of the available resources (financial, material and human resources, as well as any already existing community-based services etc.); (3) preparation of action plans that would define short- and long-term steps this would imply, with a clear timeframe and resource allocation and a clear evaluation plan which would guide assessments and timely responses where necessary; (4) development of a favourable legislative basis; (5) development of community-based support; (6) ensuring sustainability of the community-based support system; (7) support to users and their families in the transition between these two forms of care and support; (8) raising public awareness of the deinstitutionalisation process; and (9) monitoring and evaluation of results.

As he collected the information required for the Roadmap for Deinstitutionalisation in the Republic of Serbia, the Protector of Citizens noticed that placement of children and adults in

¹⁴⁶ Available at: <http://www.ombudsman.osobesainvaliditetom.rs/attachments/Mapa%20puta.pdf>.

specialised institutions remains by far the most common alternative to living with the biological family. Although the Law on Social Security¹⁴⁷ provides for a number of services (domestic aid, assisted living, shelters, day care centres etc.) that should promote and facilitate living in the community, they have still not been integrated in the social security system and remain insufficiently available to users.

The document also highlights that the transition from institutional care to community-based care and support should be reduced to the mere physical act of relocating persons from the institutions to a new housing arrangement or some other form of placement. Also, if sound community-based services are to be developed and if a support system is to be established, it will be necessary to ensure respect for human rights and provide an acceptable standard of living for all those who need some sort of care and support in order to be fully included in the community.

The Law on Professional Rehabilitation and Employment of Persons with Disabilities¹⁴⁸ states how many persons with disabilities an employer has to hire as a share of the total number of employees (Article 24.). The Law Setting the Maximum Number of Employees in the Republic Administration¹⁴⁹ puts a cap on employment in government authorities, public agencies and compulsory social insurance organisations.

In an investigation of the Republic Health Insurance Fund, the Protector of Citizens found that the reason why this authority opted to pay fines rather than employ persons with disabilities was in fact the Law Setting the Maximum Number of Employees in the Republic Administration. It appears that national authorities, as employers, face a situation where they are unable to comply with the duty to hire persons with disabilities into employment because they would then be in breach of the law which puts a cap on the number of employees in national administration. Thus, they are forced to comply with their duty under the Law on Professional Rehabilitation and Employment of Persons with Disabilities by paying the fines to the Budget Fund.

The Protector of Citizens is of the opinion that, as long as both of these laws remain in force, neither will achieve its intended purpose. The Law on Professional Rehabilitation and Employment of Persons with Disabilities is an affirmative law designed to increase the rate of employment of persons with disabilities, thereby ensuring their social inclusion and improved quality of life, which is a purpose that is ill-served by mere payment of fines. On the other hand, the Law Setting the Maximum Number of Employees in the Republic Administration, although designed primarily with the aim to rationalise and reduce budget expenses, in practice fails to deliver, because the authorities pay fines instead of employing persons with disabilities, thus again racking up expenses. The bottom line is that there are no savings in the end and the net effect is that persons with disabilities are unable to exercise their right to employment, which is guaranteed to them under the law.

The same effect has also been observed in the case of the Law on Budget System¹⁵⁰, which prohibits new employment as a way of filling job vacancies. Under that Law, new employment is possible as an exception with the consent of a body of the Government, acting on the proposal of the competent Ministry or another competent authority and with the prior opinion of that Ministry. The Law states that the number of fixed-term employees

¹⁴⁷ Official Gazette of RS No. 24/11.

¹⁴⁸ Official Gazette of RS, No. 36/09 and 32/13.

¹⁴⁹ Official Gazette of RS No. 104/09.

¹⁵⁰ Article 27.e, paragraphs 35 and 36 of the Law on Budget System, 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.

due to an increased volume of work, persons hired under a service contract or a temporary or occasional work contract, persons working through youth or students' cooperatives and other types of engagement at budget spending units can be higher than 10% of the total number of employees, subject to approval by the Government's bodies, on the proposal of the competent Ministry or other competent authority, upon obtaining a prior opinion of the Ministry.

These provisions of the Law on Budget System have been a contributing factor in the suspension of certain social security services to children and persons with disabilities that had been provided by persons hired under temporary work contracts or service contracts. Namely, local self-governments and institutions founded by local self-governments as providers of social security services that had hired a number of persons under service contracts and temporary or occasional work contracts for jobs in the field of social security (support for children with developmental disorders, assisted living support to persons with disabilities) were not allowed to renew or enter into such contracts without prior approval of the Government's Committee and were thus forced to suspend certain social security services while awaiting a decision of the competent authority for months, in spite of the fact they had already allocated funds for this purpose.

Although officials of the Ministry of Labour, Employment, Veteran and Social Affairs had announced laws that would regulate the entitlement of persons with disabilities to use guide dogs and sign language would be enacted by the end of 2014, these legislative instruments have not been enacted. The Government submitted a Bill on Guide Dog Assistance to the National Assembly on 8 December 2014, but it is still pending parliamentary debate.

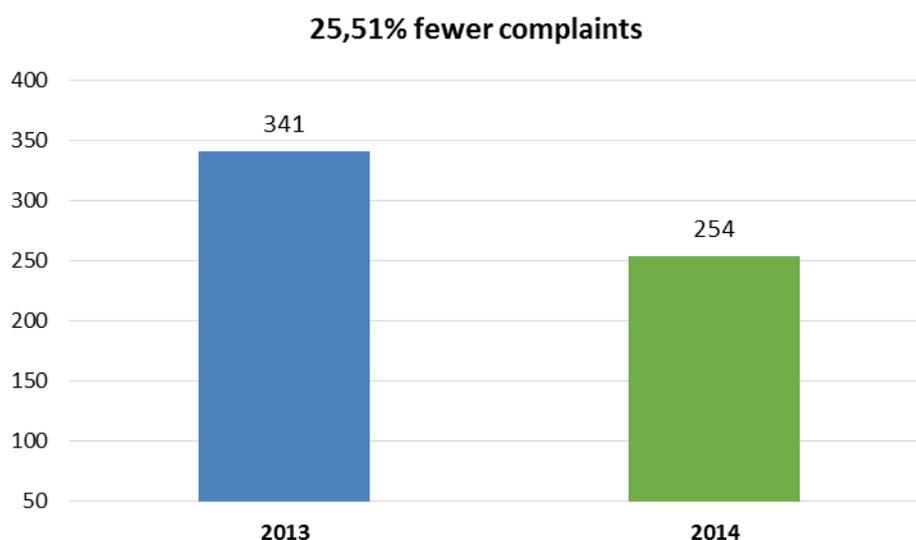
Complaints filed with the Protector of Citizens have drawn attention to the need to improve and harmonise two regulations governing the employment and rehabilitation of persons with disabilities and the procedure for exercising the entitlement to disability pension. Namely, in practice it is not uncommon 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 Fund¹⁵¹) that a person has complete or multiple third-degree disabilities, which means he/she cannot seek or maintain employment even under the special conditions provided for by the law. 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 same authority (the Republic Pension and Disability Insurance Fund) because the capability assessment body has not determined total incapacitation. This means that, according to 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. In other words, two committees of the very same authority – the Republic Pension and Disability Insurance Fund – often give two contradictory assessments of the status and degree of disability of the same person.

¹⁵¹ Article 9 of 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.

II COMPLAINTS

In the field of rights of persons with disabilities, the Protector of Citizens received 253 complaints and investigated 1 case on his own initiative. These complaints accounted for 5.21% of the total number of complaints received by the Protector of Citizens in 2014. The number of complaints in this year was 25.51% lower than last year.

Chart 7 - Rights of persons with disabilities - Number of complaints received compared to 2013



In 2014, the Protector of Citizens closed a total of 294 cases, including 148 cases opened in 2013, while the remaining ones were carried forward from previous years.

Table 24 - Rights of persons with disabilities - outcome of cases handled in 2014 and in earlier years

Dismissed complaints	137	46.60%
Unfounded complaints	72	24.49%
Cases covered by recommendations issued as the result of expedited oversight procedure	53	18.03%
Cases covered by recommendations issued as the result of oversight procedure	12	4.08%
Complaint dropped by complainant	11	3.74%
Opinions	6	2.04%
Death of complainant	3	1.02%
Total	294	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 25 – Rights of persons with disabilities – reasons for dismissal of complaints in 2014

Premature complaint - complainant advised on available remedies	59	43.07%
Declined jurisdiction by PoC - referred to competent authority	54	39.42%
Formally deficient complaint	16	11.68%
Belated complaint	5	3.65%
Jurisdiction of the Equality Commissioner	2	1.46%
Jurisdiction of a local ombudsman	1	0.73%
Total:	137	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 72.49% of dismissed complaints the Protector of Citizens gave the citizens legal assistance in the exercise of their rights before the competent authorities.

Table 26 – Rights of persons with disabilities – assistance provided in the form of legal advice

	number	percentage
Dismissed complaints	137	100%
Premature complaint - complainant advised on available remedies	59	43.07%
Declined jurisdiction - complainant referred to competent authority	54	39.42%
Total: assistance provided in the form of legal advice	113	72.49%

In the field of rights of persons with disabilities, 290 different violations of rights have been identified pursuant to 254 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 denial of due process.

Table 27 – Rights of persons with disabilities – violations of rights reported by complainants

Special rights of persons with disabilities and the elderly	124	42.76%
Economic, social and cultural rights	88	30.34%
Right to good governance	62	21.38%
Civil and political rights	16	5.52%
Total	290	100%

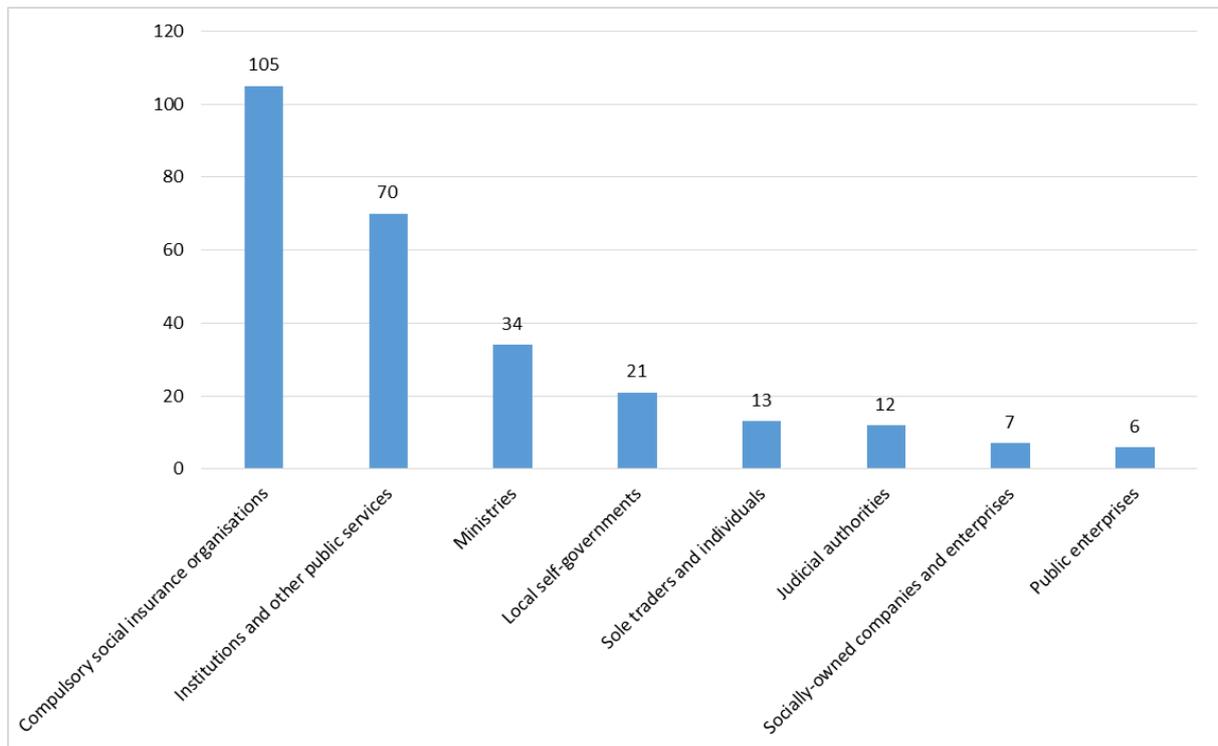
The following table shows the structure of special rights based on 124 reported violations of these rights.

Table 28 – Violations of special rights of persons with disabilities, their number and percentage

Type of right violated	Number	%
Entitlement to financial support for assistance with activities of	25	20.16%
Rights of persons declared incompetent	15	12.10%
Right to employment and professional rehabilitation	15	12.10%
Entitlement to an allowance for physical impairment	11	8.87%
Entitlement to an allowance for assistance with activities of daily	11	8.87%
Rights arising from the status of a veteran of war	8	6.45%
Right to the status of a veteran of war	7	5.65%
Right to equal accessibility of services	7	5.65%
Entitlement to an increased allowance for assistance with	5	4.03%
Right to orthopaedic aids	5	4.03%
Architectural accessibility of buildings	4	3.23%
Discrimination based on disability	4	3.23%
Right to customs and fiscal relief and benefits	3	2.42%
Right to public transport discounts and benefits	3	2.42%
Right to participation in decision-making	1	0.81%
	124	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



III OTHER ACTIVITIES

Presentation of the Roadmap for Deinstitutionalisation in the Republic of Serbia

To mark the International Day of Persons with Disabilities, the Protector of Citizens presented the Roadmap for Deinstitutionalisation in the Republic of Serbia to the Committee on Human and Minority Rights and Gender Equality of the National Assembly. The Roadmap presents possible mechanisms for the transition from institutional care to community-based care and support.

In the Committee session, the Protector of Citizens said the deinstitutionalisation process was inevitable, but he reminded public authorities that its course should be planned in advance through their mutual coordination, with gradual phasing out of the institutions, which must be coupled with more robust support services in order to be effective.

After its presentation to the parliamentary Committee, the document was also submitted to the Government, the Ministry of Labour, Employment, Veteran and Social Affairs and the Ministry of Health.

Meeting titled "Promotion of International Practice concerning Rights of Older Persons" held

The Protector of Citizens and the UNFPA office in Serbia organised an expert meeting with members of public authorities and international and Serbian organisations which seek to improve the situation of older persons. The meeting addressed issues faced by many elderly citizens and possible ways of making improvements in their situation and quality of life.

The participants were able to share their experiences and dilemmas with international and national experts on aging policy, who presented the arrangements envisaged by the Madrid International Plan of Aging (MIPAA) in the context of national capacities: they explained what was available and what was lacking in Serbia. In conclusion, the participants agreed it was necessary to ensure economic empowerment of the individual and develop support systems for families with elderly members; to improve the quality of health care and social services for the elderly; to improve the legislative framework in this field; and to include elderly persons in the activities aimed at improving their situation.

Council for Persons with Disabilities and the Elderly

The sessions and activities of the Council for Persons with Disabilities and the Elderly¹⁵² 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 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.

Participation in an international project dedicated to rights of older persons

¹⁵² Members of the Council are: Gordana Rajkov, Damjan Tatic, PhD, Ivanka Jovanovic, Vidan Dankovic, Dragana Ciric Milovanovic, Miodrag Pocuc and Milos Nemanjic, PhD.

The Protector of Citizens participates in the project “Human Rights of Older Persons and Long-Term Care”, implemented primarily 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 introduce human rights standards and a human rights based approach to long-term care of older persons; to increase awareness of human rights of older persons living in or seeking access to long-term care in Europe, particularly in relation to residential care; and to develop and/or strengthen the capacity of NHRIs to monitor and support human rights based policies in this area.

“Accessibility Map of Public Buildings and Social Security Services for Persons with Disabilities”

The Protector of Citizens, together with the Accessibility Review Association, developed in 2014 a database on accessibility of public buildings and social security services to persons with disabilities and other vulnerable categories. The data on accessibility of public buildings and services under the responsibility of local self-governments which the Protector of Citizens received from local self-governments in 2014 have been included in the Accessibility Map. The Map is a geolocation tool for mapping and searching accessible and inaccessible buildings using Google Maps. It is designed to accommodate the specific needs of different groups of users (persons with poor eyesight, persons hard of hearing, wheelchair users, parents with little children, older persons etc.).



Photo 4: Participation of representatives of the Protector of Citizens at the expert meeting on support systems for persons with disabilities and the elderly

IV TYPICAL CASES

Person granted permanent employment after years of working under fixed-term contracts

After the Protector of Citizens initiated an investigation into the legality and regularity of operations of the Republic Health Insurance Fund, that authority complied with its statutory duty to employ persons with disabilities. The Republic Health Insurance Fund has hired into

permanent employment a person with disabilities who had previously been on fixed-term contracts with the Fund for years.

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

1. **The National Assembly** should enact the Law on Guide Dog Assistance.
2. **The Government** should pass a clear decision and plan for “deinstitutionalisation” in the Republic of Serbia, with a clear and sustainable funding plan for this process.
3. **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.
4. **The Ministry of Labour, Employment, Veteran and Social Affairs** should prepare a Draft Law on Sign Language.
5. **The Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Health and the Republic Pension and Disability Insurance Fund** should improve the implementing regulations and their compliance in the procedure of exercising the rights to disability pension, employment and rehabilitation by persons with disabilities.
6. **With local self-governments** should develop systems of community-based support to persons with disabilities and the elderly.

2.5. RIGHTS OF PERSONS DEPRIVED OF LIBERTY AND NATIONAL PREVENTIVE MECHANISM

USE OF POLICE POWERS

I BACKGROUND

1. Government's achievements

1.1. The Ministry of Internal Affairs has provided training to police officers on the topics of treatment of persons in custody and provision of first aid.

2. Results achieved by the Protector of Citizens

2.1. In compliance with the recommendations of the Protector of Citizens for improving the material conditions in police detention rooms, the Police Administration of Krusevac and the Border Police Station at the Nikola Tesla Airport have refurbished their police detention rooms in accordance with the applicable standards.



Photo 5: Good practice example: Renovated detention rooms at the Kruševac Police Administration building

2.2. In compliance with the recommendations of the Protector of Citizens, the police administrations in Belgrade, Sombor, Valjevo and Subotica have stopped the practice of keeping the medical reports of detained persons in their detention case files.

2.3. In compliance with the recommendations of the Protector of Citizens, the police administrations in Belgrade, Krusevac, Novi Pazar, Vranje and Sombor give detained persons written notice of their rights.

3. Shortcomings at the national level

3.1. Many detention rooms in police stations are still not up to applicable standards.

3.2. Police stations do not have designated areas where persons who spend more than 24 hours in police custody could spend time in fresh air.

3.3. The Instructions on Treatment of Persons brought in by Police and Persons in Custody¹⁵³ contain provisions that are contrary to the applicable regulations and standards (mandatory use of physical restraints when transporting persons in custody¹⁵⁴ and mandatory presence of police officers during medical examinations of detained persons¹⁵⁵).

3.4. The Ministry of Internal Affairs has not trained police officers how to use police powers against persons with mental disorders.

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 2013 Annual Report of the Protector of Citizens:

- That the **Ministry of Internal Affairs** should bring all detention rooms at police stations in full 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.

4.2. The Ministry of Internal Affairs has not complied with the recommendations of the Protector of Citizens that police stations should have designated areas where persons who spend more than 24 hours in police custody could spend time in fresh air.

4.3. The police stations in Kula and Apatin have not complied with the recommendations of the Protector of Citizens, in that they have not stopped using detention rooms which do not meet the statutory minimum standards; furthermore, the Police Station of Mali Idjos continues with the practice of detaining persons in offices, contrary to the recommendation given by the Protector of Citizens.

5. Explanation

A praiseworthy step in the right direction has been observed in the work of the Ministry of Internal Affairs. Namely, police officers of the police administrations in Belgrade, Sombor, Valjevo and Subotica have stopped the practice of keeping the medical reports of detained persons in their detention case files; instead, they are given only to the detainee, since they contain sensitive personal data.

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 two 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. when they would not be able to complete their assignment without using them in accordance with the Law on Police. 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.

¹⁵³ Instructions on Treatment of Persons brought in by Police and Persons in Custody, 01 No. 7989/12-10 of 10 December 2012.

¹⁵⁴ Section 13 paragraph 2 of the instructions.

¹⁵⁵ Section 26 paragraph 3 of the Instructions.

Since the Law on the Protection of Persons with Mental Disabilities¹⁵⁶ provides for police assistance, it is paramount that the Ministry of Internal Affairs give police officers training on how to use police powers against persons with mental disorders.

6. Typical cases

Violation of a detainee's right to inviolability of physical and mental integrity

Upon inspection, the Protector of Citizens found that the complainant's right to inviolability of physical and mental integrity was violated because grievous bodily harm had been inflicted on him during detention. While the person was in police custody, police officers found no injuries at the time of detention or during the period spent in custody; however, a medical examination performed at the time when the complainant was placed in a holding cell found bodily harm. The Protector of Citizens recommended that the Ministry of Internal Affairs put in place all available measures to prevent any form of mistreatment of persons deprived of liberty, to investigate in detail the merits of the allegations of mistreatment, to prevent retaliation and to determine the liability of the officers of law.

7. PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **The Ministry of Internal Affairs** should, without further delay, provide the necessary resources for bringing all detention rooms at police stations in compliance with the applicable standards.
2. **The Ministry of Internal Affairs** should harmonise 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 ensure that police officers are not present at medical examinations of persons in custody, except in cases where this is required by a physician.
4. **The Ministry of Internal Affairs** should ensure that police officers do not use of physical restraints when transporting persons in custody and instead limit their use only to specific situations where the circumstances warrant it, after weighing all pertinent facts.
5. **The Ministry of Internal Affairs** should, in cooperation with the **Ministry of Health**, train police officers on how to use police powers against persons with mental disorders, i.e. it should ensure that police officers act in compliance with the Law on the Protection of Persons with Mental Disabilities.
6. **The Ministry of Internal Affairs** should undertake measures to ensure that police stations provide designated areas where persons who spend more than 24 hours in police custody could spend time in fresh air.

¹⁵⁶ Official Gazette of RS No. 45/13.

ENFORCEMENT OF DETENTION MEASURES

I BACKGROUND

1. Government's achievements

1.1. A new Law on Enforcement of Penal Sanctions¹⁵⁷, which also regulates the enforcement of detention measures, and a new Bylaw on Enforcement of Detention Measures¹⁵⁸ have been enacted.

1.2. The situation regarding overpopulation in the Penal and Correctional Institution in Pozarevac, the Penal and Correctional Institution in Sabac and the District Prison in Novi Sad has improved.

2. Results achieved by the Protector of Citizens

2.1. In compliance with the recommendations of the Protector of Citizens issued to the Penal and Correctional Institution in Sabac, the Institution now takes greater care when determining in which rooms to place detainees: issues of consideration include prior convictions and type of criminal offence for which a person is indicted and non-smokers are not placed together with smokers.

2.2. In compliance with the recommendations of the Protector of Citizens, the Penal and Correctional Institution in Sabac has made improvements with regard to the exercise of detainees' right to spend their free time outdoors and take walks in fresh air.

2.3. With a view to preventing violence against detained persons, the warden of the District Prison in Kraljevo, in accordance with the recommendation of the Protector of Citizens, has ordered a physician at the Institution, at the risk of disciplinary action, to describe in detail any bodily harm inflicted on examined persons, to write down the alleged cause of the injuries and give his opinion whether the injuries could have been caused in the manner alleged by the detainee and to notify the warden of any suspected violence against detainees.

3. Shortcomings at the national level

3.1. The Ministry of Justice has not put in place effective measures to end the attorneys' strike which went on for several months, thereby prejudicing the right to detainees to the shortest possible duration of detention.

3.2. Accommodation conditions in certain detention units of penal institutions do not comply with the applicable regulations and standards.

3.3. Detainees are as a rule not allowed to spend the spare time during the day outside their cells, in communal areas with other detainees who have not been segregated under court orders.

3.4. Detainees are as a rule not allowed to work or to participate in social and cultural activities.

3.5. Female detainees are mostly placed in *de facto* solitary confinement, often for extended periods, due to their relatively small numbers.

¹⁵⁷ Official Gazette of RS No. 55/14.

¹⁵⁸ Official Gazette of RS No. 132/14.

3.6. The issue of the District Prison in Belgrade, the largest detention unit in Serbia, remains unresolved, as much of its useful area is still used to provide housing to the families of past and present prison employees.

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 2013 Annual Report of the Protector of Citizens:

- That **the Administration for Enforcement of Penal Sanctions** should upgrade the inadequately equipped detention units and bring them in compliance with the applicable regulations and standards;
- That **the Administration for Enforcement of Penal Sanctions** and places of detention should allow detainees to work and to participate in social and cultural activities;
- That **places of detention** should allow detainees to spend the spare time during the day outside their cells, in communal areas with other detainees who have not been segregated under court orders;
- That a solution needs to be found for the issue of the District Prison in Belgrade, the largest detention unit in Serbia, where much of the useful area is still used to provide housing to the families of past and present prison employees.

5. Explanation

Under the Law on Enforcement of Penal Sanctions enacted in 2014, detainees are afforded a special form of judicial protection of their rights: they can file a complaint with a sentence enforcement judge, either orally for the record or in writing. The new Bylaw on Enforcement of Detention Measures contains more detailed provisions than the previous one on the exercise of the right to health care, the right to visits and the review procedure for the protection of rights of detainees.

Women are often placed in virtual solitary confinement during detention and our visits to the correctional facilities have revealed that the female hygiene products provided by the facilities are not adequate for their needs.

Similarly as in earlier reporting periods, a significant portion of the complaints received from detainees 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. As the Protector of Citizens does not have the mandate to inspect the lawfulness and regularity of work of courts and public prosecution offices, the complainants were in such cases advised to take recourse to the competent authorities.

One specific factor that contributed to the increased number of complaints by detainees compared with earlier reporting periods is the months-long strike of attorneys, to which the Ministry of Justice did not respond effectively to prevent harm for the rights of citizens, including in particular detained persons. Since attorneys refused to appear in court for trials during their strike, which began in September 2014 and lasted past the end of the reporting period, courts did not hold hearings of detained persons, which prejudiced the right of detained persons arising from the duty of courts to keep the duration of detention as short as possible.

6. Typical cases

Medical examination of a detained person upon admission to custody

The Protector of Citizens has found an omission in the work of the facility concerned which prejudiced the detainee's rights, in that the attending physician who examined the detainee upon admission into custody failed to determine the cause and mechanism of infliction of the identified skin changes, failed to give an opinion on possible links between the detainee's allegations of use of force against him and the identified skin changes and failed to report these facts to the warden of the facility.

For the purpose of ensuring improvements in the work of the facility and preventing future similar omissions, the Protector of Citizens has issued recommendations in connection with the content of reports on medical examination performed upon admission into custody and the actions taken by the physician and the warden of the facility in case of suspected violence against a detainee.

7. PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **The Administration for Enforcement of Penal Sanctions** should upgrade the inadequately equipped detention units and bring them in compliance with the applicable regulations and standards.
2. **The Administration for Enforcement of Penal Sanctions** should take the necessary activities to amend the Bylaw on Enforcement of Detention Measures, which would contain detailed provisions to allow detainees to spend the spare time during the day outside their cells, in communal areas with other detainees who have not been segregated under court orders.
3. **The Administration for Enforcement of Penal Sanctions** should allow detainees to work and to participate in social and cultural activities.
4. **The Administration for Enforcement of Penal Sanctions** should put in place the necessary activities to ensure that female detainees are not placed in *de facto* solitary confinement due to their low numbers.
5. **The Administration for Enforcement of Penal Sanctions** should put in place the necessary measures to provide detainees with severe disabilities in detention units with appropriate accommodation, treatment and rehabilitation.
6. **The Administration for Enforcement of Penal Sanctions** should put in place activities to address the issue of the District Prison in Belgrade, the largest detention unit in Serbia, where much of the useful area is still used to provide housing to the families of past and present prison employees.

ENFORCEMENT OF PRISON SENTENCES

I BACKGROUND

1. Government's achievements

1.1. The new Law on Enforcement of Penal Sanctions¹⁵⁹ and its implementing instruments have been enacted, as well as the Law on Enforcement of Non-Custodial Sanctions and Measures¹⁶⁰ and the Action Plan on Implementation of the Strategy for Development of the System for Enforcement of Criminal Sanctions in the Republic of Serbia by 2020.¹⁶¹

1.2. The network of offices for alternative enforcement of penal sanctions has been formed.

2. Results achieved by the Protector of Citizens

2.1. In compliance with the recommendations of the Protector of Citizens, the Administration for Enforcement of Penal Sanctions has undertaken measures to improve the procedure for conducting medical examinations after the use of force and reporting in cases of suspected violence against the examined persons.

3. Shortcomings at the national level

3.1. The Republic of Serbia is not effectively fighting against impunity for torture.

3.2. Certain accommodation facilities at the penal institutions remain non-compliant with the applicable standards.

3.3. Large penal and correctional facilities ("Zabela" in Pozarevac and facilities in Sremska Mitrovica and Nis) remain overpopulated.

3.4. Many persons serving prison sentences are not able to spend their spare time during the day outside the dormitories, in communal areas with other inmates.

3.5. Numerous shortcomings persist in the provision of health care to persons serving prison sentences, primarily due to the lack of medical staff, especially physicians – both general practitioners and specialists. There are also shortcomings in the procurement of medicines and treatment. Moreover, non-medical staff often attends medical examinations even when this is not demanded by a health care professional.

3.6. Health care services in penal institutions report to those institutions, i.e. to the Administration for Enforcement of Penal Sanctions, instead of to the Ministry of Health.

3.7. A large number of persons serving prison sentences who have severe mental disorders are still placed in regular prison facilities, which are not adequate for their medical and psycho-social treatment.

3.8. In spite of a major step forward in terms of occupational engagement of inmates, many of them are still without work.

3.9. There is only one penal and correctional facility for women and one penal and correctional facility/juvenile facility where women and juveniles serve their prison sentences/juvenile corrections sentences.

¹⁵⁹ "Official Gazette of RS No. 55/14.

¹⁶⁰ "Official Gazette of RS No. 55/14.

¹⁶¹ Resolution of the Government, 05 number 021-8527/14, of 7 August 2014.

3.10. The Intensive Correctional Treatment Department of the Penal and Correctional Institution in Krusevac does not provide intensive, varied and comprehensive correctional sessions suited to the wards' developmental needs, with multiple educational activities and programmes aimed at correcting offending behaviour.

3.11. The Supervision Unit has not been separated from the Administration for Enforcement of Penal Sanctions and attached to the Ministry of Justice and Public Administration, which would have enabled it to oversee the work of the Administration as a whole.

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 2013 Annual Report of the Protector of Citizens:

- That **the Administration for Enforcement of Penal Sanctions** should upgrade the accommodation facilities in penal institutions to bring them in compliance with the applicable standards;
- That **penal institutions** should enable all incarcerated persons to spend their spare time during the day outside their dormitories, in communal areas with other inmates;
- That **penal institutions** should provide more opportunities for occupational engagement to incarcerated persons;
- That **penal institutions** should intensify individual and group correctional sessions between tutors and inmates and improve the system of subsequent categorisation of inmates;
- That **penal institutions** should improve the provision of health care services, both in terms of treatment and examination and in terms of therapy and procurement of medicines;
- That **the Administration for Enforcement of Penal Sanctions** should ensure that persons with severe mental disorders serving prison sentences are transferred from regular correctional facilities;
- That **the health care services within penal institutions** should be part of the health care system and report to the Ministry of Health;
- That the **Ministry of Health** should conduct regular periodic supervision of the expert work of health care services;
- That **the Administration for Enforcement of Penal Sanctions** should increase the number of staff in charge of correctional work at certain penal institutions;
- That **penal institutions** should introduce programs of preparations for release and introduce special pre-release units where inmates would prepare for living as free citizens;
- That the **Ministry of Justice** should transfer the Supervision Unit from the Administration for Enforcement of Penal Sanctions to ensure that the work of the Administration as a whole is supervised by a dedicated organisational unit within the Ministry.

4.2. The Penal and Correctional Institution in Sremska Mitrovica has not complied with the recommendation of the Protector of Citizens to provide an inmate with replacement prosthetic limbs for both legs.

5. Explanation

The Republic of Serbia is not effectively fighting against impunity for torture. In 2014, the Protector of Citizens found multiple instances of irregularities in the work of penal institutions. The irregularities included failure to perform medical examination of inmates after the use of force in accordance with the applicable regulations and standards, which is essential for determining whether the use of force was justified, whether the examined person was subjected to mistreatment and, ultimately, how best to provide health care to a person against whom force was used. In this context, the Administration for Enforcement of Penal Sanctions has complied with the relevant recommendation of the Protector of Citizens and has undertaken measures to improve the procedure for conducting medical examinations after the use of force and reporting in cases of suspected violence against the examined persons. Furthermore, the National Assembly has imposed an obligation on competent public authorities to fully comply with their duties in the fight against impunity for torture, to put in place all necessary measures and activities to prevent mistreatment and to conduct timely and thorough procedures in accordance with the law in order to investigate all substantiated allegations of abuse, assign responsibility and punish the perpetrators.¹⁶²

Numerous shortcomings persist in the provision of health care services to and procurement of drugs and treatment for incarcerated persons. 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 specialists. A particularly grave concern is the shortage of physicians at the Special Prison Hospital in Belgrade. Another major issue is the provision of necessary medicinal products and treatments. It is common for therapy to be administered by non-medical staff. Also, non-medical staff tends to be present at medical examinations even when health care professionals do not demand it, which violates the inmates' privacy and their right to confidentiality of health-related information.



Photo 6: District prison in Novi Sad

¹⁶² Official Gazette of RS No. 114/14.

Incarcerated persons with mental disorders are still placed in the regular prison system, which is not appropriate for their medical and psychosocial treatment. The Protector of Citizens is of the opinion that these persons should be placed in the Special Prison Hospital or an in-patient health care facility within their respective penal institution (which should have the capacity for their treatment), or in some other appropriate medical institution.

The fact that there is only one institutions where juveniles are incarcerated and one where they are placed in the juvenile corrections system (in Valjevo and Krusevac respectively), both of which are overpopulated, creates fertile ground for informal systems which undermine the effects of correctional sessions. This also prejudices the principle that persons should serve their sentences as close to their place of residence as possible, thus making regular contact with family members and close persons more difficult. The principle of incarceration as close to the place of residence as possible is also violated in the case of female inmates, because all of them are placed in the Penal and Correctional Institution for Women in Pozarevac.

In this reporting period, the Protector of Citizens focused on the situation and rights of the wards of the Juvenile Correctional Facility in Krusevac, as well as the conditions in which the corrections are enforced. A particularly grave concern was the inability to provide proper educational and correctional sessions to inmates at the Intensive Work Unit (a separate unit outside the perimeter of the Facility, surrounded by high walls) due to poor conditions of accommodation, the lack of educational and cultural material and insufficient number of correction officers.



Photo 7: Rooms for increased supervision within the Intensive Program Department of the Juvenile Correctional Facility in Krusevac

6. Typical cases

Convict denied prosthetic limbs

The Protector of Citizens received a complaint from a convict who claimed he had not been timely provided with prosthetic lower legs. Before filing the complaint with the Protector of Citizens, the complainant had requested from the Penal and Correctional Institution in Sremska Mitrovica, where he was incarcerated, to be provided with the prosthetic limbs, which needed replacement according to a medical report of December 2012. The Institute failed to provide the prosthetics, justifying its decision by a shortage of funds.

In December 2014, the Protector of Citizens issued a recommendation to the Institution in which he stated the complainant should be provided with the prosthetic legs as soon as possible, as the Institute had previously informed the Protector of Citizens that purchase of prosthetic limbs for the complainant would be included in the 2015 financial plan.

7. PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **The Administration for Enforcement of Penal Sanctions** should continue upgrading the accommodation facilities in penal institutions in order to bring them in compliance with the applicable standards.
2. **The Administration for Enforcement of Penal Sanctions** should put in place measures within its sphere of competence to reduce the overpopulation of large penal and correctional institutions.
3. **Penal institutions** should enable all incarcerated persons to spend their spare time during the day outside their dormitories, in communal areas with other inmates.
4. **Penal institutions** should continue providing more opportunities for occupational engagement to incarcerated persons.
5. **Penal institutions** should provide sufficient medical staff, especially physicians, provide the required quantities of medicinal products and treatments and improve the provision of health care in the institutions.
6. **Penal institutions** should intensify individual and group correctional sessions between tutors and inmates and improve the system of subsequent categorisation of inmates.
7. **The Administration for Enforcement of Penal Sanctions** should ensure that persons with severe mental disorders serving prison sentences are transferred from regular correctional facilities and provided with health care appropriate to their disease and their treatment needs.
8. **The health care services within penal institutions** should be part of the health care system and report to the Ministry of Health.
9. **The Ministry of Health** should conduct regular periodic inspection of technical operations of the health care services.
10. **Penal institutions** should introduce programs of preparations for release and introduce special pre-release units where inmates would prepare for living as free citizens.
11. **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 at Juvenile Correctional Facilities, which would enable compliance with the principle that a person should serve a sentence as close to his/her place of residence as possible.

12. **The Ministry of Justice** should transfer the Supervision Unit from the Administration for Enforcement of Penal Sanctions to ensure that the work of the Administration as a whole is supervised by a dedicated organisational unit within the Ministry.

PSYCHIATRIC INSTITUTIONS

I BACKGROUND

1. Government's achievements

1.1. Competent courts deliberate and decide on involuntary commitment within the time limit set by the law and both hearings and interrogations are conducted at the hospitals where the committed persons are placed. Patients are timely served decisions on involuntary commitment by courts and are thus able to exercise their right to remedy.

2. Results achieved by the Protector of Citizens

2.1. In compliance with the recommendations of the Protector of Citizens, patients are timely served decisions on involuntary commitment by courts and are thus able to exercise their right to remedy.

2.2. In compliance with the recommendations of the Protector of Citizens, certain wards in special psychiatric hospitals have been adapted and the conditions for the placement of patients have been improved.

2.3. In compliance with the recommendations of the Protector of Citizens, Patients' Councils have been formed in large psychiatric hospitals.

2.4. In compliance with the recommendations of the Protector of Citizens, physical restraint in psychiatric hospitals is used in accordance with the applicable regulations and procedures.

3. Shortcomings at the national level

3.1. No all activities needed to rationalise services in secondary and tertiary psychiatric institutions have been implemented; there is no focus on day hospitals and outpatient treatment; and systemic activities have not been implemented to introduce community-based mental health services. Certain patients remain committed in psychiatric hospitals (primarily in Kovin, Vrsac and Gornja Toponica) for extended periods not because of their medical indications, but because community-based treatment is not available.

3.2. Accommodation facilities in certain psychiatric hospitals are not in accordance with the applicable standards, so that many patients remain in appallingly poor conditions, many of them crammed together in large rooms without even the barest minimum of privacy.



Photo 8: *Special Psychiatric Hospital “Kovín”:* Crammed rooms and lack of the right to privacy and personal property

3.3. Psychiatric hospitals do not have enough psychiatry specialists and some also lack occupational therapists; as a result, only a small number of patients participate in social and psychological rehabilitation programmes.

3.4. Cooperation between special psychiatric hospitals and general hospitals is far from satisfactory.

3.5. The provisions 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 Hospitalized for Treatment in Psychiatric Institutions contain material deficiencies with regard to 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.

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 2013 Annual Report of the Protector of Citizens:

- That the **Ministry of Health** should without implement all necessary activities aimed at rationalization 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 provisions 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 Hospitalized for Treatment in Psychiatric Institutions which provide for solitary confinement of patients should be amended.

4.2. Due to a shortage of funding, the recommendations of the Protector of Citizens relating to improvements in the accommodation conditions at the Specialist Psychiatric Hospital "Kovin" have not been implemented.

5. Explanation

In the course of 2014, the Protector of Citizens, acting in the capacity of the NPM, visited Special Psychiatric Hospital "Sveti Vrincevi" to inspect compliance with earlier recommendations, as well as Special Hospital for Psychiatric Diseases "Dr. Slavoljub Bakalovic" in Vrsac as part of regular inspection visits. He also issued a Report with Recommendations to Special Psychiatric Hospital "Kovin".

Certain psychiatric hospitals have done adaptation and renovation work.¹⁶³ Toilets are now designed to provide privacy to patients. Hospital rooms and other areas where patients stay (communal areas, halls, dining rooms...) are decorated to create a more humane environment and reflect the specific nature of the patients who use them. Nevertheless, the rooms in the large psychiatric hospital in Kovin are dilapidated and do not meet the applicable standards. Large rooms, some of them even featuring more than 20 beds, are not conducive to creating a positive therapeutic environment, nor do they give the patients their privacy. The hospital has sought help from competent authorities to improve the condition of its facilities.

Hospitals keep records of the exact time when the physical restraint/binding of a patient began (which they enter immediately upon applying the measure), the exact time when the restraints are removed (which they enter immediately upon removing the restraints), the reasons for applying this measure, the name of the physician who ordered or approved the measure, a description of any injuries caused to patients or staff and any other relevant circumstances. Patients are not physically restrained in rooms where other, unrestrained patients stay. In accordance with the recommendation of the Protector of Citizens, physical restraint is performed by binding one limb only.

The length of patients' stay at hospitals for non-medical reasons in itself constitutes inhuman treatment. As there are no appropriate community-based mental health services that would be capable of caring for patients after their hospital treatment, there is no continuity of care and proper psychosocial rehabilitation is lacking. This can lead to an aggravation of the underlying disorder and may contribute to rapid deterioration of personality.

A crucial issue faced by psychiatric hospitals is the lack of medical staff and occupational therapists. Due to the insufficient human resources, employees are not able to fully meet patients' needs. Hospitals have applied to the Ministry of Health for staff increases on many occasions, but this issue remains unresolved.

Cooperation between psychiatric hospitals and general hospitals is unacceptably poor. General hospitals do not accept clinical evidence for patients referred to them from psychiatric hospitals, even if the conditions are life-threatening. Patients with severe conditions are sometimes sent from general hospitals to special psychiatric hospitals simply

¹⁶³ Special Psychiatric Hospital "Kovin" and Special Psychiatric Hospital "Sveti Vrincevi."

because they were once treated in one of those special hospitals, even if their mental health is not a primary consideration at the given moment.

6. PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **The Ministry of Health** should without any further delay implement all necessary activities aimed at rationalization 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.

2. **The Ministry of Health** should put in place measures within its sphere of competence to amend the Law on the Protection of Persons with Mental Disabilities, including the provisions governing 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. Once the Law has been amended, it will be necessary to work on amendments to the Bylaw on Detailed Conditions for Use of Physical Restraint and Solitary Confinement of Persons with Mental Disorders Hospitalized for Treatment in Psychiatric Institutions.

3. **The Ministry of Health** should put in place measures to adapt the accommodation capacities of the Social Psychiatric Hospital "Kovin."

RESIDENTIAL SOCIAL SECURITY INSTITUTIONS

I BACKGROUND

1. Government's achievements

1.1. The Protector of Citizens has not observed any major achievements in this field during the reporting period.

2. Results achieved by the Protector of Citizens

2.1. In compliance with the recommendations of the Protector of Citizens, Residential Centre "Veternik" has formed an expert team tasked with preparing individualised treatment plans for each individual patient upon admission. Users and their guardians and family members are provided with information on users' rights and house rules of the Residential Centre.

3. Shortcomings at the national level

3.1. No systemic activities have been put in place in the context of deinstitutionalisation and facilitation of community-based care for persons with intellectual and mental problems (and their families); residential social security institutions are still home to a large number of users (both adults and children).

3.2. Residential social security institutions still lack staff, including in particular physicians, pedagogues and care-givers

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 2013 Annual Report of the Protector of Citizens:

- That the **Ministry of Labour, Employment, Veteran and Social Affairs** should intensify the activities on comprehensive deinstitutionalization, i.e. reduction of capacities and closing of the existing residential social security institutions, as well as on community-based care for their users;
- That the **Ministry of Labour, Employment, Veteran and Social Affairs** should pass regulations that would provide for the procedures for restricting the freedom of movement and applying physical restraints in residential social security institutions;
- That **residential social security institutions** should immediately stop the practice of solitary confinement of their users.

4.2. The Ministry of Labour, Employment, Veteran and Social Affairs has not informed the Protector of Citizens of the activities it undertook pursuant to the recommendations for transfer of users from the Residential Centre "Veternik" to community-based care and bringing the number of users placed at the Institution down to its bed capacity in accordance with the applicable regulations.

5. Explanation

Acting in the capacity of the National Protective Mechanism, the Protector of Citizens prepared the Report of Visit to “Veternik” Residential Centre,¹⁶⁴ which outlines proposals for remedying the irregularities identified in the treatment of Residential Centre users. As the facility at present has more users (both children and adults) than is its maximum capacity under the applicable regulations, the Protector of Citizens has issued recommendations¹⁶⁵ for separating children from adults, transferring most of the users from the Residential Centre and provision of support for their community-based care.

Large residential social security institutions still have users whose sole reason for being placed there is the lack of community-based care and the absence of support to their families and guardians in their care for these persons.

Competent authorities do not act in compliance with international regulations and standards, including in particular the Convention on the Rights of Persons with Disabilities. Serbia, as a state party, has a duty to grant all persons with disabilities the right to social inclusion and the freedom to make their own choices. It also has a duty to put in place effective and appropriate measures to facilitate the exercise of this right by persons with disabilities and their full and effective participation and inclusion in the community. Based on the current state of affairs, it would seem that the government has not taken an active role to ensure the inclusion of persons with disabilities in community life.

A particular concern is the fact that many children are also placed at residential social security institutions.¹⁶⁶ Competent authorities should become very actively involved in this regard and should make efforts to arrange for non-institutionalised care for children with developmental disorders in a natural environment, preferably in their own families. In this context, those families should be given assistance and support.

The Ministry of Labour, Employment, Veteran and Social Affairs has not fully cooperated with the Protector of Citizens and has not taken the necessary measures to remedy the identified shortcomings pursuant to the recommendations given to it. Indeed, the Minister has, on several occasions, publicly opposed the recommendations and warned the Serbian public there had been instances of cannibalism among the persons placed in a facility, which he believed was a sufficient reason to not go ahead with the deinstitutionalisation of facilities where persons with intellectual impairments are placed. The Protector of Citizens is of the opinion that bringing up the issue of cannibalism among persons with intellectual impairments serves no other purpose but to unnecessarily scare the public, which further reinforces the stigmatisation of those persons.

6. PROPOSALS FOR IMPROVING CITIZENS’ POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **The Ministry of Labour, Employment, Veteran and Social Affairs**, in cooperation with the Provincial Secretariat for Health, Social Policy and Demographics and the “Veternik” Residential Centre, should put in place effective measures to comply with the recommendations relating to deinstitutionalisation of users placed at the “Veternik” Residential Centre and facilitation of their return to and care in the community.

¹⁶⁴ Report and the authority’s reply available at: <http://www.zastitnik.rs/index.php/lang-sr/2011-12-25-10-17-15/3359-2014-06-19-12-50-05>.

¹⁶⁵ Recommendations for “Veternik” Residential Centre available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/3418-2014-08-01-11-28-35>.

¹⁶⁶ At the time of the visit, 96 users were aged 6-18.

2. **The Ministry of Labour, Employment, Veteran and Social Affairs** should, in coordination with other competent authorities, implement systemic activities on comprehensive deinstitutionalization, 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 problems (and their families).
3. **The Ministry of Labour, Employment, Veteran and Social Affairs** should put in place measures to provide a sufficient number of staff (physicians, pedagogues and caregivers) in residential social security institutions.
4. **The Ministry of Labour, Employment, Veteran and Social Affairs** should ensure that children are placed separately from adults at residential social security institutions.
5. **The Ministry of Labour, Employment, Veteran and Social Affairs** should ensure that the number of users placed at residential social security institutions complies with the limits set by applicable regulations.
6. **The Ministry of Labour, Employment, Veteran and Social Affairs** should ensure that residential social security institutions discontinue the practice of placing users, including children, in solitary confinement, because such practice constitutes mistreatment.
7. **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.

TREATMENT OF ASYLUM-SEEKERS

I BACKGROUND

1. Government's achievements

- 1.1. The Ministry of Internal Affairs has formed an Asylum Office with 29 employees.
- 1.2. The Ministry of Internal Affairs has stepped up its efforts to identify and register foreign nationals found in the territory of the Republic of Serbia.
- 1.3. The Commissariat for Refugees and Migrations has increased the capacity of accommodation facilities for persons who expressed their intent to seek asylum in Serbia.
- 1.4. The Ministry of Internal Affairs and the Commissariat for Refugees and Migration have intensified their cooperation with regard to the referral of asylum-seekers to asylum centres.
- 1.5. The Ministry of Internal Affairs has established daily presence of duty police officers in asylum centres.

2. Results achieved by the Protector of Citizens

- 2.1. In accordance with the recommendation of the Protector of Citizens, an Asylum Office has been formed and staffed with much more employees than the formed Asylum Department.
- 2.2. Pursuant to the recommendation of the Protector of Citizens, the Ministry of Internal Affairs has stepped up its efforts to identify and register foreign nationals reasonably suspected of illegally entering the territory of the Republic of Serbia, as well as all other foreign nationals who have no evidence that their stay in Serbia is legal.
- 2.3. In accordance with the recommendations of the Protector of Citizens, the Commissariat for Refugees and Migrations has improved the accommodation services

provided to persons who expressed intent to seek asylum in Serbia and has provided them with a higher level of care.

2.4. In accordance with the recommendation of the Protector of Citizens, the Ministry of Internal Affairs and the Commissariat for Refugees and Migration have intensified their cooperation with regard to the referral of asylum-seekers to asylum centres.

2.5. In compliance with the recommendations of the Protector of Citizens, the Commissariat for Refugees and Migration has ended the practice of issuing certificates of temporary absence to asylum-seekers.

3. Shortcomings at the national level

3.1. The competent authorities the Republic of Serbia have not adequately established direct and effective control of foreign nationals in the process of migration through the territory of the Republic of Serbia.

3.2. Medical examinations at certain asylum centres and at the Shelter for Foreigners are not performed in accordance with the applicable regulations and standards (persons are not afforded timely examination upon their admission).

3.3. The Ministry of Internal Affairs has not provided brochures on the rights and duties of foreign nationals found in Serbia in languages they understand.

3.4. Irregular migrants punished for misdemeanours are not allowed phone calls to their country of origin and certain prisons (Sombor and Subotica) notify the diplomatic and consular missions of the person's country of origin without his/her consent.

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 necessary measures to ensure that any foreigner found in the territory of the Republic of Serbia is informed about his/her legal statutes in a language he/she can understand.

4.2. **The Ministry of Internal Affairs** is still not sufficiently effective in implementing the asylum procedure, from registration of foreign nationals who wish to seek asylum in the Republic of Serbia, through issuing of identity cards, filing of asylum applications and hearings to passing of decisions to grant/deny asylum.

4.3. **The Ministry of Internal Affairs** has not equipped all police stations with the technological means for issuing certificates of intent to apply for asylum with a photograph.

5. Explanation

According to the figures of the Ministry of Internal Affairs, in 2014 there were 23.429 foreign nationals who illegally entered the territory of the Republic of Serbia. Of them, 16.730 expressed a wish to seek asylum and 1350 of those have been registered, 460 have been issued with identity cards and 388 have applied for asylum. Asylum was granted to only one person, while five persons received subsidiary protection.

Persons who express intent to seek asylum tend to stay in the territory of the Republic of Serbia between several days and several weeks, until they make arrangements to cross the national border of the Republic of Serbia. An insufficiently effective system for managing migration flows through the Republic of Serbia has resulted in an increase in the number of illegal entries by irregular migrants into the country.

The Protector of Citizens, acting in the capacity of the National Preventive Mechanism, issued 27 recommendations¹⁶⁷ to the Ministry of Internal Affairs and the Commissariat for Refugees and Migration in early 2014 in connection with improvements in the treatment of irregular migrants/asylum seekers in the Republic of Serbia. In 2014 his activities were focused on overseeing compliance with these recommendations, which prompted a large number of visits to relevant authorities and institutions¹⁶⁸.

It has been found that, as from September 2014, duty police officers have been present at asylum centres on a daily basis and have been reporting regularly to the Border Police Administration on the remaining available beds at the asylum centres. The Border Police Administration forwards this information to police stations, which then refer persons who expressed intent to seek asylum to those asylum centres where beds are available. The asylum centres have increased their intake capacities by about 760 persons in total.

Foreign nationals found in the territory of the Republic of Serbia usually receive information on their rights and duties in the English language. Certain shortcomings have been identified in the medical examinations performed at the asylum centres, ranging from incomplete examination at some asylum centres¹⁶⁹, through unavailability of any form of medical examination¹⁷⁰ to examinations that are performed only on certain days during a week.¹⁷¹ The Shelter for Foreigners¹⁷² offers no medical examination upon admission at all; instead, examinations are performed only when the Shelter staff determines that a foreign national has visible injuries or health issues.

6. PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **The Ministry of Internal Affairs and the Commissariat for Refugees and Migration** should improve the system for managing irregular migrations by providing comprehensive and consistent application of the existing standards in the field of asylum and migrations.
2. **The Ministry of Internal Affairs** should put in place appropriate measures and activities to ensure effective implementation of the asylum procedure, from registration of foreign nationals who wish to seek asylum in the Republic of Serbia, through issuing of identity cards, filing of asylum applications and hearings to passing of decisions to grant/deny asylum.
3. **The Ministry of Internal Affairs, i.e. the Commissariat for Refugees and Migration** should ensure that medical examinations at the Shelter for Foreigners and at all asylum centres are performed in accordance with the applicable regulations and standards (including timely examination immediately upon admission).
4. **The Ministry of Internal Affairs** should provide brochures on the rights and duties of foreign nationals found in Serbia in languages they can understand.
5. **The Ministry of Internal Affairs** should ensure that certificates of intent to apply for asylum include a photograph of the asylum-seeker.
6. **Penal institutions** should enable irregular migrants punished for misdemeanours are not allowed phone calls to their country of origin and should discontinue the practice of

¹⁶⁷ Available at <http://www.ombudsman.rs/index.php/lang-sr/2012-02-07-14-03-33/3190-2014-02-14-08-47-05>.

¹⁶⁸ A total of 41 institutions were visited (police administrations/stations, regional border police centres, centres for accommodation of asylum-seekers, penal institutions, juvenile correctional facilities and the Shelter for Foreigners in Padinska Skela).

¹⁶⁹ Report of Visit to the Asylum Centre in Sjenica, No. 71-62/14.

¹⁷⁰ Reports of Visits to the Asylum Centres in Tutin, No. 71-61/14, and IJA in Sjenica, No. 71-62/14.

¹⁷¹ Reports of Visits to the Asylum Centres in Banja Koviljaca, No. 71 -52/14; in Bogovadja, No. 71 -90/14; and in Krnjaca, No. 71 - 85/14.

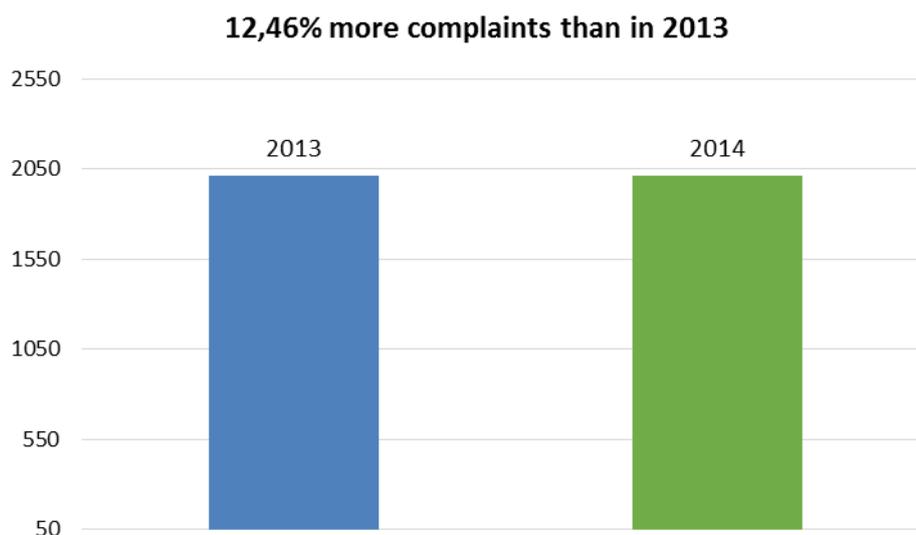
¹⁷² Report of Visit to the Shelter for Foreigners No. 71 - 84/14.

notifying the diplomatic and consular missions of the person's country of origin without his/her consent.

II COMPLAINTS

In the field of rights of persons deprived of liberty, the Protector of Citizens received 330 complaints, with 4 more cases investigated on his own initiative. Those 334 complaints account for 6.85% of the total number of complaints received by the Protector of Citizens in 2014. The number of complaints in 2014 was 12.46% higher than in the previous year.

Chart 9 - Rights of persons deprived of liberty - Number of complaints received compared to 2013



In the reporting period, the Protector of Citizens closed a total of 283 cases, of which 192 were received in 2014, while the remaining ones were carried forward from previous years.

Table 29 - Rights of persons deprived of liberty - outcome of cases handled in 2014 and in earlier years

Dismissed complaints	188	66.43%
Unfounded complaints	65	22.97%
Cases covered by recommendations issued as the result of expedited oversight procedure	15	5.30%
Cases covered by recommendations issued as the result of oversight procedure	9	3.18%
Complaint dropped by complainant	6	2.12%
Total	283	100%

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

Table 30 - Rights of persons deprived of liberty - reasons for dismissal of complaints in 2014

Declined jurisdiction - complainant referred to competent authority	80	42.55%
Premature complaint - complainant advised on available remedies	67	35.64%
Formally deficient complaint	28	14.89%

Belated complaint	8	4.26%
Anonymous complaint	5	2.66%
Total:	188	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 78.19% of dismissed complaints the Protector of Citizens gave the citizens legal assistance in the exercise of their rights before the competent authorities.

Table 31 - Rights of persons deprived of liberty - assistance provided in the form of legal advice

	Number	percentage
Dismissed complaints	188	100%
Declined jurisdiction - complainant referred to competent	80	42.55%
Premature complaint - complainant advised on available	67	35.64%
Total: assistance provided in the form of legal advice	147	78.19%

In this field, 423 different violations of rights have been identified pursuant to 334 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 32 - Rights of persons deprived of liberty - violations of rights reported by complainants

Civil and political	196	46.34%
Economic, social and cultural	81	19.15%
Right to good governance	76	17.97%
Special rights of persons deprived of liberty	70	16.55%
Total	423	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.

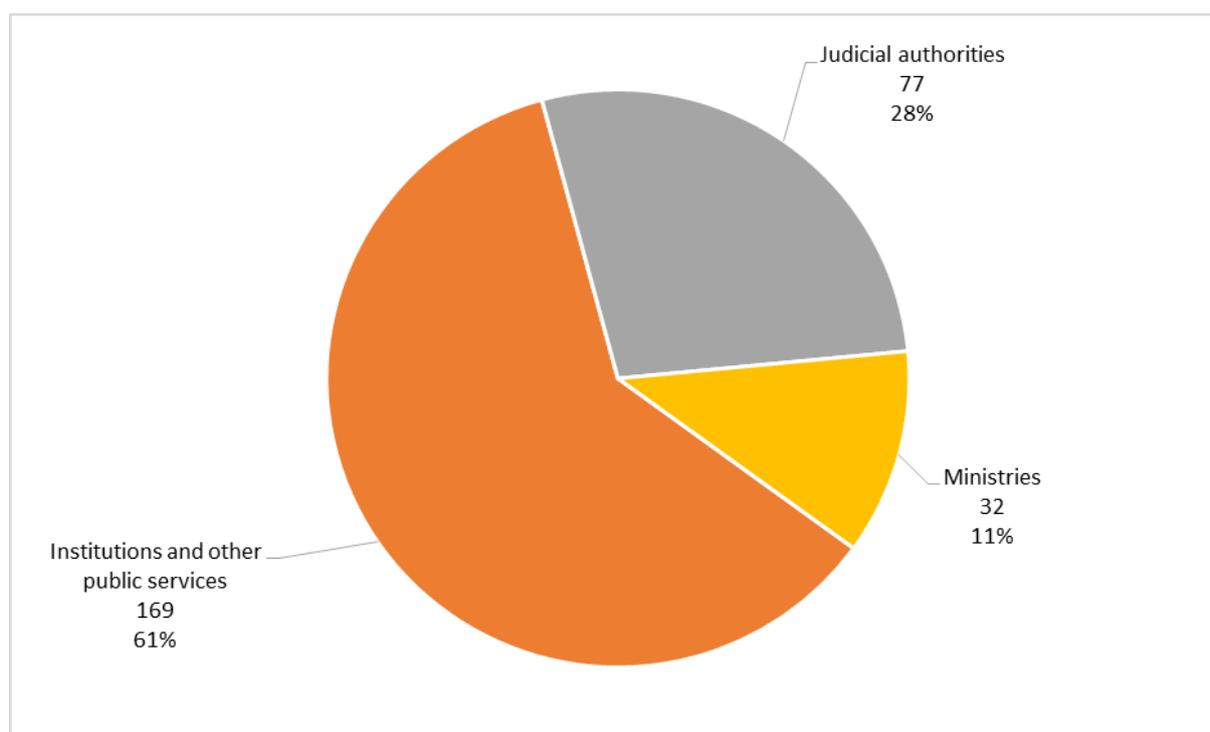
Table 33 - Special rights of persons deprived of liberty, their number and percentage

Type of right violated	Number	%	Type of right violated	Number	%
Accommodation	13	11.61%	Parole	3	2.68%
Right to transfer	12	10.71%	Clothes, underwear, footwear	2	1.79%

Right to receive visits	5	4.46%	Right to submission, complaint and appeal by a convicted person	2	1.79%
Hygiene	5	4.46%	Right to phone calls	2	1.79%
Special rights of a convicted person	5	4.46%	Amnesty	2	1.79%
Free time outside of enclosed spaces	4	3.57%	Categorisation	2	1.79%
Meals and canteen	4	3.57%	Suspension of prison sentence	1	0.89%
Placement	4	3.57%	Right to stay in a separate room	1	0.89%
Parole	3	2.68%			

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



III OTHER ACTIVITIES

With the aim of promoting and protecting the rights of persons deprived of liberty and prevention of torture, in 2014 representatives of the Protector of Citizens took part in numerous conferences, roundtables and workshops. The Deputy Protector of Citizens in charge of rights of persons deprived of liberty held several lectures for the students of the Faculty of Law and the Faculty of Medicine and issued about 30 press releases in connection with the prohibition of mistreatment and improvements in the field of prevention of torture.

In February 2014, the Protector of Citizens, the Ministry of Internal Affairs and the Belgrade Centre for Human Rights held a press conference titled "Challenges faced by the Republic of Serbia in the Field of Asylum and Migrations." In March 2014, a Deputy Protector of Citizens held a keynote address at the conference "Situation in the Field of Mental Health and Measures taken in the Deinstitutionalisation Process", organised by the Helsinki Committee for Human Rights and the International Assistance Network. On the UN International Day in Support of Victims of Torture, the 26th of June, the Committee of the Lawyers' Committee for Human Rights organised a press conference titled "The Role of Health Care Services in the Prevention of and Punishment for Torture", in which the Deputy Protector of Citizens in charge of this field and a representative of the NPM presented the health care situation in prisons. In September 2014, Group 484, the Belgrade Centre for Human Rights and the Belgrade Centre for Security Policy held a conference dedicated to the system of asylum and migrations, which was addressed by the Deputy Protector of Citizens in charge of this field and a representative of the NPM.

The Protector of Citizens has continued his successful cooperation with the OSCE Mission to Serbia. A representative of the Protector of Citizens took part in the conference titled "Prevention of Torture", organised in Belgrade in late February 2014 by the OSCE Mission to Serbia to explain the importance of regional cooperation and exchange of experiences between Western Balkans countries. With the support of the OSCE Mission to Serbia, a representative of the Protector of Citizens took part in the two-day OSCE meeting "Prevention of Torture" held in Vienna in April 2014.

The Protector of Citizens has intensified his cooperation with the UNHCR Office in Serbia and the associations Belgrade Centre for Human Rights and Group 484, with a view to implementing activities aimed at improving and protecting the rights of asylum-seekers in Serbia.

In November 2014, the Protector of Citizens, acting in the capacity of the NPM, together with the OSCE Mission to Serbia and the UNHCR Office held the First South-East OPCAT Forum. The Forum was attended by members of the UN Subcommittee on Prevention of Torture (SPT), the Southeast Europe NPM Network (Albania, Austria, Bosnia and Herzegovina, Bulgaria, Hungary, Macedonia, Croatia, Montenegro, Serbia and Slovenia) and representatives of the NPMs of Romania, Germany, Greece, the Czech Republic, France, Poland, Estonia and Azerbaijan, members of the European Committee for the Prevention of Torture (CPT), the Association for the Prevention of Torture (APT) and other international organisations, as well as representatives of the civil society, including the Public Monitoring Commissions of Russia (CoE PMC Project). A press conference titled "Prevention of Torture and Other Forms of Torture and Fight against Impunity" was held on the following day. In addition to the participants in the Forum, the press conference was also attended by representatives of the relevant ministers and of Committees of the National Assembly of the Republic of Serbia, detention institutions, courts and prosecution offices.

In 2014 the Protector of Citizens continued his participation in the work of the Southeast Europe NPM Network. In May 2014, a representative of the Serbian NPM took part in the Network meeting titled "Methodology of Writing NPM Reports" held in Ljubljana (Slovenia). In October 2014, NPM representatives attended a special training session titled "Monitoring of Psychiatric Institutions in the Context of Protection from Torture and Inhuman and Degrading Treatment" held in Skopje (Macedonia).

In 2014 the Protector of Citizens received study visits from representatives of the Georgian NPM, the Public Monitoring Commissions (PMC) of Russia and the Ukrainian NPM. During those study visits, the Serbian NPM presented his work and visited places of detention together with the representatives of these monitoring mechanisms. The Protector of Citizens was also visited by representatives of the NPMs, public authorities and non-governmental organisations of Montenegro and Albania.

IV NATIONAL PREVENTIVE MECHANISM

Under the Law amending the Law on Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁷³, enacted on 28 July 2011¹⁷⁴, the Protector of Citizens is mandated to perform the tasks of the National Preventive Mechanism against Torture (hereinafter referred to as “NPM”), in cooperation with the ombudsmen of Autonomous Provinces and associations whose statutes envisage the objective of promoting and protecting human rights and freedoms. During the reporting period, the Protector of Citizens in the capacity of NPM cooperated with the Provincial Ombudsman of the Autonomous Province of Vojvodina and numerous non-governmental organisations in charge of systemic monitoring of the situation of persons deprived of liberty in specific areas under relevant agreements, including: the Belgrade Centre for Human Rights (in the field of use of police powers and treatment of asylum-seekers), the Committee of Human Rights Lawyers (in the field of detention), the Helsinki Committee in Serbia (in the field of enforcement of penal sanctions), the International Assistance Network (in the field of rights of persons with mental disorders in detention), MDRI (in the field of rights of persons with disabilities in social security institutions), the Victimology Society of Serbia (in the field of rights of women in the prison system), the Human Rights Centre of Nis (in the field of rights of persons with disabilities in the prison system), the Human Rights Committee of Valjevo and Dialogue Valjevo (in the field of rights of juveniles in the prison system), as well as the Youth Initiative for Human Rights, the organisation “ApsArt”, Group 484, the Association of Former Convicts “Libertas” and the Association of Users of Psychiatric Services and Their Families “Duša” (Soul).

The National Assembly reviewed the 2013 Annual Report of the National Preventive Mechanism for the first time. The parliament found the Report to be detailed and comprehensive, with an exhaustive presentation of activities aimed at improving the situation with regard to the status of persons deprived of liberty and creation of a torture-free society, with full respect for the dignity and rights of all persons whose freedom of movement is restricted. The National Assembly adopted by a majority vote the Conclusions¹⁷⁵ in which the parliament ordered the competent authorities to comply with the recommendations of the Protector of Citizens and to report on the outcome to the National Assembly by 31 December 2014. According to the information available to the Protector of Citizens, the competent authorities have not done as instructed.

In the course of 2014, the NPM made 78 visits to places of detention, including 37 scheduled visits and 41 visits with specific purpose.

As part of the scheduled visits, the NPM visited 7 police administrations and 19 police stations reporting to those administrations, 3 penal institutions, 2 psychiatric hospitals and 5 homes for the elderly. In addition, the Protector of Citizens also performed 3 monitoring procedures in case of persons repatriated in the readmission at the “Nikola Tesla” Airport. On the basis of these visits, the NPM sends reports to the visited institutions with recommendations for rectifying the identified shortcomings that result or may result in torture or mistreatment.

¹⁷³ Official Gazette of RS – International Treaties, No. 7/11;

¹⁷⁴ Serbia signed the Optional Protocol to the Convention against Torture in 2003, ratified it in 2005 and became a Member State in 2006 by submitting a ratification document;

¹⁷⁵ Official Gazette of RS No. 114/14.

In 2014, the NPM focused on visits with a specific purpose, in which he examined the status of asylum-seekers and irregular migrants in the Republic of Serbia. Through oversight of compliance with the NPM's recommendations for improving the treatment of irregular migrants/asylum-seekers in the Republic of Serbia¹⁷⁶, the NPM visited 41 places of detention together with the Belgrade Centre for Human Rights. He visited 23 police stations, 5 regional border police centres, 5 camps for asylum-seekers, 5 penal institutions, 2 juvenile correctional facilities and the Shelter for Foreigners in Padinska Skela.

The activities carried out in 2014 resulted in the preparation of 43 reports of visits, including 13 reports of regular visits and 30 reports of visits with a specific purpose. In total, 345 recommendations were issued to competent authorities.

With the aim of ensuring full compliance with the recommendations set out in the reports of the visits, in 2014 the NPM engaged in a dialogue with the Ministry of Internal Affairs and the police administrations he had visited.¹⁷⁷ The purpose of this dialogue was to improve the treatment of detained persons by the police, prevent torture and improve the treatment of asylum-seekers and irregular migrants. The NPM also engaged in dialogue in the field of mental health and the deinstitutionalisation process and introduction of community-based care with the Ministry of Health, the Provincial Secretariat for Health, Social Policy and Demographics, the Ministry of Internal Affairs and the visited psychiatric hospitals.¹⁷⁸

¹⁷⁶ Recommendations available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/3190-2014-02-14-08-47-05>.

¹⁷⁷ PA Sabac, PA Smederevo, PA Novi Sad, PA Zrenjanin, PA Pancevo, PA Sremska Mitrovica, PA Sombor, PA Subotica, PA Kikinda, PA Novi Pazar and PA Prijpolje.

¹⁷⁸ Special Psychiatric Hospital "Sveti Vracevi", Nov Knezevac; Special Psychiatric Hospital "Dr. Slavoljub Bakalovic", Vrsac and Special Psychiatric Hospital Kovin.

2.6. SECTORS OF EDUCATION AND SCIENCE, CULTURE AND INFORMATION AND YOUTH AND SPORTS

EDUCATION AND SCIENCE

I BACKGROUND

1. Government's achievements

- 1.1. The Law amending the Law on Higher Education¹⁷⁹ has been enacted.
- 1.2. The Bylaw on Enrolment of Pupils in Secondary Schools¹⁸⁰ has been passed.
- 1.3. The Ministry of Education, Science and Technological Development has intensified its work on passing and harmonization of secondary legislation governing the curricula and syllabuses, as well as types of teacher qualifications in vocational schools.
- 1.4. An Inclusive Education Coordination Unit has been formed within the Ministry of Education, Science and Technological Development.¹⁸¹
- 1.5. The Ministry of Education, Science and Technological Development has prepared a Draft Law on Textbooks and Other Teaching Aids.¹⁸²
- 1.6. The Ministry of Education, Science and Technological Development has prepared a Draft Action Plan on Implementation of the Strategy for Development of Education in Serbia by 2020.

2. Results achieved by the Protector of Citizens

- 2.1. The Ministry of Education, Science and Technological Development, education institutions and higher education institutions have remedied omissions in their work by providing responses and decisions pursuant to citizens' requests, after the Protector of Citizens initiated inspection procedures.
- 2.2. The Ministry of Education, Science and Technological Development has complied with the recommendation of the Protector of Citizens and amended the provisions of the Law on Higher Education, thus improving the procedure for recognising foreign higher education diplomas and certificates.
- 2.3. Relevant authorities (the Ministry of Education, Science and Technological Development, the education inspectorate, the Institute for Advancement of Education and the National Education Council) have complied with the recommendations of the Protector of Citizens and remedied the identified omissions in their work.
- 2.4. The Ministry of Education, Science and Technological Development has incorporated the comments and recommendations given by this authority in the Draft Law on Textbooks, duly noting the opinion of the Protector of Citizens that it is necessary to regulate the textbook quality assessment procedure and ensure that all authorities act in accordance with the law in this procedure and the procedure of approving, choosing and purchasing textbooks.

¹⁷⁹ Official Gazette of RS No. 99/14.

¹⁸⁰ Official Gazette of RS No. 41/14.

¹⁸¹ For more details see section Child Rights.

¹⁸² For more details see section Child Rights.

2.5. In 2014, the Protector of Citizens received 155 complaints in this field, in which complainants alleged 176 violations of rights. In the same period, he completed the investigations in a total of 152 cases received in 2014 and in earlier years. Out of the total of 64 investigations conducted, 28 (43.75%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 11 the recommendation, of which 3 (27.27%) have been accepted, 1 (9.09%) have not been complied with and 7 are still pending. Based on the number of identified (32) and remedied (31) omissions, the rate of efficiency in this field is 96.88%.

3. Shortcomings at the national level

3.1. The Ministry of Education, Science and Technological Development, educational institutions and higher education institutions do not decide on citizens' requests and do not always reply to them timely, efficiently and within the stipulated time limits.

3.2. The work of education inspectors is not always carried out timely and efficiently and supervisory powers the education inspector of the Ministry of Education, Science and Technological Development has over educational inspectors in local self-government units are not implemented.

3.3. The Ministry of Education, Science and Technological Development has not adopted a new bylaw setting out the criteria for determining the costs of primary and secondary services or, alternatively, amended the existing ones.

3.4. The situation of educators has worsened with the austerity measures and their work is undervalued.

3.5. The National Qualifications Framework in Serbia has not been adopted.

3.6. There is no impartial, meaningful and authoritative external oversight of higher education institutions in the award of vocational, academic and scientific titles and vocations.

3.7. The response of higher education institutions and education authorities to the students' sit-in at the Faculty of Philosophy of the University of Belgrade has not been proportionate to the severity of the issue and the consequences which ensued.

3.8. Students cannot fully exercise their right to be informed of their rights and protection mechanisms.

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 2013 Annual Report of the Protector of Citizens:

- That the Ministry of Education, Science and Technological Development should ensure timely and efficient actions of education inspectors.
- That 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.

4.2. The Faculty of Sports and Physical Education of the University of Belgrade has not complied with the recommendation of the Protector of Citizens and remedied an omission which affected a citizen protected as a whistleblower by the Anti-Corruption Agency.

4.3. The Ministry of Education, Science and Technological Development, the National Council for Higher Education and the Accreditation and Quality Assurance Commission

have not accepted the opinion of the Protector of Citizens regarding the need to provide for impartial, meaningful and authoritative external oversight of higher education institutions in the award of vocational, academic and scientific titles and vocations.

5. Explanation

The Law amending the Law on Higher Education has clarified certain legislative arrangements in order to eliminate the issues observed in the implementation of the Law and reflect the existing practices. Novel features of the Law include time limits applicable to the process of accreditation, licensing and revoking of license of higher education institutions, the procedure for recognising foreign higher education diplomas, the issues of freedom of information and personal data protection, creation of a central repository of doctoral dissertations, the conditions under which the status of a student is forfeited and the conditions for progressing to the next year of studies.

The Bylaw on Enrolment of Pupils in Secondary Schools governs the criteria and procedure for determining the ranking order of candidates for school enrolment, the scores assigned to eighth-grade pupils for participation in competitions and the types of competitions taken into account for scoring purposes, the content, time and place of admission examinations and other issues of relevance for school enrolment.

The Strategy for Development of Education in Serbia by 2020¹⁸³ sets out the purpose, objectives, directions, instruments and mechanisms of development of Serbia's education system in the coming years. The Action Plan, the fourth proposal of which has recently been prepared by the Ministry of Education, Science and Technological Development, sets out the activities, competent authorities and a timeframe for achieving the identified objectives and specific goals.

Good cooperation between the Protector of Citizens and of the Ministry of Education, Science and Technological Development has continued. 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.

Authorities and institutions have in many cases been prompted by the inspections of legality and regularity of their work to properly and effectively remedy any identified omissions. However, there have been cases of inspected authorities persisting with the omissions, to which the Protector of Citizens responded by identifying those omissions and issuing recommendations for remedial action.

Belated and ineffective responses by the Ministry of Education, Science and Technological Development have most commonly been observed in the work of the Republic Education Inspectorate, as well as in the work of local education inspectorates. The Republic Education Inspectorate makes insufficient use of its oversight powers in relation to the education inspectors entrusted with conducting the inspections.

Parts of the general public and the expert community, as well as some MPs in the National Assembly, have questioned the lawfulness and regularity of acceptance of doctoral dissertations and award of the PhD title in certain cases. Given the importance science and research activities hold for the Republic of Serbia and the need to protect the integrity and dignity of holders of scientific titles, the question of lawfulness and regularity of awarded scientific titles cannot remain without an indisputable, impartial and authoritative answer.

¹⁸³Official Gazette of RS No. 107/12.

The Minister of Education, Science and Technological Development has appointed a working party in charge of prepared the Draft Integrated National Qualifications Framework for all education levels in the Republic of Serbia, but the drafting process has not been completed. Among other considerations, it should be borne in mind that an integrated National Qualifications Framework would provide for qualifications that would meet labour market demand and lay the foundations for implementing the concept of lifelong learning.

Even though the Ministry had passed the Bylaw on Standards of Competences of Directors of Education Institutions¹⁸⁴ in 2013, there is still no regulation that would govern the conditions for and manner and procedure of licensing.

The Ministry of Education, Science and Technological Development has not innovated the existing bylaws setting out the criteria for determining the costs of primary and secondary services, which the Protector of Citizens highlighter already in 2010¹⁸⁵, when he issued opinions and recommendations to that Ministry, with which it refused to comply.¹⁸⁶

The reporting period has seen teachers going on a lengthy strike and even completely stopping their work for a while. The Protector of Citizens pointed out that an improvement in the status of teachers was in the best interests not only of the education sector, but of the society as a whole as well; however, he warned that the pupils' right to education should not suffer as a result of any industrial action. The Protector of Citizens called on the education authorities and teachers' trade unions to intensify social dialogue in order to improve the quality of education and the position of teachers, as well as to advance the protection and rights of students.

Among the reasons most commonly cited by teachers and university lecturers in their complaints to the Protector of Citizens were: refusal of education institutions to enter into employment contracts with them, refusal of education institutions to make job announcements where the situation warrants it, failure of education institutions to accept part-time teachers into full-time employment, substitute teaching and inefficient and unfair actions of relevant bodies in the selection of candidates for teaching posts. In parallel with this, there has been an increase in the number of complaints alleging workplace mistreatment by heads of education institutions, including cases in which the Anti-Corruption Agency granted the whistleblower status to some of the employees who took recourse to the Protector of Citizens.

The Ministry of Education, Science and Technological Development, the University of Belgrade and the Faculty of Philosophy in Belgrade have not responded properly to the students' sit-in at the Faculty in order to address the points of contention between the students and the administration, while at the same time enabling the students to continue receiving full education, involving the legitimately elected student bodies in the process and to effectively punishing any form of violence.

Higher education institutions, university bodies and the Ministry of Education, Science and Technological Development provide belated and incomplete information to students in connection with their rights and available protection mechanisms; participation of students' bodies is law and bodies do not respond in a timely fashion to requests made by students.

¹⁸⁴ Official Gazette of RS No. 38/13

¹⁸⁵ Opinion and the recommendation of the Protector of Citizens, available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/907-2010-06-01-08-13-05>.

¹⁸⁶ Response of the Ministry of Education and Science, available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/907-2010-06-01-08-13-05>

II TYPICAL CASES

Impartial external control is needed in the award of vocational, academic and scientific titles and vocations

Some MPs in the National Assembly and parts of the general public and the expert community have questioned the lawfulness and regularity of acceptance of doctoral dissertations and award of the PhD title in certain cases. The Protector of Citizens issued an opinion to the Ministry of Education, Science and Technological Development and the National Council for Higher Education, in which he called for an impartial, meaningful and authoritative external oversight of higher education institutions in the award of vocational, academic and scientific titles and vocations. The Protector of Citizens explained this was necessary in order to protect the integrity of science, research and education and the rights and interests of all interested citizens and in order to justify the reasonable expectations held by the expert community and the general public.

The Ministry of Education, Science and Technological Development and the National Council for Higher Education have not considered the opinion of the Protector of Citizens.

Education inspector inspects his own work pursuant to a citizen's report

Instead of scrutinising the work of the education inspectorate in one local self-government (which conducts inspections as a delegated duty, under the supervision of a public authority), the Ministry of Education, Science and Technological Development forwarded the submissions in which the complainant complained about an education inspector's work to that very inspector for further investigation.

The Ministry has received recommendations to scrutinise the work of the education inspectorate which conducts inspections as a delegated duty and to directly investigate all future complaints against education inspectors in local self-governments, taking also other measures in accordance with the law as and when appropriate.

The Protector of Citizens is overseeing compliance with this recommendation.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **The Minister of Education, Science and Technological Development** should pass a bylaw which would regulate training and examinations for directors of education institutions.
2. **The Minister of Education, Science and Technological Development** should pass new bylaws setting out the criteria for determining the costs of primary and secondary services or, alternatively, amended the existing ones.
3. **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.
4. **The Ministry of Education, Science and Technological Development** should adopt the National Qualifications Framework in Serbia.
5. **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.
6. **The Ministry of Education, Science and Technological Development** should ensure that education inspectors act timely and efficiently.

7. **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 implanting regulations.

CULTURE AND INFORMATION

I BACKGROUND

1. Government's achievements

1.1. A set of media laws has been enacted, including: the Law on Public Information and the Media, the Law on Electronic Media and the Law on Public Broadcasting Services.¹⁸⁷

1.1. The Ministry of Culture and Information has initiated the process of amending the Law on Culture¹⁸⁸, soliciting the involvement of the general public.

1.2. After the Independent Committee on Investigation of the Murder of Slavko Curuvija presented its findings, the Organised Crime Prosecution Office brought criminal charges against four former officers of the State Security Department.

2. Results achieved by the Protector of Citizens

2.1. The actions of the Protector of Citizens and his efforts to shed light to identified shortcomings in media legislation in the previous reporting period have brought about to the enactment of the set of media laws.

2.2. By his actions, the Protector of Citizens prompted public authorities to control compliance of media reporting with the Law on Public Information to a larger extent.

2.3. In his media appearances, the Protector of Citizens has 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.

2.4. Public announcements made by the Protector of Citizens have increased public awareness of the links between fundamental human and civil rights and media freedoms, while at the same time also 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.

2.5. In 2014, the Protector of Citizens received 8 complaints in this field, in which complainants alleged 7 violations of rights. In the same period, he completed the investigations in a total of 14 cases received in 2014 and in earlier years. During 2014, 2 investigations were closed by issuing recommendations in an expedited inspection procedure.

3. Shortcomings at the national level

3.1. There is no adequate media oversight by public authorities to ensure they take better account of protection of minors and respect for personal dignity in the programmes they broadcast.

3.2. The media face pressures and journalists are often physically attacked because of their reporting.¹⁸⁹

¹⁸⁷ Official Gazette of RS No. 83/14.

¹⁸⁸ For more information see: <http://www.kultura.gov.rs/cyr/dokumenti/javne-rasprave>.

¹⁸⁹ For more details see section Media.

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

4.1. There are no recommendations or other enactments of the Protector of Citizens that have not been complied with in this sector.

5. Explanation

According to the set of media laws – the Law on Public Information and the Media, the Law on Electronic Media and the Law on Public Broadcasting Services – privatisation of media outlets should be completed by 1 July 2015; the laws define public interest in the field of public information; and they lay down legal assumptions for free development of independent, professional media and a media system capable of meeting a wide range of citizens' needs without any discrimination.

These laws govern the operations of public broadcasting services, namely the Serbian Broadcasting Corporation and the Radio Television of Vojvodina; these services are required to adhere to the principles of true, unbiased, complete and timely provision of information, prohibition of censorship and respect for human rights. The laws also provide for their funding from the national budget by 2016. Furthermore, the laws govern the status of editors, protect journalists' rights and promote their freedom of association, provide for transparency of media ownership, introduce a Register of Media Outlets and provide for the protection of media pluralism by prohibiting impermissible mergers in the field of public information.

The Ministry of Culture and Information has prepared a Draft Law on Culture on the basis of the opinions provided by the expert community and the general public, who were involved in the drafting process.

The Ministry of Culture and Information has initiated public debates on the Draft Law on Archive Inventory and Archive Agency, the Draft Law amending the Law on Librarianship and Information Activities, the Draft Law amending the Law on Mandatory Copies of Publications and the Draft Law amending the Law on Old and Rare Archive Materials, thus allowing the expert community and the general public to state their views on these legislative texts.

II TYPICAL CASES

Woman left without a required document for more than a year due to negligence of her professional association and inactivity of the Ministry

A woman was left without a document she needed for more than a year due to negligence of her professional association and inactivity of the Ministry. As a member of the Association of Scientific and Technical Translators of Serbia, she was unable to exercise her entitlements arising from pension and disability insurance for more than a year, because her Association did not have the status of a representative association in culture, while those associations that enjoy this status had not complied with their duty and taken over the documents, records and archives of the Association for the purpose of issuing certificates. On the other hand, the Ministry of Culture did not inspect the exercise of delegated duties by the representative associations, nor did it put in place measures to protect the complainant from harmful consequences of unresolved status-related issues and incorrect functioning of associations.

After an investigation was initiated, the Ministry ordered a representative association to take over the cases, records and archives and issue the complainant the certificate she needed to

exercise her entitlements arising from pension and disability insurance. Consequently, the investigation by the Protector of Citizens was terminated.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. The regulatory body in charge of the 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.

MEDIA AND HUMAN AND CIVIL RIGHTS

RESPECT FOR CITIZENS' RIGHTS IN THE MEDIA

Last year, the National Assembly enacted a new set of media laws, which provide for a completion of the privatisation process in the media by 1 July 2015 and define public interest in the field of public information. This has been a major step forward in reinforcing the freedom of public access and freedom of the media and ensuring better and more consistent respect for citizens' rights. By far the most important aspect of the new legislation concerns future arrangements for media funding from municipal, town/city, provincial and national budgets.

As opposed to the current practice, which allows local and national public authorities to directly fund the media whose editorial policy they perceive as favourable to them, the new legislation introduces the practice of project funding of media programming. The Law on the Media defines the public interest and budget funding can be used solely for project funding of that specific interest. Decisions to award project funding are made by independent committees, rather than the public authorities themselves.

In regulatory terms, this approach creates a clear scope for public authorities to provide strong backing for media content which serves the public interest, which should bring about to a reduction in the now ubiquitous tabloid-style reporting, pulp and trash in the Serbian media. Furthermore, this will facilitate better and more effective exercise of citizens' right to impartial, accurate and fast information on issues of public interest, while at the same time reducing scope for abuse by public authorities.

While this is undoubtedly a major step forward, the mere enactment of a set of new media laws is in and of itself far from enough if we are to successfully address the huge problems faced by the media. Little has changed in practice and all observations stated in last year's Report of the Protector of Citizens still stand. A particularly worrying trend is that the media, both in surveys conducted by media associations and publicly, increasingly report they have been subject to pressure because of their reporting.

It has become commonplace for public office holders, including the highest-ranking ones, to personally and publicly accuse the media of working against them or for being on the payroll of foreign governments and working against the country's interests. From the aspect of media freedoms, the facts reported by the media should be taken as the only relevant criterion for assessing their work. And if some media outlets indeed to resort to unlawful means in their work, it is incumbent upon public authorities to investigate the offences involved by following the procedures provided for by the law.

In summary, public authorities should enforce laws and punish the perpetrators of any irregularities they discover in the process. Launching smear campaigns against certain media outlets, accusing them of being puppets on the payroll of foreign governments or local

tycoons, is a remnant of bygone days in Serbia's recent history that should remain well and truly behind us. Unfortunately, this attitude of certain public office holders has encouraged some media outlets to chime in with their attempts to denounce their colleagues from other media outlets, which serves no purpose other than further increasing the confusion among citizens.

Although the situation with regard to respect of fundamental rights of the citizens whose problems and fates the media bring to the public eye, it is still not uncommon for them to experience hostility or even threats to their safety. Thus, on the 27th of November last year, TV Pink broadcast an interview with a mother who accused her husband of having sexual intercourse with their daughter. The broadcaster revealed the mother's identity (photographs, name and town of her residence).

Media associations – quite rightly – reacted and identified this as a violation of the Broadcasters' Code of Ethics and the Law on Public Information.

The Code clearly states that the media have a duty to protect the physical and mental dignity of the person in question. Furthermore, underage persons must be protected from explicit public appearances. According to Article 80 of the Law on Public Information and the Media, an underage person "cannot be identifiable from any information that may be prejudicial to his/her rights or interests."

Unfortunately, journalists continue to experience pressures, even physical assaults. By far the most disturbing case was the beating of Davor Pasalic, a reporter for the Fonet agency, who was assaulted on the 3rd of July last year near his flat. Mr. Pasalic was beaten two times within a very short interval by three young men who demanded money from him, but also referred to him as an "Ustasha" (a member of Croatian WWII fascist forces). The Ministry of Internal Affairs announced it would form a special team to investigate this case, but to date there have been no concrete results.

An example of serious threats to journalists can be found in the case of Ms Dragana Sotirovski, a reporter of the Serbian Broadcasting Corporation, who has received threats from the management and trade union leaders of the Special Hospital "Sokobanja" for reporting on the hospital's work. Ms Sotirovski claims the hospital has been threatening her since November 2013 and that threats also came from the former director of the hospital, Dr. Ljiljana Isakovic. It should be noted that Ms Sotirovski reported on misdemeanour charges brought against the director by some of the employees.

For the exercise of citizens' rights it is vital that journalists are safe from physical harm, but it is equally important that they are free from pressures from the institutions on whose work they report. The case of Dragana Sotirovski is also important in the light of whistleblower protection, because the criminal charges were filed by the staff of the hospital where Ms Isakovic was the director. These whistleblowers cannot feel safe if their director can threaten journalists with impunity.

Institutions which hold information of public interests have also attempted to restrict journalists' rights, and by extension also citizens' rights. Thus, the Business Registers Agency (known under its local acronym APR) has introduced user registration, which applies in particular to investigative journalists who search its archives. Journalists' association have strongly opposed this decision, believing it to be a measure aimed at restricting investigative journalism. The Business Registers Agency subsequently retracted on its decision, which was certainly praiseworthy.

The most drastic case of invasion of privacy in the past months was the publication of pornographic images which allegedly depicted Ms Vanja Calovic of the Network for Affirmation of the NGO Sector in Montenegro. The images were published by the Informer tabloid newspaper. Publication of such content in the media is beyond the pale and constitutes a veritable threat to citizens' rights and their privacy. Thankfully, such cases have been met with a sharp response from journalists' organisations and associations, in a move which reaffirms self-regulation.

HUMAN RIGHTS IN THE EYES OF THE MEDIA

Reporting of the Serbian media on topics with important human rights implications in 2014 was largely coloured with sensationalism. Just like newspaper articles in the past, media reports overflow with offensive titles, unnecessary details of violence, rude insults and unscrupulous accusations targeted at political opponents, topped with a seasoning of offensive social network comments which stoke the flames of animosity in the public.

In the heated atmosphere of warring political factions, it is not uncommon for newspapers to announce arrests without court orders or pass verdicts allegedly based on common sense or their "secret sources", usually within the police. The adverse effects on citizens' rights that result from this situation are often more difficult to remedy than the effects of wrongdoings by public authorities, since oversight authorities and other bodies are not able or indeed allowed to intervene directly and discipline the media.

Most of the media tend to focus on particularly vulnerable groups, such as persons with disabilities, national minorities (in particular the Roma), women, children, persons deprived of liberty (especially psychiatric patients), refugees and IDPs, asylum-seekers and irregular migrants and LGBTI persons, only when covering specific events, usually with a large dose of sensationalism, with no permanent topics or articles dedicated to their concerns.

It appears that the coverage of the needs of these groups ranges in tone from pity to complete stigmatisation, without any attempt to delve into the reasons and possible solutions for their plight. Below are some examples of this:

Campaigns for medical treatment: there have been positive instances of visibility of persons with disabilities and children with medical issues. The programmes are often conceived as pleas for financial help for treatment costs and usually resonate well with wide audiences. As a rule, public institutions are in such cases accused of negligence and lack of involvement, while citizens and individuals are called upon to self-organise and collect the money. Unfortunately, while the media have been quick to support pleas for financial help for treatment, they have been just as quick to publicly pass judgement in cases of alleged embezzlement of treatment funds. Instead of driving the efforts to collect additional money needed for treatment of severely ill persons, public authorities have been perceived as defensive and helpless.

Children in the eyes of the media: Judging by the number of articles focusing on children, it would appear this topic garners much attention; however, once again the media reports are bombastic and the initial interest tends to wane after just a couple of days, until the next cause for public outcry replaces it in a never-ending succession of ever more tragic events. Some of the more striking examples of negative events reported by the media in 2014 include peer violence among children, the situation of juvenile delinquents, paedophilia and incest and inability of the poorest children to attend education. The media 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.

By far the most tragic event was the death of seven children in three separate fires in insanitary settlements in Novi Beograd, in Mali Rit near Pancevo and in Donji Milanovac. The fact that the children were of Roma ethnicity somehow seemed to be the most important piece of information for the press and most of them focused on it in their front-page headlines, while some newspapers even went so far as to “chide” the parents for negligence or feign surprise at the appalling conditions in which the children were raised.

Positive examples of top achievers or pupils decorated in international competitions are delegated to the back pages of newspapers. They pass almost unnoticed and the overall impression is that all credit for their success goes to their families, while the role of many education institutions in their development and success remains invisible.

Visible segregation of the Roma population: Members of national minorities, in particular the Roma, are often painted in the press as a potential source of constant trouble: “invisible persons”, constant relocations, no education and a massive drain on social welfare. User comments frequently decry them as unjustifiably privileged in comparison with other citizens. Unfortunately, there are even TV programmes with jokes about the Roma and unwitty affectations which mimic the Romany language and poke fun at the life of this population, often walking the thin line between what is legal and what is not. Tasteless jokes about this ethnic minority are dismissed as harmless teasing. The regulatory bodies, whose duty it is to react in cases like these, have not been vocal enough.

Prejudice spreads fear from mentally ill persons: Articles about mentally ill persons are filled to the brim with prejudice and ignorance and mental illness is often depicted in a negative context, usually as an explanation for cruel murders. They give out details of the murderer’s diagnosis, how long he/she was in therapy, whether he/she was hospitalised and what treatment was applied. Headlines contain unqualified statements about murderers being mentally ill, as if there were an unquestionable correlation between the two facts.

Health care professionals who work in this field and who should explain the true nature of mental illness from the professional viewpoint are rarely given prominence in the media.

Undesirable asylum-seekers and irregular migrants in our midst: Asylum-seekers and irregular migrants are also painted with a negative brush. The media tend to give much attention to the concerns of the citizens living in the vicinity of camps for migrants, who allegedly fear for their lives and property, while the competent institutions (the Commissariat for Refugees and the Ministry of Internal Affairs) are largely absent from the public discourse.

Invisible LGBTI population: Coverage of the LGBTI population “booms” immediately before a Pride Parade, only to recede back into obscurity until the next year’s event. It appears that the media are interested only in finding out which political faction supports the Pride Parade and who might attend it, instead of aiming to bring attention to the issues faced by the LGBTI population and their visibility in the public. The Office for Human and Minority Rights tends to issue announcements on this subject matter only when the date of a Pride Parade is nearing or when formal meetings with LGBT associations are arranged.

Domestic violence and an increasing trend of murder/suicide: Cases of domestic violence garner much media attention. The media usually copy from police reports which describe the act of violence itself. The number of women murdered in 2014 was lower than in 2013 (hence the frequent boast that “only” 25 women were murdered, as opposed to 45 last year). Only few media outlets provide deeper analyses into the causes and consequences of such violence and the measures taken by public authorities and the society as a whole to reverse this growing trend.

Media reports often justify the situation by claiming that the competent authorities lack financial resources, centres for social work are understaffed and underfunded, police stations lack precise information about the offenders' actions and courts lack sufficient evidence for convictions. The "safe house" model, initially intended as a modest contribution of an NGO in an effort to provide housing to the women and children who suffer violence, has become the dominant model for responding to domestic violence in the eyes of the media.

Prostitution – responsibility of the women: In 2014 there were several media reports on the so-called elite prostitution, which speculated on or even publicly exposed the names of the alleged prostitutes. Thus, one report about young women arrested for alleged prostitution towards the end of the year included nude images of the women with their full names and surnames, often accompanied by snide comments, with details of their families, education and statements from their friends and acquaintances. Their customers allegedly included politicians and other public figures. On the other hand, the article gave out only the initials of the person who ran the prostitution business, the pimp, who was also arrested; all of his images in the media have been blurred out and the public still does not have even the basic information on the man who allegedly made profit by arranging for the prostitution of young women and who – lest we forget – reportedly took a fifty percent "cut" out of their earnings. As criminology views the pimp as the main culprit in the organisation of a human trafficking chain, there is every reason for the public to be aware of his role. And if politicians used the prostitutes' services, the public should be all the more interested in this case, because it exposes illicit behaviour of those in positions of power. However, no information has been provided on any of this; what we have been served instead are personal details of the women, whose photographs have been on public display like goods in a shop window.

Although many attempted to justify this case by patriarchal views (men decide what is right and wrong and women have to obey) or gender inequality (in a "business venture", the man earns and the woman works), it shows that certain individuals and groups continue to enjoy full protection in the media, while the women – who were *de facto* the victims in this case – are publicly named and shamed.

The overall impression of media coverage of human rights is one of short-term, "instant" attention-grabbing, laden with prejudice. Institutions and competent authorities often appear powerless to tackle the issues at hand, which they justify by quoting financial and organisational reasons. The media image of institutions as non-functional has become the standard.

YOUTH AND SPORTS

IV BACKGROUND

1. Government's achievements

- 1.1. The Law on Prevention of Doping in Sport¹⁹⁰ has been enacted.
- 1.2. The Ministry of Youth and Sports has prepared the final text of the Draft National Youth Strategy for the period from 2015 to 2025.¹⁹¹
- 1.3. The work on amendments to the Law on Youth¹⁹² is underway.
- 1.4. The Model Protocol for the Protection of Children and Youth against Violence in Sports and Recreational Activities¹⁹³ has been prepared.

2. Results achieved by the Protector of Citizens

- 2.1. By issuing opinions to the Ministry of Youth and Sports, the Protector of Citizens emphasized the need to improve the competition procedure for selection of members of the Youth Council.
- 2.2. In 2014, the Protector of Citizens received 15 complaints in this field, in which complainants alleged 15 violations of rights. In the same period, he completed the investigations in a total of 11 cases received in 2014 and in earlier years.

3. Shortcomings at the national level

- 3.1. The field of contracting between sport clubs/organisations and underage athletes is not regulated, which harms child athletes as an economically disadvantaged party.
- 3.2. A comprehensive program for employment and encouraging of education and professional advancement of the youth has not been enacted, in spite of the fact that Serbia has one of the highest youth unemployment rates in Europe (over 50% of youth are unemployed, while 60% of youth are long-term unemployed)¹⁹⁴ and this population group is most affected by the inability to find jobs.¹⁹⁵
- 3.3. Young people who are neither in education nor employed and live with their primary families who are not users of social benefits cannot exercise the right to health insurance payable by the Republic Health Insurance Fund, although this population group requires increased attention of the health care system, particularly in the field of mental and reproductive health.

¹⁹⁰ Official Gazette of RS No. 111/14.

¹⁹¹ For more information see: www.mos.gov.rs.

¹⁹² For more information see: www.mos.gov.rs.

¹⁹³ For more details see section Child rights.

¹⁹⁴ For more details see: <http://www.europa.rs/en/mediji/najnovije-vesti/4346/EU+shares+experience+with+Serbia+on+combating+youth+unemployment.html>.

¹⁹⁵ The majority of unemployed persons are young people aged between 24 and 29. In November 2014, there were 97,713 unemployed young persons. Source: the National Employment Service, the Monthly Statistical Bulletin for November 2014, No. 147, available at http://www.nsz.gov.rs/live/digitalAssets/3/3041_bilten_nsz_novembar_2014.pdf.

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 2013 has not been complied with:

The **Ministry of Youth and Sports** amend the Law on Sport and regulate the field of contracting between sport clubs/organisations and underage athletes.

5. Explanation

The main reason for enactment of the new Law on Prevention of Doping in Sport was to improve the manner of regulation of this subject matter in the Republic of Serbia and to harmonise it with the changes made in international documents relating to prevention of doping in sport during the previous nine years. Since the International Convention against Doping in Sport refers to the uniform application of the main provisions of the World Anti-Doping Code in all countries that are signatories to the Convention, including the Republic of Serbia, and since the content of the World Anti-Doping Code has been significantly changed in the past years and that numerous new rules under this Code entered into force on 1 January 2015, the Serbian legislature enacted the new Law harmonised with the arrangements of this Code in order to comply with its international legal duties. The new Law comprehensively and systematically regulates the measures and activities for prevention of doping in sport. The Working Group for preparation of the National Youth Strategy for the period 2015-2025 formulated the final text of the Draft National Youth Strategy 2015-2025 after a public debate and took into account all comments received from associations, individuals and international partners.

The Ministry of Youth and Sports initiated a procedure to amend the Law on Youth. To that end, the Ministry invited youth associations, associations for youth and their federations, as well as offices for youth to give their suggestions and proposals and to become involved in the amendments. The Ministry invited all interested parties who are not able to attend round tables to submit their comments by filling a questionnaire on the official website of Ministry, with the aim of including the general public in the amending of the Law, identifying the shortcomings of the existing Law on Youth and initiating the improvement of legislation.

Taking into account that the Protector of Citizens found in exercise of his oversight function that the competition procedure for the selection of members of the Youth Council was not transparent enough, the Protector of Citizens issued an opinion to the Ministry of Youth and Sports stating that active participation of the youth in the work of the Youth Council was an important mechanism for involvement of young persons in making and implementation of the youth policy and it was necessary to ensure that as many young people as possible not only have access to information on activities of the Council, but also participate in its work. The Protector of Citizens emphasized that youth participation in the work of the Council could be improved by appropriate measures of the Ministry of Youth and Sports which would ensure that the duration of the term of office of members in the Youth Council is limited, that any information on the work of the Youth Council, including in particular public calls for participation in the work of this body and for proposal of candidates for Membership in it, is transparent and available to as many young people as possible and that time limit for submission of applications for a public call for selection of members of the Youth Council.

In a recommendation given to the Town Administration of Loznica¹⁹⁶, the Protector of Citizens emphasized the need to encourage female sport and the duty of local self-governments to set involvement of women, children and youth in sport as one of priorities in allocation of budget fund for sport.

Health vulnerability of the youth is increasing, with increased tobacco, alcohol and psychoactive substances abuse, increased number of injuries – including those resulting from abuse – as the most common risk factors. Mental health of the youth is poor and, consequently, there has been a noticeable increase in the incidence of behaviour disorders, addictions, depression and suicide rates. Reproductive health of the youth is characterised by low use of contraceptives and increasing incidence of sexually transmitted diseases.¹⁹⁷ Preservation and improvement of youth health, reduction of health risks and a number of the most frequent health disorders are set as overall strategic objectives of the Republic of Serbia.¹⁹⁸ It is therefore necessary to dedicate special attention to this population group which is particularly vulnerable in terms of health.

V TYPICAL CASES

Schooling of young persons also depends on efficiency of judicial authorities

A young man aged 25 has dropped out of education because, even with a final and enforceable court decision, he cannot exercise the right to support by his parents and his poor economic and social status does not allow him to pay tuition fees at his university school. The court decision has not been enforced and the parent who was ordered to pay child support – even though he was found guilty of the criminal offence of refusal to pay child support – failed to comply with his duty. The consequences of inefficiency of public authorities in the implementation of the court decision and punishing of unlawful behaviour in this case had a bearing on the education of a young person who, after he was left without means of livelihood as a result of his parents' negligence, received also no support from the society, which is supposed to have an interest in increasing the number of young people with university degrees and various forms of vocational training and professional advancement available to young people.

Young person without health insurance

After graduating from secondary school, a girl aged 19 has been trying without success to find a job. Since she is neither in education nor employed, lives with her parents and does not belong to a socially vulnerable group, her health insurance was cancelled. For that reason, she had to discontinue treatment in a mental health institution for children and youth, because her family is neither able to pay contributions for inclusion in compulsory health insurance nor to pay for health services. The Republic Health Insurance Fund advised her to change her place of residence so that she could ostensibly comply with the requirements for the status of a socially vulnerable person. The Protector of Citizens is conducting out an investigation of legality and regularity of the work of several administrative authorities in connection with this and other complaints relating to citizens' health insurance.

¹⁹⁶ For more details see section Gender Equality and Rights of LGBT Persons.

¹⁹⁷ Youth Health Development Strategy of the Republic of Serbia, Official Gazette of RS No. 104/06.

¹⁹⁸ The National Youth Strategy, Official Gazette of RS No. 55/08.

VI PROPOSALS FOR IMPROVING THE CITISENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

2. **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, education and professional skills upgrading of youth.
3. **The Ministry of Youth and Sports** should amend the Law on Sport and should regulate the field of contracting between sport clubs/organisations and underage athletes.
4. **The Ministry of Youth and Sports** should improve the transparency of public calls and competitions.
5. **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.

2.7. HEALTH SECTOR

VII BACKGROUND

1. Government's achievements

- 1.1. The Law on Medical Documentation and Records¹⁹⁹ has been enacted.
- 1.2. The Law amending the Law on Health Care²⁰⁰ has been enacted.
- 1.3. The Law amending the Law on Health Insurance²⁰¹ has been enacted.
- 1.4. The Government has passed the Decision on Establishment of a Budget Fund for Treatment of Diseases, Conditions or Injuries that cannot be successfully treated in the Republic of Serbia.²⁰²
- 1.5. The Ministry of Health formed a team of coordinators for improvement of the health care system which will be responsible for improvement of certain fields - ophthalmology, orthopaedics, radiology, cardiology and medicinal products and medical devices.²⁰³
- 1.6. The Republic Health Insurance Fund formed the Office for cooperation with associations of patients and persons with disabilities.²⁰⁴

2. Results achieved by the Protector of Citizens

- 2.1. The initiative of the Protector of Citizens to delay replacement of the existing health insurance documents was formally accepted with the enactment of the Law amending the Law on Health Insurance, which saved the citizens' an amount of approximately EUR 30 million.
- 2.2. The Protector of Citizens recommended to the Ministry of Health to amend the Bylaw on the Manner of Handling of Complaints, the Form and the Content of Records and Reports of Advisors in Charge of the Protection of Patients' Rights²⁰⁵

¹⁹⁹ Official Gazette of RS, No. 123/14.

²⁰⁰ Official Gazette of RS, No. 93/14.

²⁰¹ Official Gazette of RS, No. 107/05, 109/05, 57/11, 110/12, 119/12, 99/14, 123/14 and 126/14.

²⁰² Official Gazette of RS, No. 92/14, 122/14 and 131/14.

²⁰³ Available at: www.zdravlje.gov.rs/showelement.php?id=7626.

²⁰⁴ Available at: www.rfzo.rs/index.php/aktuelnosti/vesti-arhiva-2014.

²⁰⁵ Available at: www.ombudsman.rs/index.php/lang-sr/2011-12-11-11-34-45/3269-2014-04-14-12-05-30.

- 2.3. Pursuant to a recommendation of the Protector of Citizens, the Medical Centre Ruma stopped charging the service of vacutainer blood sampling.²⁰⁶
- 2.4. The Protector of Citizens recommended that the Ministry of Health act on citizens' reports lawfully, efficiently, regularly and diligently in its future work.²⁰⁷
- 2.5. The Protector of Citizens contributed to capacity building of the mechanisms for the protection of patients' rights by preventative actions, through trainings for advisors for the protection of patients' rights and members of local health councils in 98 local self-governments.
- 2.6. The Protector of Citizens contributed to public awareness raising and dissemination of knowledge on patients' rights, with particular emphasis on health care for the Roma national minority through trainings for the Roma women's' organisations.
- 2.7. In 2014, the Protector of Citizens received 136 complaints in this field, in which complainants alleged 154 violations of rights. In the same period, he completed the investigations in a total of 121 cases received in 2014 and in earlier years. Out of the total of 33 investigations conducted, 2 (6.06%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 8 the recommendation, of which 5 (62.5%) have been accepted, 1 (12.5%) have not been complied with and 2 are still pending. Based on the number of identified (8) and remedied (7) omissions, the efficiency in this field is 87.5%

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, the right to health insurance and health care of a number of employees and their families is not protected at the moment, regardless of the constitutional guarantees.
- 3.2. Mechanisms for the protection of rights established the Law on Patients' Rights²⁰⁸, including in particular advisors for the protection of patients' rights, in the majority of local self-governments do not have appropriate working conditions.
- 3.3. The Law amending the Law on Health Care²⁰⁹ has not been enacted to regulate the issue of additional work in health institutions.
- 3.4. Because of weaknesses in the implementation Law on Public Procurements, purchased medical material and equipment are sometimes of poor quality, their delivery is delayed and they cause large subsequent expenses, which is contrary to the interests of patients' health and the principle of the highest possible health care standards.²¹⁰
- 3.5. Citizens still experience problems due to inappropriate work organisation in certain health institutions. The issues in connection with waiting lists and making appointments for diagnostic and specialist and consultative check-ups within the statutory time limits have not been completely addressed.
- 3.6. A particular problem is the practice of health institutions to make appointments for medical check-ups for the next month only during one day in the current month, which violates the guaranteed patients' right to availability of health care.

²⁰⁶ Available at: www.ombudsman.rs/index.php/lang-sr/2012-02-07-14-03-33/3363-2014-06-22-10-30-54.

²⁰⁷ Available at: www.ombudsman.rs/index.php/lang-sr/2012-02-07-14-03-33/3413-2014-07-29-09-49-57.

²⁰⁸ Official Gazette of RS No. 45/13.

²⁰⁹ Available at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/5076-13.pdf.

²¹⁰ Available at: www.ombudsman.rs/index.php/lang-sr/2011-12-25-10-17-15/2011-12-25-10-13-14/3635-2014-12-26-15-12-18.

3.7. As in the previous years, the position of employees in the health care sector is fraught with a number of problems. The corruption perception is very high. Nominal salaries are disproportionately low, while actual incomes of privileged individuals have been non-transparently increased by taking up multiple jobs which are beyond the physical abilities of any man.

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 2013 Annual Report of the Protector of Citizens:

The **Republic Health Insurance Fund** (hereinafter referred to as "the Republic Health Insurance Fund") and the **Tax Administration** should act promptly and cooperate efficiently to ensure timely payment of health insurance contributions by employers and other contribution payers.

The **Tax Administration** should start the implementation of the measures provided by the law against employers/contribution payers for health insurance.

The **Ministry of Health and the Republic Health Insurance Fund** should explain the nature (binding or non-binding) of the rules contained in treatment protocols and bylaws which bind physicians to comply with procedures and use drugs/medical devices even when they believe such drugs/medical devices are not appropriate for health needs of a specific patient.

By carrying out inspections, the **Republic Health Insurance Fund** and the **Ministry of Health** should ensure that health institutions comply with the law and issue stipulated certificates to patients in case they are not able to provide health services in an appropriate manner and /or within an appropriate time limit.

Deficiencies caused by waiting lists should be completely eliminated.

The **Ministry of Health** should supervise efficient protection of patients' rights and smooth functioning of the newly formed protection mechanisms, in accordance with the Law on Patients' Rights.

The **Ministry of Health and the Republic Health Insurance Fund** should ensure more information to patients on their health insurance and health care rights.

The **Ministry of Health** should ensure that health institutions organise their work in the manner which provides the highest possible respect of patients' time and their right to available and high-quality health care.

4.2. The Ministry of Health has not complied with the recommendations of the Protector of Citizens to amend the forms stipulated under the Law on Patients' Rights, with the aim of ensuring efficient and comprehensive reporting of advisors for the protection of patients' rights and the Health Council.

5. Explanation

Enactment of the Law on Medical Documentation and Records ensured uniform keeping of medical documentation and records in health institutions, private practice and other legal entities carrying out the health care activity in accordance with the law, with the aim of improving the treatment process and ensuring exercise of the guaranteed patients' rights to the highest extent possible. Information documented and recorded in the manner stipulated by the law is the basis for functioning of the integrated medical information system and when it is collected in this manner, it will be available to all health professionals and associates, in accordance with the law. Collecting and processing of information in

connection with population health is a condition for cost-effective use of all available resources in the health care system.

Amendments to the Law on Health Care ensured approval of specialisations and narrow specialisations also to unemployed health professionals with higher education, which contributed to addressing of the problem of lack of physicians with relevant specialisations and to hiring of health professionals which have difficulties in finding appropriate jobs in their profession.

On the basis of the Decision the Constitutional Court²¹¹, the provisions of the Law on Health Insurance, according to which the condition for certification of health insurance documents is selection of a chosen physician, have been declared unconstitutional and repealed.

Another amendment to the Law on Health Insurance has postponed the replacement of health insurance documents and the introduction of a special medical card for the use of health care services until 31 December 2016, which means the initiative of the Protector of Citizens was formally adopted. Considering that there are other citizens' health care rights that are either not exercised or are not fully exercised, the respect of which is much more important than replacement of the existing health insurance documents by a plastic medical card for the issuing of which the citizens' would have to pay RSD 500.00, the Protector of Citizens launched an initiative to address this problem institutionally, which resulted in adoption of amendments to the Law and delay of the duty to replace documents.

The Protector of Citizens found that the Health Inspectorate of the Ministry of Health made an omission in its work because it contributed to the expiry of the statute of limitations for initiation and conduct of infringement proceedings by failing to timely investigate all allegations in citizens' reports about unlawful operations of a health institution and did so only after the Protector of Citizens initiated investigation of that authority.

The Protector of Citizens contributed to public awareness raising and dissemination of knowledge on patients' rights, with special emphasis on health care for the Roma, through trainings for 18 members of 10 female Roma organisations.

In order to ensure additional funds for treatment of diseases, conditions or injuries and treatment of patients with certain types of rare diseases which are curable but cannot be successfully treated in the Republic of Serbia and for treatment of which the Republic Health Insurance Fund cannot provide sufficient funds from payments of contributions for compulsory health insurance and from other sources of financing in accordance with the law, the Budget Fund for Treatment of Diseases, Conditions or Injuries that cannot be successfully treated in the Republic of Serbia has been opened.

The Republic Health Insurance Fund formed the Office for cooperation with associations of patients and persons with disabilities, with the aim of establishing continual cooperation with patients' associations and joint addressing of the problems faced by patients, which certainly contributes to improvement of the quality of the health care system.

Finding that the manner of recording and reporting of advisors for the protection of patients' rights and the Health Council in local self-governments does not enable the collecting of information which would provide a sufficient basis for passing substantiated conclusions on the exercise of patients' rights, the Protector of Citizens submitted to the Ministry of Health an opinion with recommendations to change the existing forms in accordance with the proposed models. After submitting the opinion, in an effort to ensure substantial compliance

²¹¹ Official Gazette of RS No. 126/14.

with the given recommendations, the Protector of Citizens organised trainings for advisors for the protection of patients' rights and members of local health councils in 98 municipalities and towns/cities. These trainings should be continued in the first half of 2015.

At the initiative of the Protector of Citizens, improvement of public procurements in health institutions in the interest of patients' health will in the following period be one of the priorities of the Ministry of Health and the Public Procurement Administration, while other public authorities and bodies, including the Ministry of Internal Affairs and the Commission for the Protection of Bidders' Rights, will be invited to closely cooperate.

Problems faced by citizens' in the exercise of rights under compulsory health insurance remained almost the same compared with previous reporting period: cooperation between the competent authorities is not efficient enough, citizens' suffer the consequences of negligence of contribution payers for compulsory health insurance. The number of complaints relating to determination of the basis of insurance has significantly increased.

In spite of the past warnings by the Protector of Citizens that the arrangements for additional work in health institutions had the potential for abuse, the Bill amending the Law on Health Care²¹², which would regularly and lawfully regulate additional work in health institutions, was withdrawn from the procedure.

In the reporting period, the practice of unavailable appointment dates or difficulties in appointing medical check-ups in health institutions, long waiting lists, lack of medicinal products and medical devices, incorrect treatment by health professionals and insufficient involvement of health professionals in informing patients about their rights and the procedure for exercise and protection of those rights have persisted.

Health institutions continued to use practice of appointing medical check-ups for the next month during only one day of the current month, which violates patients' guaranteed right to availability of health care and the patients' right to respect of their time. On the other hand, citizens' are still not sufficiently informed about their right and the corresponding duty of health institutions to issue a certificate in case they cannot appoint check-ups within the statutory time limit by which they could refund the costs in the Republic Health Insurance Fund after they undergo check-ups in the private practice. In such cases, citizens' mostly undergo check-ups in the private practice, without obtaining a certificate in advance to be entitled to refund of costs, although they pay compulsory health insurance contributions every month and are entitled to treatment from health insurance funds.

In this reporting period, the number of citizens' complaints about technical medical mistakes made during the course of patients' treatment increased significantly and on a number of occasions the citizens' also expressed doubt in the authenticity of reports of expert commissions for control of quality of professional work in health institutions. The protection of patients' rights would be enhanced by improvement of the manner and procedure of control of the quality of professional work. This would ensure professional, expert, diligent and impartial control of physicians' professional work which would result in proper, comprehensible and substantiated reports based on facts and evidence.

As in the previous reporting period, health professionals and associates faced numerous problems in connection with their labour law status. The so-called uncontracted employees whose hiring is not contracted with the Republic Health Insurance Fund and who are financed by health institutions are not only dissatisfied with working conditions and the fact

²¹² Available at: www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/5076-13.pdf.

that payment of their salaries depend on the earnings made by a health institution in the market, but they also question the criteria the managers in health institutions used in selection of employees who constitute the so-called contracted human resources. Citizens question regularity and lawfulness of public competitions and they believe there are other criteria for selection instead of those specified by the law.

VIII OTHER ACTIVITIES

Trainings for advisors for the protection of patients' rights and members of local health councils

The Protector of Citizens organised trainings for advisors for the protection of patients' rights and members of health councils in 98 towns/cities and municipalities, while continuation of training is planned 2015. Trainings were held in Belgrade, Sabac, Subotica, Pozarevac, Zajecar, Kragujevac, Nis and Vranje. In addition to ensuring substantial compliance with the recommendations of the Protector of Citizens to change the existing forms for reports of advisors for the protection of patients' rights in accordance with the models proposed by the Protector of Citizens, the objective of trainings is also to inform in detail the participants in trainings about the competences of the Protector of Citizens and experiences of this institution in connection with the exercise of rights in the field of health care and health insurance and patients' rights. Special attention was dedicated to the position of vulnerable population groups (children, women, young people under 26 years of age, the elderly, persons with disabilities and the Roma) and the most frequent problems these persons face in exercise of their rights. The participants also learned about the reasons why the Protector of Citizens proposed a change of the form for reports and benefits for all authorities, including local self-government authorities, from such reporting which would contribute to timely identification of potential problems and their efficient addressing.

During the trainings, advisors for the protection of patients' rights and members of local health councils pointed to the problems they face in their work, particularly short time limits for acting and inappropriate rooms where complainants are admitted, which cannot provide the complete protection of privacy. The records from all trainings held in this reporting period are available to the public and posted on the official website of the Protector of Citizens, while all records was also submitted to the Ministry of Health.

The Protector of Citizens took part in training titled Project "I Know My Rights: Mobilisation of the Roma Community for Recognition and Practicing of Health Care, Social Security and Education Rights".²¹³

During this reporting period, the Protector of Citizens established cooperation with various authorities and institutions, as well as with the civil sector. The Protector of Citizens participated in various round tables, seminars, and other events dedicated to the exercise of rights in the field of health care and health insurance.

IX TYPICAL CASES

Failure to submit report on extraordinary external evaluation of professional work at a health institution within the specified time limit

After his mother died during treatment, a complainant submitted a request for an extraordinary evaluation of professional work at the health centre Knjazevac. Although the procedure was completed, the report of the medical committee on extraordinary evaluation of the Ministry of Health was not submitted within the statutory time limit of 15 days of the

²¹³ For more details see section Gender Equality and Rights of LGBT Persons.

date of its preparation; instead, it was submitted seven months later, and even then only after the Protector of Citizens initiated investigation of lawfulness and regularity of work of the Ministry of Health. The reasons for this have not been sufficiently explained, taking into account the specific and insufficiently regulated roles of the Ministry, the Institute for Public Health “Dr. Milan Jovanovic Batut” and the supervisors themselves have in the extraordinary quality assurance procedure.

Untimely acting on complainant’s report results in the expiry of the statute of limitations

After an investigation of lawfulness and regularity of work of the Ministry of Health, the Protector of Citizens found that the Health Inspectorate of the Ministry of Health made an omission in its work to the detriment of the complainants’ rights because it contributed to the expiry of the statute of limitations of infringement proceedings by failing to timely investigate all allegations in citizens’ reports about unlawful operations of a health institution and did so only after the Protector of Citizens initiated investigation of that authority. In accordance with the recommendation of the Protector of Citizens, the Ministry of Health issued an apology to the complainant.

Health institution charged use of medical supplies to patients for which it previously received funds from the Republic Health Insurance Fund

After investigation of lawfulness and regularity of operations of the Medical Centre in Ruma, the Protector of Citizens found that this institution charges provision of a health service to patients without a proper basis and that acting general manager of the Medical Centre, as a person responsible for lawfulness of operations of the health institution, failed to take measures to prevent or cease with unlawful actions. The procedure was closed by submission of a recommendation to the Medical Centre in Ruma and to the District Council of Ruma, as the founder of this health institution. The health institution rectified the omission by ceasing the practice of unlawful charging of the health service, however, the District Council of Ruma have not considered an option to take measures against the general manager of the institution because of his omissions.

X PROPOSALS FOR IMPROVING THE CITISENS’ POSITION IN RELATION TO GOVERNMENT AUTHORITIES

6. **The Government** should propose and the **National Assembly** should adopt amendments to the existing Law on Health Care, which would regulate carrying out of additional work in health institutions in the manner which would minimise the possibilities for abuse of legal provisions.
7. **The Ministry of Health** should eliminate deficiencies caused by waiting lists.
8. **The Ministry of Health** should take measures to prevent carrying out of additional work contrary to the law.
9. **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.
10. **The Ministry of Health** should that health institutions organise their work in the manner which provides the highest possible respect of patients’ time and their right to available and high-quality health care.
11. **The Ministry of Health** should in its future work dedicate special attention to the manner of quality assurance of professional work in health institutions, particularly to specify the manner of acting and time limits for submission of reports of expert supervisors to the Ministry and to the parties in the procedure.

12. **The Ministry of Health and the Republic Health Insurance Fund** should explain the nature (binding or non-binding) of the rules contained in treatment protocols and bylaws which bind physicians to comply with procedures and use drugs/medical devices even when they believe such drugs/medical devices are not appropriate for health needs of a specific patient.
13. **The Ministry of Health and the Republic Health Insurance Fund** should ensure more information to patients on their health insurance and health care rights.
14. **The Ministry of Health and the Republic Health Insurance Fund** should directly inspect the manner of appointing medical check-ups in health institutions and take measures which would ensure appointing of check-ups in accordance with the law, patients' needs, health conditions and the duty to respect patients' time.
15. **The Ministry of Health and local self-government 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.
16. By carrying out inspections, **the Republic Health Insurance Fund and the Ministry of Health** should ensure that health institutions comply with the law and issue stipulated certificates to patients in case they are not able to provide health services in an appropriate manner and /or within an appropriate time limit.
17. **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.

2.8. SOCIAL SECURITY AND PENSION AND DISABILITY INSURANCE SECTOR

SOCIAL SECURITY

I BACKGROUND

1. Government's achievements

1.1. The Law on Public Broadcasting Services²¹⁴ has been enacted.

2. Results achieved by the Protector of Citizens

2.1. The Protector of Citizens has filed a motion for constitutional and legal review²¹⁵ of the Decree on Social Inclusion Measures for Welfare Recipients²¹⁶ with the Constitutional Court.

2.2. The Protector of Citizens has filed an Initiative for Amendments to the Law on Financial Support to Families with Children.²¹⁷

2.3. The Protector of Citizens has given visibility to the status of children living and working on the streets and mobilised the competent authorities.²¹⁸

2.4. In 2014, the Protector of Citizens received 44 complaints in this field, in which complainants alleged 50 violations of rights. In the same period, he completed the investigations in a total of 34 cases received in 2014 and in earlier years. Out of the total of 10 investigations conducted, 2 (20%) investigations were closed by recommendations issued in an expedited inspection procedure. Based on the number of identified (2) and remedied (2) omissions, the efficiency rate in this sector is 100%.

3. Shortcomings at the national level

3.1. Parents with children who need constant care and assistance do not have at their disposal adequate services in the field of health care, social security, education and local community services, nor are support and assistance ensured to them when they provide such services themselves.²¹⁹

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 community, have access to health care and social security services and enjoy full protection from violence, mistreatment and neglect.²²⁰

3.3. Austerity measures have further reduced the already limited range of available social security services.

3.4. Decisions to grant or deny social security rights do not contain a clear, substantiated and comprehensible statement of reasons.

3.5. The Law on Social Housing²²¹ does not clearly and precisely regulate the duties and responsibilities of housing policy implementers at the national and local levels or their

²¹⁴ Official Gazette of RS No. 83/14.

²¹⁵ Official Gazette of RS, No. 16/02, 115/05, 107/09 and 104/14.

²¹⁶ Official Gazette of RS No. 112/14.

²¹⁷ For more details see section Child Rights.

²¹⁸ For more details see section Child Rights.

²¹⁹ For more details see the part of this Report dedicated to child rights.

²²⁰ For more details see section Child Rights.

²²¹ Official Gazette of RS No. 72/09.

interrelations in achievement of the objectives set by the law, which prevents the citizens from exercising their rights specified by this Law.²²²

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 2013 Annual Report of the Protector of Citizens:

- That the **National Assembly** should consider the bills of amendments to the Labour Law and of the Law on Financial Support to Families with Children submitted by the Protector of Citizens.

4.2. Even after three whole years, public authorities have not complied with the recommendations given by the Protector of Citizens in the Special Report *Child Begging in the Republic of Serbia*.²²³

5. Explanation

The new Law on Public Broadcasting Services regulates the procedure for granting exemptions from the TV licence fee. Namely, it specifically states that this entitlement is exercised on the basis of a request filed on a statutory form with supporting documentation; that a decision to exempt a person from the licence fee is to be passed by the public broadcasting service in accordance with the Law on General Administrative Procedure²²⁴; and that such decisions are final, but may be contested in an administrative dispute. This has remedied the shortcomings which citizens with disabilities had been pointing to the attention of the Protector of Citizens, namely that there was no appeal mechanism against a decision of the public broadcasting service to reject a request for exemption from the licence fee because such decisions were served in the form of a notice. Under the new legislative provisions, requests for exemption from the licence fee are handled in an administrative procedure.

The Protector of Citizens filed a motion for constitutional and legal review of the Decree on Social Inclusion Measures for Welfare Recipients with the Constitutional Court, because he believes the provisions of the Decree which provide for community service work and volunteering as social inclusion measures are contrary to the legal nature of the social inclusion measures provided for in the Law on Social Security²²⁵ and incompatible with the legal nature of community service work and volunteering, which are based on the principles of voluntary work and work free of charge; hence, these do not qualify as social inclusion measures. The authority which passed the said Decree thus essentially imposed another condition for recognition of the entitlement to financial assistance, although no such condition exists in the text of the Law; furthermore, with this move the said authority regulated the conditions for exercising a social security entitlement by a piece of secondary legislation, thereby violating the provision of the Constitution which stipulates that the manner of exercising the human and minority rights guaranteed by the Constitution is to be regulated by laws.

The Law on Social Housing vaguely and imprecisely defines the duties and responsibilities of national and local implementing bodies of the housing policy, their mutual relations are

²²² For more details see section Child Rights.

²²³ Report prepared and published in 2011, available at:

http://www.zastitnik.rs/attachments/1597_brosura_Final%20ddd.pdf.

²²⁴ Official Gazette of FRY No. 33/97и 31/01, Official Gazette of RS No. 30/10.

²²⁵ Official Gazette of RS No. 24/11.

not defined and funding arrangements for the social housing programme are not established, which prevents citizens from adequately exercising their rights under the said Law.

In Belgrade, the Decision on Social Security Rights and Services²²⁶ has terminated a number of social security services and curtailed a number of social security entitlements. Thus, the Decision has done away with the day shelter for children, the services of personal aides for children, youth and elderly persons with physical disabilities and subsidies for utility products, services and rent, while the entitlement to one-off financial assistance is no longer available to children without parental care, pupils and students. The rights of beneficiaries of emergency, one-off and permanent financial assistance have been reduced both in terms of the available amount and the eligibility criteria. This has aggravated the position of the most vulnerable population category – the socially deprived persons. Other local self-governments have also done away with some of the locally-funded social security measures and services, although in some instances municipalities and towns/cities have excluded social security services from the scope of austerity measures, thus preserving the attained level of social security.

Some local self-governments that managed to secure funds for social security services have not been able to provide those services to citizens, because the restrictions on public sector employment imposed by the Government have prevented them from employing providers of such services.

Decisions to grant or deny social security rights do not contain a clear and substantiated statement of reasons. Although they formally do contain statements of reasons, they do not provide even the bare minimum of information on the facts found, the manner and means applied to find those facts, how the facts were weighed and how substantive law was applied to them, which renders them incomprehensible to the recipients.

II TYPICAL CASES

Placement in a foster family arranged after the Protector of Citizens launched an investigation

The Protector of Citizens received a complaint about the work of the City Centre for Social Work in Belgrade because of its failure to comply with the decision of a second-instance authority in a procedure for placement in a foster family. After the Protector of Citizens initiated an investigation into the lawfulness and regularity of its work, the City Centre for Social Work complied with the decision of the Ministry of Labour, Employment, Veteran and Social Affairs and the complainant was granted the right to placement in a foster family.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT 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

²²⁶ Official Journal of the City of Belgrade No. 37/14.

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 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.

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 local self-governments should put in place measures within their respective spheres of competence to introduce new social security services and improve the existing ones, especially in underdeveloped municipalities.

PENSION AND DISABILITY INSURANCE

I BACKGROUND

1. Government's achievements

1.1. The Protector of Citizens has not observed any major achievements of the Government in this sector in 2014.

2. 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 the Pension and Disability Insurance Fund implemented activities to improve its work organisation in order to ensure that citizens' applications are processed as efficiently as possible.

2.2. In connection with the recommendation of the Protector of Citizens that the Pension and Disability Insurance Fund should 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", officials of the Pension and Disability Insurance Fund have conceded that the actions which prompted the Protector of Citizens to issue the said recommendation had been incompatible with the principle of fairness as one of the underlying principles of good governance.

2.3. In 2014, the Protector of Citizens received 269 complaints in this field, in which complainants alleged 309 violations of rights. In the same period, he completed the investigations in a total of 182 cases received in 2014 and in earlier years. Out of the total of 59 investigations conducted, 40 (67.8%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 1 recommendation, of which 0 (0%) has been complied with, 1 (100%) have not been complied with and 0 are still pending. Based on the number of identified (41) and remedied (40) omissions, the efficiency rate in this sector was 97.56%.

3. Shortcomings at the national level

3.1. Unpaid pension and disability insurance contributions remain one of the most frequent causes of citizens' inability to exercise their entitlements arising from pension and disability insurance. This is exacerbated by the fact the Pension and Disability Insurance Fund and the Tax Administration are not sufficiently coordinated in matters concerning

exchange of taxpayer information, calculation and payment of contributions, amounts of assessed and collected contributions and other official data relating to these contributions.

3.2. There is still no regulatory framework that would reduce the number of provisional decisions and resolve the issue of overpaid pensions and benefits, which pose a significant threat to the livelihood of pensioners and benefit claimants.

3.3. The Pension and Disability Insurance Fund, in violation of the Law on Administrative Procedure and the Law on Pension and Disability Insurance, after passing a provisional decision determining a beneficiary's pension, passes a decision on final pension assessment which does not revoke the provisional decision but merely replaces it; thus, the decision on final pension assessment is effective retrospectively, from the date when the provisional decision was passed. In this way, the Pension and Disability Insurance Fund unlawfully shifts the burden of its tardiness and errors to the beneficiaries by requiring them to return any overpaid amounts of pensions and benefits.

3.4. Although the Government has made initial steps to address the issue of "Kosovo pensions", suspension of payment of pensions to insured persons who made the whole or a part of insurance service on the territory of Kosovo and Metohia, i.e. inability to pay pensions in arrears to insured persons is still one of the system problems in the Republic of Serbia.

3.5. 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.

3.6. Due to the deficiencies of the Law on Pension and Disability Insurance²²⁷, certain insurance beneficiaries whose disability is caused by an injury or illness unrelated to work do not qualify for a disability pension because they became incapacitated after they reached the statutory age for retirement, but on the other hand they also do not qualify for the old-age pension because, although they have reached the statutory age, they have not spent enough years in employment with insurance coverage.

3.7. From a number of complaints it would appear that the second-instance authority of the Pension and Disability Insurance Fund does not make sufficient use of its authority to rule on administrative matters by itself in accordance with the Law on General Administrative Procedure²²⁸ (which denies citizens the right to receive a decision within a reasonable period).

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 2013 Annual Report of the Protector of Citizens:

- That the Ministry of Labour, Employment, Veteran and Social Affairs should supervise the lawfulness of operations and enactments of the Pension and Disability Insurance Fund in connection with the recommendations of the Protector of Citizens.
- That the Pension and Disability Insurance Fund, in accordance with the recommendation of the Protector of Citizens, when deciding whether there are grounds to reclaim overpaid amounts of pensions or other benefits arising from

²²⁷ Official Gazette of RS, No. 34/03, 64/04 - decision of the Constitutional Court of Serbia, 84/04 - new law, 85/05, 101/05 - new law, 63/06 - decision of the Constitutional Court of Serbia, 5/09, 107/09, 101/10, 93/12, 62/13, 108/13, 75/14 and 142/14.

²²⁸ Official Gazette of FRY No. 33/97 and 31/01 and Official Gazette of RS No. 30/10.

pension and disability insurance, in each individual case pass a decision determining the exact overpaid amount and the mode in which it is to be returned.

- That the Pension and Disability Insurance Fund should *ex officio* pass decisions on final pension assessment.

4.2. Notwithstanding the recommendations and enormous efforts of the Protector of Citizens, the Pension and Disability Insurance Fund has not determined *ex officio* new amounts of pensions, as from the date of qualifying for retirement, for all former employees of the company “Robne kuce Beograd”.

5. Explanation

In 2014, the Protector of Citizens has continued monitoring compliance of the Pension and Disability Insurance Fund with his recommendations and has held several meetings with officials of the Pension and Disability Insurance Fund in order to facilitate timely and efficient deciding on the rights arising from pension and disability insurance.

In connection with the observation made by the Protector of Citizens that the Pension and Disability Insurance Fund failed to pass decisions determining the overpaid amount of pensions, although this was recommended by the Protector, the director of the Pension and Disability Insurance Fund passed the Instructions amending the Instructions on Determination, Return and Recording of Overpaid Amounts of Pensions and Financial Benefits under Pension and Disability Insurance, which was sent to all organisational units of the Pension and Disability Insurance Fund for implementation. These Instructions ensure at best only partial compliance with the recommendation of the Protector of Citizens, because they stipulate that a decision determining the overpaid amount of pension or financial benefit is to be passed whenever a payment was made without proper legal basis, but only if this is requested by the debtor or an employee of the organisational unit in charge of representation.

The Pension and Disability Insurance Fund has also informed the Protector of Citizens it follows a systemic approach in determining whether the conditions for passing decisions on final pension assessment are met. To increase efficiency in the passing of these decisions, organisational units of the Fund’s Directorate monitor compliance with the said conditions on a daily basis.

However, while it is obvious that the Pension and Disability Insurance Fund has made efforts to ensure it passes as many decisions on final pension assessment as possible and thus reduce the number of provisional decisions, from the complaints filed with the Protector of Citizens it would appear that this problem remains widespread.

As the Pension and Disability Insurance Fund had not complied with the recommendation of the Protector of Citizens that the Fund should 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”, officials of the Pension and Disability Insurance Fund held a number of meetings with the staff of the Protector of Citizens and with former employees of “Robne kuce Beograd”. It was agreed that management of the Pension and Disability Insurance Fund would see the former employees of “Robne kuce Beograd” to discuss with every one of them individually the specific omissions made in the assessment of their pensions and to look into possible directions for overcoming the points of contention. The parties recalled that the Protector of Citizens pointed to identified irregularities and illegalities in his recommendation and that management of the Pension and Disability Insurance Fund had conceded that the actions taken in those cases had been incompatible with the principle of fairness as one of the underlying principles of good governance. According to the

information received from the complainants, meetings were held first with all of them together and then with every one of them individually, but they were mostly perfunctory and there was no financial analysis of each individual case, as had been agreed between the director of the Pension and Disability Insurance Fund and representatives of the Protector of Citizens. No steps forward have been made after the meetings to remedy the omissions and comply with the recommendation of the Protector of Citizens.

Under Articles 232 and 233 of the Law on General Administrative Procedure, an authority of second instance has the power to resolve an administrative matter if it finds that the facts were incompletely or incorrectly established in the first-instance procedure, that the procedure did not follow the rules of procedure of relevance to the resolution of the matter, or that the wording of the contested decision is unclear or contrary to the rationale, that evidence was not duly considered, that an erroneous conclusion was made, that a regulation was misapplied or that the administrative matter should have been resolved in a different way or a different decision should have been made based on a free estimate. Instead of using these powers granted to it under the Law on Administrative Procedure, the authority of second instance usually refers cases back to the authority of first instance for repeated deliberation, often more than twice. This leads to unnecessarily long procedures, which sometimes drag out for years. This protraction seriously hampers the exercise of rights arising from pension and disability insurance.

II TYPICAL CASES

Tardiness of the Pension and Disability Insurance Fund results in huge debt

A complainant received a provisional decision on the award of old-age pension in 2006. The decision was supposed to be provisional pending the publication of figures on the average wage in the Republic of Serbia for that year. Although the average wage is publicised by the third month each year in respect of the preceding year, which means that in this case the figure for 2006 should have been published by the end of March 2007, the Pension and Disability Insurance Fund did not pass a decision on final old-age pension assessment for the complainant until 2014. The amount granted to her under the new decision was lower than the amount she had been receiving under the provisional decision, so the Pension and Disability Insurance Fund sent the complainant a request to return the overpaid amount of pension. She was ordered to return the amount overpaid to her in the preceding eight years, up to the date when the decision on final pension assessment was served on her, although the Pension and Disability Insurance Fund could have made a final assessment of her pension entitlement as early as in April 2007 and thus reduce the overpaid amount by a considerable margin.

The Pension and Disability Insurance Fund was issued a recommendation to remedy the effects of this omission as swiftly as possible and to make a determination of the overpaid amount of pension.

Notwithstanding these and other similar recommendations, the Pension and Disability Insurance Fund generally avoids making determinations of overpaid amounts of pension; instead, it offers pensioners the choice of paying the debt by a withholding order on their pension or, failing any agreement, it takes the matter to a court and litigates the beneficiaries.

Pension and Disability Insurance Fund fails to seek the assistance of a contact point

A complainant alleged he was wronged by the Pension and Disability Insurance Fund because the latter failed to decide on his application for old-age retirement filed in 2010. However, for the complainant to be able to exercise the pension entitlement, the Pension and

Disability Insurance Fund was required to obtain relevant information from the French insurance authority. For this reason, starting in 2011, the Pension and Disability Insurance Fund pleaded with that authority on five separate occasions – without success – to comply with the General Convention on Social Security between France and Yugoslavia. The Protector of Citizens initiated an investigation of legality and regularity of work of the Pension and Disability Insurance Fund and demanded information on whether the Fund had contacted the Serbian contact point in accordance with the General Convention on Social Security to expedite the response of the French insurance authority in the procedure for awarding an old-age pension to the complainant. The Pension and Disability Insurance Fund replied it had not sought the assistance of the competent Serbian authority, but the suggestions made in the document passed by the Protector of Citizens prompted it to immediately contact the Institute for Social Insurance of the Republic of Serbia and ask it to take actions within its mandate in the capacity of the contact point in order to close the procedure initiated pursuant to the complainant's application.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **The Ministry of Labour, Employment, Veteran and Social Affairs** should, in cooperation with **the Pension and Disability Insurance Fund**, amend the regulations with the aim to introduce an efficient mechanism to address the issue of overpaid pension amounts, which continues to threaten the livelihood of many pensions, as well as with the aim to regulate the procedure of passing decisions on definite pension amounts that would replace temporary decisions.
2. **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.
3. **The Pension and Disability Insurance Fund** should continue to undertake activities with the aim to improve its operations, to regularly update its registers and to ensure efficient acting on citizens' requests for the exercise of pension and disability insurance rights and should improve cooperation between branch offices and more efficient cooperation with foreign funds.
4. Better cooperation is needed between **the Pension and Disability Insurance Fund and the Tax Administration** with regard to exchange of information on obligors of insurance contributions and other official information in connection with pension and disability insurance contributions, which would significantly improve the issue of unpaid contributions and unavailability of rights arising from pension and disability insurance.

2.9. LABOUR SECTOR

I BACKGROUND

1. Government's achievements

- 1.1. The Law amending the Labour Law²²⁹ has been enacted.
- 1.2. The Law on Mediation²³⁰ has been enacted.
- 1.3. The Law amending the Law on Compulsory Social Insurance Contributions²³¹ and the Law amending the Law on Personal Income Tax²³² have been enacted.
- 1.4. The Ministry of Labour, Employment, Veteran and Social Affairs has opened a Quick Reply Office where citizens can inquire about the progress of the procedures conducted by that authority pursuant to their requests, complaints, appeals and other submissions.²³³

2. Results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens has raised public awards of the importance of proper implementation of labour legislation with regard to the exercise and protection of employees' rights and compliance of employers with their duties; he has also mobilised the competent oversight authorities to prevent adverse situations by efficient, timely and effective action.
- 2.2. Acting in compliance with the recommendations of the Protector of Citizens given in an expedited inspection procedure, public authorities have taken action against negligent employers, thus protecting employees' right to work and labour rights.
- 2.3. By acting preventively and cooperating with the competent authorities, the Protector of Citizens has contributed to better protection of citizens' rights during periods of unemployment.
- 2.4. In 2014, the Protector of Citizens received 337 complaints in this field, in which complainants alleged 362 violations of rights. In the same period, he completed the investigations in a total of 312 cases received in 2014 and in earlier years. Out of the total of 49 investigations conducted, 24 (48.98%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 4 the recommendation, of which 1 (25%) have been accepted, 3 (75%) have not been complied with and 0 are still pending. Based on the number of identified (28) and remedied (25) omissions, the rate of efficiency in this sector is 89.29%.

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, so their employees cannot exercise the compulsory pension, disability and health insurance rights guaranteed by the Constitution of the Republic of Serbia.

²²⁹ Official Gazette of RS No. 75/14.

²³⁰ Official Gazette of RS No. 54/14.

²³¹ Official Gazette of RS No. 57/14.

²³² Official Gazette of RS No. 57/14.

²³³ Available at <http://www.minrzs.gov.rs/lat/kancalrija-za-brze-odgovore>.

3.2. The Law on Budget System²³⁴ and the Decree on the Procedure for obtaining Approval for New Employment and Additional Staff Engagement by Public Spending Units²³⁵ have resulted in a slowdown in new employment.

3.3. 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.

3.4. There are still numerous cases of informal employment of citizens, which can rarely be identified through investigations of employers' operations.

3.5. Employers often avoid entering into employment contracts; instead, they hire citizens outside of employment relations, which is facilitated by the fact that enforcement of labour legislation is slow, inefficient and ineffective.

3.6. Although announced, a law which would regulate in detail the actions of the labour inspectorate was not passed.

3.7. There is no uniform method of calculating accumulated years of service for employees in public institutions, because legislative provisions are unclear and the competent authority has provided a vague interpretation.

3.8. The legislative framework for employment and salaries in public authorities and organisations, public services and public enterprises is not uniform.

3.9. Employment, self-employment and additional vocational and on-the-job training programmes, especially those targeted at young persons, are underdeveloped and underutilised.

3.10. The National Employment Service has not passed documents that would regulate in detail the procedure of public calls for job applicants.

3.11. There has been no constant social dialogue with employees' and employers' representatives in order to ensure conditions for decent 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 2013 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 **Government** should draft and propose to the National Assembly an amendment to the Law on Employment and Unemployment Insurance to make the existing arrangements more flexible and give unemployed persons more time to comply with their duty to report to the National Employment Service.

²³⁴ Official Gazette of RS, No. 54/09, 73/10, 101/10, 101/11, 93/12, 62/13, 63/13, 108/13 and 142/14.

²³⁵ Official Gazette of RS, No. 113/13, 21/14, 66/14 and 118/14.

- 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.²³⁶
- That **the labour inspectorate** should take more initiative and initiate procedures *ex officio* in cases where the available evidence is sufficient to warrant inspections.²³⁷

5. Explanation

The provisions of the Law amending the Labour Law²³⁸ which pertain to the calculation of salaries and salary compensations are an improvement in the protection of workers' rights, because the payroll sheet for the salary and salary compensation which the employer must pay in accordance with the law now has the status of an executive document, which will make the position of the worker in the event of a lawsuit much more advantageous.

The fact that salary increase for accumulated years of service is now based only on the years spent with the current employer has effectively reduced the salaries for many employees. On the other hand, employers no longer bear the financial burden linked with their employees' periods of employment with other employers. The relevant provisions of the Law on Salaries of Civil Servants and Employees and of the Law on Salaries in Public Authorities and Public Services have also been harmonised with the provisions of the Labour Law which pertain to salary increase for accumulated years of service.

The Labour Law guarantees and expands the rights of female employees during pregnancy and breastfeeding. In accordance with the ILO Maternity Protection Convention, in addition to pregnant female employees, the protection is now afforded also to breastfeeding female employees who work in very difficult jobs. If the employer is unable to afford the statutory level of protection, it must provide other suitable work for the female employee, or, if no such work is available, put her on a paid leave. Pregnant and breastfeeding women may not work overtime or at night, if such work has been determined by the competent authority to be prejudicial to the health of the mother or the child.

The provisions of the Labour Law which grant employed pregnant women the right of paid leave for medical examinations in connection with their pregnancy implement the constitutional guarantee of special care for mothers and children.

Employment relations and salaries in public authorities and organisations, public services and public enterprises are often governed by special laws. This legal arrangement results in significant differences between the employees of different authorities, organisations, services

²³⁶ The Protector of Citizens proposed this in his 2012 Annual Report.

²³⁷ The Protector of Citizens proposed this in his 2012 Annual Report.

²³⁸ Official Gazette of RS No. 75/14.

and enterprises in terms of hiring and dismissal, employees' rights and responsibilities and salary calculation and amounts, even where the jobs are identical or comparable.

With regard to the Law amending the Law on Salaries in Public Authorities and Public Services²³⁹, Article 5 paragraph 2²⁴⁰ causes much confusion and legal uncertainty in connection with the calculation of salary increase for accumulated years of service. The Ministry of Public Administration and Local Self-Government has not provided employers with clear guidelines for calculating the accumulated years of service if an employee has previously worked in an institution within the same network of bodies or an institution founded by the same level of government.

There are no clear criteria for the selection of candidates for employment in those cases where the Labour Law applies.

Citizens are hired without any legal basis (informal employment), while the exercise of their rights depend exclusively on the will of an employer.

Even when they hire citizens, employers avoid entering into employment contracts; instead, they hire citizens outside of employment relations. The Protector of Citizens has received complaints from citizens hired under professional training and advancement contracts by private security firms, claiming their employers just posed as providers of professional training and advancement in accordance with Article 201 of the Labour Law in order to be able to deny them the rights they would otherwise have in an employment relationship.

Citizens in fixed-term employment hold that status for years. Under the amendments to the Law, the maximum duration of fixed-term employment has been extended from one to two years.

Citizens also often complain to the Protector of Citizens that their employers require them to sign "blank letters of resignation" as a precondition for an employment contract. Citizens claim their employers give them a notice of termination by mutual consent with a blank space instead of date to sign together with the employment contract. Employers can then use these "blank letters of resignation" at any time. The consequences of a "blank letter of resignation" include no severance pay and no unemployment compensation, pension and disability insurance and health insurance during unemployment.

Citizens often complain to the Protector of Citizens that they are exposed to abuse at work and they also point to arbitrariness and illegality in deciding on termination of employment. It was also observed that the citizens insufficiently use the existing legal possibilities to protect their rights (contacting the Commissioner for Protection of Equality, the labour inspectorate, the Republic Agency for Peaceful Settlement of Labour Disputes, requiring court protection). Because of their difficult financial situation and fear that they would lose their jobs, employees report their dissatisfaction only after they lose such a job, when proving they were right becomes possible only in court proceedings which are time-consuming and include financial expenses.

The lack of regulations that would govern the powers, competences and actions of inspectorates is one of the reasons for the absence of efficient, effective and timely oversight of compliance with labour legislation, adequate worker protection and effective punishment of offending employers. The second cause is inefficiency of the labour inspectorate, while the

²³⁹ Official Gazette of RS No. 99/14.

²⁴⁰ "For the purposes of paragraph 1 of this Article, all institutions within the same activities and covered by the same network plan or founded by the same level of government are deemed to be the same employer."

time-consuming, ineffective and inefficient infringement proceedings, without swift and appropriate punishment and compensation of damage suffered by the employees, are seen as the third cause.

Employers still avoid their legal and agreed duties in terms of regular payment of salaries and other emoluments and in terms of timely payment of compulsory health insurance and pension and disability insurance contributions. The competent authorities (the labour inspectorate, the Tax Administration, republic health insurance and pension and disability insurance funds) are not efficient, diligent and effective and do not cooperate nor exchange information sufficiently and the citizens suffer due to their inefficiency.

The Law on Mediation²⁴¹ gives citizens an opportunity to settle a dispute amicably and thus protect their rights without the burden of time-consuming and costly lawsuits. Amicable settlement of disputes, in which the parties voluntarily attempt to overcome their differences through negotiation facilitated by one or more mediators, is a much faster, more efficient and cheaper way of settling disputes and thus achieves higher protection for the guaranteed rights.

The amendments to Law on Compulsory Social Insurance Contributions²⁴² and the Law on Personal Income Tax²⁴³ have replaced a system of tax breaks and incentives available to employers who hire certain categories of persons (trainees, persons under 30 and persons above 45 and 50 respectively) by a single measure which applies to all new employment regardless of the workers' age or work experience. Namely, every private sector employer – whether a company or a sole trader – that increases the number of employees compared with 31 March 2014 is entitled to claim back a portion of the compulsory social insurance contributions payable by the employee and those payable by the employer, as well as to claim back the payroll tax paid on the salaries of those new employees.

The amendments to tax legislation provide for fiscal incentives for private sector employers which should encourage them to invest in new jobs and new employment.

The Law amending the Law on Budget System restricts new employment and limits the total number of temporarily hired persons at direct or indirect budget spending units. The said Law and the Decree on the Procedure for obtaining Approval for New Employment and Additional Staff Engagement by Public Spending Units place restrictions on new employment by stipulating that any new employment is subject to approval by the Government's bodies, on the proposal of the competent Ministry or other competent authority, upon obtaining a prior opinion of the Ministry. This employment ban will remain in place until 31 December 2015. These legislative instruments also limit the total number of fixed-term employees due to an increased volume of work, persons hired under a service contract or a temporary or occasional work contract, persons working through youth or students' cooperatives and other types of engagement at budget spending units to maximum 10% of the total number of employees. This effectively introduces an additional step in the employment procedure, one that is not provided for in labour legislation. The aim of these restrictions is to slow down new employment, but a side effect is that they have hindered or completely prevented the provision of many services (in the fields of health care, education, social security etc.).

²⁴¹ Official Gazette of RS No. 55/14.

²⁴² Article 45 of the Law amending the Law on Compulsory Social Insurance Contributions Official Gazette of RS No. 57/14.

²⁴³ Article 21c of the Law amending the Law on Personal Income Tax, Official Gazette of RS No. 57/14.

Employment and self-employment measures and programmes are underdeveloped and are not appropriate in the light of the high unemployment rate, the qualifications structure and – first and foremost – the number of unemployed persons aged between 30 and 45. Although Serbia has one of the highest youth unemployment rates in Europe (more than 50% of young persons are unemployed and 60% of young persons are long-term unemployed)²⁴⁴ and as a group they have been by far the most affected by the shrinking labour market and shortage of jobs²⁴⁵, there is no holistic programme for their employment and promotion of their education and professional advancement.

In 2014, similarly as in previous years, citizens complained about the work of the National Employment Service, in particular the duty of unemployed persons to report in person to the National Employment Service every three months. This obligation is provided for in the Law on Employment and Unemployment Insurance²⁴⁶, which stipulates that an unemployed person must report to the National Employment Service in person in order to inquire about the possibilities and conditions of employment and intermediation in employment, in accordance with an individual employment plan, at least once every three months and whenever asked by the National Employment Service to do so. The ways in which this legislative arrangement inconvenience the unemployed seem to outweigh the potential benefits and it appears this Article of the Law should be amended to give unemployed persons a more flexible period in which they could meet their obligation to report in person (e.g. on any weekday over a ten-day period every three or four months).

Under the Law on Employment and Unemployment Insurance, the director of the National Employment Service chooses branch managers pursuant to a public call for job applications. However, the National Employment Service has not passed regulations that would regulate in detail the criteria, method and procedure of selection of branch managers.

II TYPICAL CASES

The Protector of Citizens helps remedy an omission made 25 years ago

In a procedure conducted in 1990, the Kraljevo Branch of the National Employment Service refused to recognise a citizen's accumulated years covered by contributions (for pension and disability insurance) for a period during which he exercised his rights deriving from temporary unemployment. After the Protector of Citizens initiated an investigation into the lawfulness and regularity of work of the National Employment Service, the latter passed a supplementary decision which recognised the complainant's accumulated years covered by contributions during a two-year period of temporary unemployment. Thus, an omission made by the said public authority 25 years ago has been remedied and the citizen has been able to properly and lawfully exercise his rights deriving from pension and disability insurance.

Omission prejudicing the rights of an employee remedied

After the Protector of Citizens initiated an investigation, the competent labour inspectorate acted on the complainant's report, inspected the employer's operations, identified omissions and passed a decision in which it ordered the employer to pass a decision on termination of

²⁴⁴ For more information see: <http://www.europa.rs/en/mediji/najnovije-vesti/4346/EU+shares+experience+with+Serbia+on+combating+youth+unemployment.html>.

²⁴⁵ A majority of the unemployed are young persons aged 24 to 29 – 97,713 in November 2014 according to the National Employment Service, Monthly Statistical Bulletin for November 2014, No. 147, available at http://www.nsz.gov.rs/live/digitalAssets/3/3041_bilten_nsz_novembar_2014.pdf.

²⁴⁶ Article 32 of the Law on Employment and Unemployment Insurance.

employment, deregister the employee with compulsory insurance organisations and fill in the employee's employment record book and return it to the complainant. As the employer had not paid pension and disability insurance contributions, the labour inspector sent a notice to the Tax Administration so the latter could proceed to act within its sphere of competence. The employer has complied with the decisions of the labour inspectorate and the omission which prejudiced the complainant's rights has been eliminated; the Protector of Citizens has therefore terminated the investigation.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **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 or 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.
2. **The Government** should propose and the National Assembly should enact 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.
3. **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.
4. **The Ministry of Labour, Employment, Veteran and Social Affairs** should focus its inspection efforts on timely detection of "informal employment" and taking effective action against the employers who hire citizens under such arrangements.
5. **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, with a focus on young persons.
6. **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.
7. **The National Employment Service** should pass documents which would govern the procedure of public calls for the selection of branch managers.

2.10. INTERNAL AFFAIRS SECTOR

I BACKGROUND

1. Government's achievements

1.1. During the reporting period, the Ministry of Internal Affairs implemented a special system for documenting and monitoring compliance with the recommendations of the Protector of Citizens.

1.2. The Ministry of Internal Affairs has improved the procedure for issuing documents (identity cards, passports, vehicle registration certificates and driving licences).

2. Results achieved by the Protector of Citizens

2.1. The Protector of Citizens has filed an Initiative for Amendments to the Law on Road Traffic Safety with the Government the Republic of Serbia.

2.2. By issuing a recommendation to the Ministry of Internal Affairs in which he called on the Ministry to pass substantiated decisions when deciding whether public gatherings should be allowed or not, the Protector of Citizens contributed to better work of the Ministry.

2.3. The Ministry of Internal Affairs accepted the recommendation of the Protector of Citizens and put in place measures to ensure future compliance with the applicable regulations which govern the procedure for forcible expulsion of foreign nationals who are no longer allowed to stay in the Republic of Serbia.

2.4. By issuing a recommendation to the Ministry of Internal Affairs, the Protector of Citizens drew attention to an omission in the work of organisational units within that authority that resulted from a failure to accept and comply with the findings set out in the Report of the Police Internal Control Department as the body in charge of overseeing the work of that authority and review the actions of its employees.

2.5. By initiating an investigation of lawfulness and regularity of work of the public authority, the Protector of Citizens helped the Complaints and Submissions Office and the Complaints Commission of the Police Internal Control Department within the Ministry of Internal Affairs remedy any omissions in its work more effectively and timely inform the public of all measures taken and all omissions identified in its work.

2.6. In 2014, the Protector of Citizens received 330 complaints in this field, in which complainants alleged 349 violations of rights. In the same period, he completed the investigations in a total of 309 cases received in 2014 and in earlier years. Out of the total of 32 investigations conducted, 17 (53.13%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 1 recommendation, of which 1 (100%) has been accepted, 0, while 0 are still pending. Based on the number of identified (18) and remedied (18) omissions, the rate of efficiency in this sector is 100%.

3. Shortcomings at the national level

3.1. The Ministry of Internal Affairs does not respond timely to citizens' job applications for posts within that authority, especially where age of the applicant is a condition for employment, which is indicative of unfair treatment of these citizens by the said authority.

3.2. The Ministry of Internal Affairs does not allow police officers whose employment was terminated because criminal charges were filed against them, but who were subsequently exonerated in criminal trials, to return to work.

3.3. Decisions passed by the Ministry of Internal Affairs pursuant to citizens' applications for authorisation to purchase firearms and ammunition and for seizure of firearms and revocation of firearms licences still provide no statement of reasons, although the Protector of Citizens has been warning about this omission for quite some time.

3.4. During the reporting period, the Ministry of Internal Affairs, notwithstanding the relevant recommendations of the Protector of Citizens, largely continued the practice of not stating the decisive facts in the statements of reasons for its decisions.

3.5. Similarly as in the previous reporting period, the Administrative Affairs Directorate of the Ministry of Internal Affairs still does not always act timely pursuant to citizens' request for granting or termination of citizenship of the Republic of Serbia.

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 2013 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, in accordance with the recommendation of the Protector of Citizens, always reply to citizens' complaints and submissions with substantiated decisions which include a statement of all relevant facts and circumstances and all pertinent reasons for the response given to citizens' allegations;
- That the **Ministry of Internal Affairs** should timely act pursuant to citizens' request for granting or termination of citizenship of the Republic of Serbia.

4.2. The Government has not adopted the initiative of the Protector of Citizens to amend the Law on Road Traffic Safety.

4.3. The Ministry of Internal Affairs has not complied with the recommendation of the Protector of Citizens to investigate individual liability of disciplinary officers in charge for the failure of competent civil servants of the Ministry of Internal Affairs to take disciplinary action against police officers in whose work the Police Internal Control Department found omissions, which in practice defeats the purpose of internal controls in the police service.

5. Explanation

The Protector of Citizens has submitted the Initiative to amend the Law on Road Traffic Safety to the Government in order to remove the obligation imposed upon citizens to replace their paper-based driving licences with plastic chip-based ones against a fee by a specified date, regardless whether the paper document has expired or not. Under the proposed amendment, the current driving licences would remain valid until their original expiration date, except where the licence holder chooses to replace the licence before expiration.

The Government did not accept this initiative of the Protector of Citizens; instead, the National Assembly adopted the Law amending the Law on Road Traffic Safety²⁴⁷, which merely extended the period in which all driving licences must be replaced from five to eight years of the effective date of that Law.

²⁴⁷ Official Gazette of RS No. 55/14.

This arrangement merely delays the date by which all driving licences must be replaced; however, as citizens are still required to replace their driving licences before their original expiration dates, the Protector of Citizens is of the opinion that the requirement to replace a valid public document before its expiration goes against the justified expectations which the citizens had when they were issued driving licences with a clearly specified term of validity.

During the reporting period, the Ministry of Internal Affairs has improved the procedure for issuing documents (identity cards, passports, vehicle registration certificates and driving licences). The Protector of Citizens received no complaints in this context in 2014 and, upon visiting police stations and accessing their documentation, he has found that, although the statutory time limit for issuing these documents is 15 or 30 days, depending on the document, they are usually issued much faster.

The Protector of Citizens learned from media reports and a communication sent by the Lawyers' Committee for Human Rights (YUCOM) that the Stari Grad Police Station of the Belgrade Police Administration had passed a decision to ban a public gathering organised by the Serbian-Chinese Friendship Society, but no statement of reasons was provided for such decision.

Upon an investigation of this authority, the Protector of Citizens found the decision did not state reasons for banning the public gathering based on relevant facts. For this reason he issued a recommendation to the Ministry of Internal Affairs in which he advised it to improve its work to ensure that, in the future, every statement of reasons given for a decision to ban a public gathering includes the decisive facts and circumstances on which the decision is based.

The Protector of Citizens issued a recommendation to the Ministry of Internal Affairs advising the latter to improve its work after omissions were found in the case of detention and forced expulsion from Serbia of eleven foreign nationals who were members of the Falun Dafa movement. In the text of the recommendation he explained that forced expulsion of foreigners who are no longer allowed to stay in the Republic of Serbia must comply with the principles set out in the Law on General Administrative Procedure²⁴⁸ and the provisions of the Law on Foreigners.²⁴⁹

II TYPICAL CASES

Ministry of Internal Affairs accepts recommendation of the Protector of Citizens to improve its operations in cases of forced expulsion of foreigners who are no longer allowed to stay in the Republic of Serbia

The Protector of Citizens found through an investigation that the Ministry of Internal Affairs had made omissions in the procedures of forced expulsion of foreigners who are no longer allowed to stay in the Republic of Serbia as a result of violations of the principles set out in the Law on General Administrative Procedure and the provisions of the Law on Foreigners.

The Protector of Citizens issued a recommendation for remedying the omissions and improving the work of the said authority. The Ministry of Internal Affairs accepted the recommendation and pledged to ensure that, in future procedures of forced expulsion of foreigners who are no longer allowed to stay in the Republic of Serbia, such measure is accompanied by a decision to place the persons concerned at the Shelter for Foreigners once they have been ordered to leave the Republic of Serbia. The Ministry further stated the

²⁴⁸ Official Gazette of FRY No. 33/97 and 31/01 and Official Gazette of RS No. 30/10.

²⁴⁹ Official Gazette No. 97/08.

pending amendments to the Law on Foreigners would introduce both alternative and cumulative reasons for expulsion of foreign nationals, which will specify in detail the reasons for expelling foreign nationals in cases where this is warranted by considerations of public order and/or safety of the Republic of Serbia and its citizens. In its reply to the Protector of Citizens, the Ministry explained it had taken steps to bring the rooms at the Shelter for Foreigners in compliance with the applicable standards and the recommendation given by the Protector of Citizens.

Citizen allowed to freely cross international borders after the Interpol office in Rome is advised to withdraw an arrest warrant for a person of the same name

Upon learning from a decision on initiation of an investigation by the Protector of Citizens that a citizen was inconvenienced whenever crossing international borders because an Interpol arrest warrant had been issued for a person of the same name, the Ministry of Internal Affairs notified Interpol's organisational units in Rome that the wanted person had died and asked for the arrest warrant to be withdrawn. The omission was thus remedied and the citizen has since been able to freely cross the state border.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT 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 of the police; furthermore, it should timely initiate and conduct disciplinary procedures and competent senior officers should take action to comply with the proposals of the Internal Control Department of the police without delay.
2. **The Ministry of Internal Affairs** should improve its work by presenting decisive facts in the statements of reasons for its decisions and other documents.
3. **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. **The Ministry of Internal Affairs** should in the future timely act pursuant to citizens' request for granting or termination of citizenship of the Republic of Serbia.

2.11. SECTORS OF FINANCE AND ECONOMY

FINANCE

I BACKGROUND

1. Government's achievements

- 1.1. Conditions have been introduced to facilitate the shift to a programme budgeting model²⁵⁰ in 2015.
- 1.2. The Tax Administration has taken a number of activities to prevent illegal cash flows and to control the recoding of sales through cash registers, the organisation of games of chance and other activities subject to taxation.²⁵¹
- 1.3. The Law amending the Law on Protection of Financial Service Consumers²⁵² has been enacted.

2. Results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens found the so-called "solidarity taxation" of public sector salaries²⁵³ to be improper, unfair and contrary to the very purpose of the Law in question in cases where an employee, through no fault of his/her own, receives several salary back-payments in the course of a single month which cumulatively exceed the taxation threshold, but are individually below it.
- 2.2. With a view to ensuring more efficient exercise of citizens' rights, the Protector of Citizens issued a recommendation to the Ministry of Finance in which he reminded the said authority it should timely coordinate the activities of its organisational units and designate an organisational unit which would handle requests in cases of conflict of jurisdiction.
- 2.3. The Protector of Citizens contributed to the remedying of omissions committed by the Ministry of Finance with regard to the so-called "administrative silence" by issuing a recommendation which highlighted the importance of deciding on complaints lodged by Customs Administration staff in due time.
- 2.4. The Protector of Citizens contributed to a more complete exercise of employment rights by customs officers by issuing a recommendation to the Ministry of Finance in which he advised the latter to make effort to draw the Government's attention to find placements for the customs officers transferred from the UNMIK Customs Office in 2008. The Protector of Citizens also advised the Ministry of Finance to recommend that the Customs Administration provide training opportunities for those employees without delay and then assign them to fill the vacancies.
- 2.5. For the purpose of improving communication between citizens and the Customs Administration, the Protector of Citizens issued a recommendation in which he advised the Customs Administration it is required to notify complainants in writing on the merits of their complaints.²⁵⁴

²⁵⁰ Article 112 paragraph 1 of the Law on Budget System, Official Gazette of RS, No. 54/09, 73/10, 101/10, 101/11, 93/12, 62/13, 63/13, 108/13 and 142/14.

²⁵¹ "Determined Fight against Informal Economy", the Ministry of Finance, communication available at <http://www.mfin.gov.rs/newsitem.php?id=10663>

²⁵² Official Gazette of RS No. 139/14.

²⁵³ Law on Reduction of Net Wages for Public Sector Employees, Official Gazette of RS No. 108/13.

²⁵⁴ Law on Public Administration, Official Gazette of RS, No. 79/05, 101/07 and 99/14.

2.6. The Protector of Citizens contributed to lawful operations of the Tax Administration branch in Zemun by pointing to an omission which led to the assessment of tax on registered firearms in 2008, 2009, 2010, 2011, 2013 and 2014 in a case where the complainant was entitled to a tax exemption.²⁵⁵

2.7. In 2014, the Protector of Citizens received 285 complaints in this sector, in which complainants alleged 340 violations of rights. In the same period, he completed the investigations in a total of 329 cases received in 2014 and in earlier years. Out of the total of 78 investigations conducted, 55 (70.51%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 14 the recommendation, of which 8 (57.14%) have been accepted, 6 (42.86%) have not been complied with and 0 are still pending. Based on the number of identified (69) and remedied (63) omissions²⁵⁶, the rate of efficiency in this sector is 91.30%.

3. Shortcomings at the national level

3.1. The provisions of the Law on Conditional Write-Off of Interest and Standstill of Tax Debt²⁵⁷ have prevented forcible collection of compulsory social insurance contributions from the so-called "small taxpayers" in 2014; on the other hand, many taxpayers have forfeited the standstill status because of a minor delay in the payment of symbolic amounts of tax debt.

3.2. Individual property tax, which has increased significantly from earlier years, has been a major grievance for the citizens, both because of the delineation of property tax areas by local self-governments and because of the fact that all real estate is appraised on the basis of the average cost of a square metre, which does not take into account market conditions and actual economic circumstances.

3.3. The Law amending the Law on Tax Procedure and Tax Administration²⁵⁸ has changed the order of tax debt settlement from collected amounts. Namely, any amounts collected are first used against collection costs, then interest, while the principal is covered from the remainder, if any, which is more disadvantageous for citizens than the previous arrangement, under which any partial payments were first used to cover the principal.

3.4. The Ministry of Finance and its subordinate tax and customs authorities have on occasion been negligent in handling citizens' submissions: they have been known to remain silent and not decide on the requests contained in such submissions or to misplace them, which is why they have been requesting copies of those submissions after the Protector of Citizens has initiated an investigation.

3.5. As a precondition for giving citizens access to their services, commercial banks require a disproportionate amount of personal data which are not necessary for the commercial relationship concerned; furthermore, in the event of past-due payments they tend to invade citizens' privacy in impermissible ways.

3.6. 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

²⁵⁵ Article 21 paragraph 1 item 4 of the Law on Taxes on the Use, Possession and Carrying of Goods, Official Gazette of RS, No. 26/01, 80/02, 43/04, 31/09, 101/10, 24/11, 100/11, 120/12, 113/13, 68/14 and 140/14

²⁵⁶ The number of identified omissions is the sum of terminated investigations, the number of recommendations that have been complied with and those that have not been complied with, while the number of remedied omissions is calculated as the sum of terminated investigations and recommendations which resulted in compliance.

²⁵⁷ Official Gazette of RS No. 119/12.

²⁵⁸ Official Gazette of RS No. 68/14, Article 21.

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.²⁵⁹

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 2013 Annual Report of the Protector of Citizens:

- That the **Ministry of Finance** should timely act on requests for opinions on the implementation of laws and other general instruments;
- That **the Tax Administration** should pass first- and second-instance decisions within the time limits set by the law and in the form required by the law, to enable the citizens to seek review of the opinions of tax authorities through the use of available remedies.
- That **the Customs Administration** should pass first- and second-instance decisions within the time limits set by the law and in the form required by the law, to enable the citizens to seek review of the opinions of tax authorities through the use of available remedies.
- That **the Customs Administration** should improve the exercise and protection of employment rights of customs officers and ensure compliance with the applicable regulations on public administration and civil servants.

4.2. The Ministry of Finance has not prepared instructions for implementation of the Law on Reduction of Net Wages for Public Sector Employees, which should have incorporated the opinion of the Protector of Citizens on the correct way to apply that Law in cases of cumulative monthly payments; furthermore, it has not made arrangements for refunding the unlawfully collected tax to income recipients.

4.3. The Regional Unit of the Tax Administration in Kragujevac has not accepted the opinion of the Protector of Citizens in connection with unjustified denial of the right to reimbursement of expenses incurred for the services of professional tax assistants in tax procedures.

5. Explanation

Preparations for the shift from linear budgeting to programme budgeting have improved the way in which budget spending units produce and analyse their financial plans, in that it has enabled them to monitor the attainment of set objectives and their spending. A programme budget makes budget spending units compete for financial support for their programmes, which means public funds will be more effectively targeted at overcoming specific issues and completing tasks.

Amendments to the Law on Protection of Financial Service Consumers have created normative conditions for more effective and more comprehensive protection of citizens. Also, the National Bank of Serbia is now vested with greater powers to determine whether financial service providers engage in unfair business practices or include unfair clauses in their contracts.

²⁵⁹ 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 Nos. 80/04 and 101/05.

Based on the concerns raised by complainants, mostly women on pregnancy or maternity leave, the Protector of Citizens issued Preventive Recommendations to the Ministry of Finance in connection with the implementation of the Law on Reduction of Net Wages for Public Sector Employees, which introduced the so-called “solidarity taxation.” He found the implementation of this Law to be improper, unfair and contrary to the very purpose of the Law, because it imposes tax on salary amounts paid in the course of a single month even in cases where an employee, through no fault of his/her own, receives two or more salary back-payments which cumulatively exceed the taxation threshold, but are individually below it. This practice has disproportionately affected pregnant women and nursing mothers whose employers have fallen behind schedule with the payment of their salary compensation. For this reason the Ministry of Finance was advised to prepare instructions on the proper mode of application of this Law, which would incorporate the opinion of the Protector of Citizens that income should be taxable only if the amount paid in respect of any given month and that month alone exceeds the non-taxable threshold. The Protector of Citizens also suggested that the unduly collected amounts of tax should be refunded in all justified cases. The Ministry of Finance did not comply with this recommendation and refused to provide a detailed explanation, other than a reference to legislative provisions and their own interpretation. The Law on Reduction of Net Wages for Public Sector Employees, which caused much criticism, debates and uncertainty among the general public, was repealed on 1 November 2014.²⁶⁰ The Constitutional Court did not initiate a constitutional review until after the Law was already repealed, on 20 November 2014.²⁶¹

The standstill period of the principal tax debt for the so-called “small taxpayers”, which prevented forcible collection of compulsory social insurance contributions for their employees, expired in late 2014. As principal tax debt repayment in instalments is scheduled to begin in 2015²⁶², one can only hope that the workers who have been deprived of their rights for two years will finally receive satisfaction. Implementation of the Law on Conditional Write-Off of Interest and Standstill of Tax Debt has also opened a number of issues in connection with the forfeiture of the standstill status and the conditions under which a taxpayer can requalify for a standstill, because many taxpayers have forfeited the standstill status because of a minor delay in the payment of symbolic amounts of tax debt, because they did not have sufficient information or because commercial banks were late in processing their payment orders or because they were not aware of minor increases in pension and disability insurance contributions.²⁶³ As a result, many of them reapplied for a standstill and the processing of those applications put an additional strain on tax authorities – which struggle to keep pace as it is – and further slowed down their operations.

As a result of an increase in property tax, many complainants raised issues with the way local self-governments delineated property tax areas and with the average cost of a square metre in their neighbourhoods. They claimed the prices stated in the property sales agreements for newly-build residential units were inflated so that a portion of the amount

²⁶⁰ Pursuant to Article 13 paragraph 1 of the Law on Temporary Regulation of the Base for the Calculation and Payment of Salaries/Wages and Other Regular Income for Budget Spending Units, Official Gazette of RS No. 116/14.

²⁶¹ Announcement from the 32nd session of the Constitutional Court, available at <http://www.ustavni.sud.rs/page/view/0-102074/saopstenje-sa-32-sednice-ustavnog-suda-odrzane-20-novembra-2014-godine-kojom-je-predsedavala-vesna-ilic-prelic-predsednica-ustavnog-suda?qs=%D0%BE%20%D1%83%D0%BC%D0%B0%D1%9A%D0%B5%D1%9A%D1%83>

²⁶² Pursuant to Article 8 of the Law on Conditional Write-Off of Interest and Standstill of Tax Debt. Repayment of tax debt in instalments for the so-called “large taxpayers” began on 1 January 2014.

²⁶³ Article 1 paragraph 1 of the Law amending the Law on Compulsory Social Insurance Contributions, Official Gazette of RS No. 57/14.

granted as a home loan could be used for furniture and fittings, which had a knock-on effect on the value of older properties, although sometimes their owners could barely afford the costs of basic maintenance. While there is no doubt that they are dissatisfied, these complainants rarely make use of the remedies available to them to contest their tax assessments, nor do they plead with their local self-governments to take the economic reality into account when making tax assessments. The amendment which allows misdemeanour charges against citizens who fail to pay the assessed amount of tax has also raised concerns.

The mechanisms designed to protect the rights of the Customs Administration employees still do not function properly. In addition to individual complaints from customs officers, the Protector of Citizens also received a complaint signed by the 37 officers who became employees of the Customs administration based on a Resolution of the Government in 2008, following their transfer from the UNMIK Customs Office. These employees have not been assigned to any posts for the past five years, which is a situation that has no basis in the applicable regulations. In that time, they have been receiving a fixed monthly compensation, which has not changed since 2008. Meanwhile, the Customs Administration has hired new employees on various grounds, including through public calls for applications. The Protector of Citizens issued a recommendation to the Ministry of Finance advising it to take action within its sphere of competence in order to draw the Government's attention to the need for creating regulatory and financial assumptions for assigning the employees taken over from the UNMIK Customs Office to appropriate posts.²⁶⁴ The Customs Administration was advised to provide training to those employees without delay and then transfer them to any available vacancies, pending a comprehensive solution for their status.

In mid-2014, the customers of some commercial banks were unpleasantly surprised when their banks asked their consent for transferring their personal data to the US tax authorities. This practice caused dilemmas regarding the applicability of FACTA²⁶⁵ in the Republic of Serbia, since no intergovernmental agreement to that effect has been signed or ratified. However, this did not prevent commercial banks from asking for their customers' consent for data transfer, without any basis in applicable Serbian legislation. This prompted the Commissioner for Information of Public Importance and Personal Data Protection to remind the public that personal data processing must be based on the law.²⁶⁶ Commercial banks have been known to request their customers' personal data that are not necessary for their commercial relations and in the event of past-due payments tend to invade the customers' privacy in improper and impermissible ways. These invasions of privacy usually involve frequent telephone calls to harass the debtors and their family members, to threaten them or to scare them with seizure of property. The Protector of Citizens has referred these complainants to the Centre for Protection and Education of Financial Service Customers at the National Bank of Serbia.

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

²⁶⁴ In its replies, the Customs Administration referred to the regulations restricting the maximum number of employees in public authorities, public agencies and compulsory social insurance organisations.

²⁶⁵ Foreign Account Tax Compliance Act.

²⁶⁶ Communication available at <http://www.poverenik.rs/sr/saopstenja-i-aktuelnosti/1871-obrada-podataka-o-licnosti-mora-imati-osnov-u-zakonu.html>, accessed 4 February 2015.

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.

II TYPICAL CASES

Ministry of Finance does not recognise its constituent bodies

A complainant addressed the Ministry of Finance in writing in accordance with the Law on Free Access to Information of Public Importance²⁶⁷ with a request for information on the balance and credits/debits on the accounts used for flood relief donations in mid-2014. The Ministry of Finance informed the complainant it did not have access to the requested information and referred to the Treasury Administration and the National Bank of Serbia. Under the Law on Budget System²⁶⁸, the Treasury Administration is a body within the Ministry of Finance, but in this case the Ministry treated it as a separate public authority, thus forcing the complainant to file a new request and wait an additional period for a reply. The Protector of Citizens conducted an investigation and the omission was remedied when the Ministry of Finance obtained the requested information from the Treasury Administration and allowed the complainant to access the information.

Tax Administration repeats the same omission every year

A complainant filed a complaint with the Protector of Citizens against the Tax Administration Branch in Zemun, which had assessed tax on registered firearms from 2008 to 2013 on a firearm presented to him as a commemorative reward for his work in law enforcement. Although such cases are exempt from tax on registered firearms, the complainant was forced to repeatedly demonstrate to the tax authority the firearm was a present. This happened every year from 2008 onwards, except for 2012. The complainant was also forced to resort to available remedies to contest the tax assessments. The tax authority even repeated the same omission during the investigation initiated by the Protector of Citizens and assessed a tax liability payable by the taxpayer in question for 2014. The issue was resolved after the Protector of Citizens issued a recommendation. In this context, the Tax Administration was advised to issue a formal note of apology to the complainant and to exercise due care in order to avoid similar mistakes in the future.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT 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, by which Serbia was ordered to undertake all necessary measures 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.
2. **The National Bank of Serbia** should focus its full attention on timely supervision of the banking sector and efficient protection of financial service users, once the regulations conferring such powers on that institution take effect.

²⁶⁷ Official Gazette of RS, No. 120/04, 54/07, 104/09 and 36/10.

²⁶⁸ Official Gazette of RS, No. 54/09, 73/10, 101/10, 101/11, 93/12, 62/13, 63/13, 108/13 and 142/14.

3. **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.
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 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.
7. **Local self-governments** should not plan their own-source revenue only on the basis of their own needs; instead, they should also take into account the economic conditions and the financial situation of their taxpayers.

ECONOMY

I BACKGROUND

1. Government's achievements

- 1.1. The Law amending the Law on Bankruptcy²⁶⁹ has been enacted.
- 1.2. The new Law on Privatisation²⁷⁰ has been enacted.
- 1.3. The Ministry of Economy, in cooperation with the competent institutions, prepared the Draft Strategy to support the Development of Small and Medium-Sized Enterprises, Entrepreneurship and Competitiveness in the Period 2015-2020 with an Action Plan.²⁷¹

2. Results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens has filed an Initiative to the Government to amend the Law on the Procedure of Registration with the Business Registers Agency²⁷², which would impose a duty on the Agency to serve written copies of registrar's decisions to sole traders affected by those decisions, even in cases where those sole traders were not the ones applying for registration of a data entry, change or deletion.
- 2.2. The Ministry of Economy informed the Protector of Citizens it would comply with his recommendation and submit to the Government as soon as possible a Proposal for Settling Claims Registered in Accordance with the Decree on Registration of Outstanding Debt of Socially-Owned Enterprises under Enforceable Judgements for Employment-Related Claims.²⁷³
- 2.3. The proposals made by the Protector of Citizens in the drafting of the Strategy to support the Development of Small and Medium-Sized Enterprises, Entrepreneurship and Competitiveness in the Period 2015-2020 and the accompanying Action Plan contributed to

²⁶⁹ Official Gazette of RS No. 83/14.

²⁷⁰ Official Gazette of RS No. 83/14.

²⁷¹ Website of the Ministry of Economy, available at: <http://www.privreda.gov.rs/pages/article.php?id=11004>.

²⁷² Official Gazette of RS, No. 99/11 and 83/14.

²⁷³ Official Gazette of RS, No. 23/12 and 87/12.

the establishment of relevant mechanisms and reinforcement of economic operators' rights in proceedings before public authorities.

2.4. In 2014, the Protector of Citizens received 151 complaints in this field, in which complainants alleged 151 violations of rights. In the same period, he completed the investigations in a total of 166 cases received in 2014 and in earlier years. Out of the total of 28 investigations conducted, 25 (89.29%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted investigations and issued 4 recommendations, of which 0 (0%) have been accepted, 2 (50%) have not been complied with and 2 are still pending. Based on the number of identified (27) and remedied (25) omissions²⁷⁴, the rate of efficiency in this sector is 92.59%.

3. Shortcomings at the national level

3.1. 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 – and with inadequate oversight of the authorities in charge of conducting the bankruptcy proceedings, in particular bankruptcy administrators.

3.2. The new system of oversight and control of bankruptcy administrators provided for in the Law amending the Law on Bankruptcy of 2014 has not yet been established; instead, the existing standards have been modified and the work of bankruptcy administrators is still overseen in the procedure shown to be fairly ineffective in the past.

3.3. The Privatisation Agency has not completed privatisation processes in a large number of enterprises (155 of them according to the most recent available figures²⁷⁵), the majority of which will probably go into bankruptcy.

3.4. The Government has not amended the Law on the Procedure of Registration with the Business Registers Agency which would impose a duty on the Agency to serve written copies of registrar's decisions to sole traders affected by those decisions, even in cases where those sole traders were not the ones applying for registration of a data entry, change or deletion.

3.5. The Ministry of Economy has not fulfilled its duty under the Decree on the Conditions for and Manner of Attracting Direct Investment²⁷⁶ to regulate in detail the manner and procedure of overseeing recipients' compliance with their contractual obligations.

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 2013 Annual Report of the Protector of Citizens:

- That the **Government** should draft and propose to the National Assembly a new text of the Law on Bankruptcy, which would, in addition to the positive arrangements already included in the Bill, provide for more complete and more efficient supervision of bankruptcy administrators in the course of bankruptcy proceedings.

²⁷⁴ The number of identified omissions is the sum of terminated investigations, the number of recommendations that have been complied with and those that have not been complied with, while the number of remedied omissions is calculated as the sum of terminated investigations and recommendations which resulted in compliance.

²⁷⁵ Website of the Ministry of Economy, available at: <http://www.privreda.gov.rs/newsitem.php?h=1&id=8100>.

²⁷⁶ Official Gazette of RS, No. 55/14 and 65/14.

- That **the Privatisation Agency** should make further efforts and take appropriate measures and activities to complete the process of privatisation in those enterprises where it is still ongoing as soon as possible and with the best possible outcome.

5. Explanation

With regard to bankruptcy proceedings, a key novelty is the enactment of the Law amending the Law on Bankruptcy, which has introduced significant improvements in the status of bankruptcy creditors and efficiency of the procedures; however, it is merely an improved version of the existing system, which has been rather ineffective in practice, rather than a comprehensive reform that would have resulted from the enactment of a completely new law. The said amendments should ensure better provision of information to the public about the work of bankruptcy administrators and other bankruptcy bodies and allow for better and more effective bankruptcy and reorganisation procedures.

Either way, the duty to post notices on electronic notice boards in courts, along with the duty of the authorities in charge of bankruptcy proceedings to notify one another of any relevant facts and actions in the proceedings, certainly count as positive legislative amendments which will ensure better information and transparency of bankruptcy proceedings. Major steps forward have also been made in terms of detailed conditions for the appointment of bankruptcy administrators, detailed timeframes for the actions of bankruptcy bodies and detailed powers and responsibilities of bankruptcy bodies.

Shortcomings of the amendments include the unnecessary requirement for lien debtors to register their lien with the bankruptcy court and the too stringent rules on the duty of creditors to notify the court on the identity of guarantors and any claims they may have from the guarantees within a short period in accordance with the Law on Bankruptcy.²⁷⁷ There are still no means of exercising control of the work of the Privatisation Agency in cases where it is appointed as a bankruptcy administrator.

With regard to bankruptcy proceedings and complaints against authorities in charge of bankruptcy proceedings, the situation in 2014 did not change much compared with the previous year, i.e. there has been no major decline in the number of complaints against them. Similarly as in earlier years, 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 2012 and 2013 – 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.

With regard to privatisation, the key novelty in terms of legislation is the enactment of the new Law on Privatisation, which improves the position of creditors of companies in restructuring, provides for a debt collection mechanism enforceable against companies in

²⁷⁷ Members 49. and 111 of the Law on Bankruptcy, Official Gazette of RS, No. 104/09, 99/2011 - new law, 71/12 - decision of the Constitutional Court and 83/14.

restructuring for those creditors who registered their claims in accordance with the Law amending the Law on Privatisation and provides for new privatisation models.

In 2014, the number of complaints submitted to the Protector of Citizens by citizens against companies in restructuring due to outstanding claims against those companies remained more or less the same as in 2013. A key change in this regard introduced by the new Law on Privatisation is the repeal of Article 20h of the previous Law on Privatisation²⁷⁸, which stipulates that, from the date of passing of a decision on restructuring to the date of passing of a decision on completion of restructuring, but in any case not later than 30 June 2014, an entity under privatisation and/or its assets cannot be subjected to enforced collection or any other execution measure for the purpose of settlement of claims, while any enforced collection procedures that may be underway must be suspended. The new Law and the abovementioned amendments of the previous one allow the creditors of companies in restructuring to collect their claims out of court by filing those claims with the Privatisation Agency, in which case the Agency is required to record and determine the amount of claims for each creditor within a statutory time limit and prepare proposals for settlement, which are then sent to the creditors.

Excessively lengthy privatisation processes have been a major issue. Under the new Law, socially-owned capital in privatised entities must be privatised by 31 December 2015. It also introduced additional privatisation models, with the aim of increasing the chances of successful privatisation. Thus, the new Law recognises as many as four privatisation models. In addition to sale of equity and transfer of equity free of charge, it has also introduced sale of assets and strategic partnership. It remains to be seen whether these changes will be sufficient to complete all privatisations according to schedule.

Furthermore, it should be noted that the Ministry of Economy, in cooperation with other competent institutions, prepared a Draft Strategy to support the Development of Small and Medium-Sized Enterprises, Entrepreneurship and Competitiveness in the Period 2015-2020 with an Action Plan for its implementation, which should improve the business climate and ensure better access to sources of finance, continual human resources development, greater sustainability and competitiveness, better access to new markets, development and promotion of an entrepreneurial spirit and promotion of youth entrepreneurship, female entrepreneurship and social entrepreneurship. Suggestions made by the Protector of Citizens have contributed to the establishment of mechanisms and reinforcement of rights of economic operators in procedures conducted by the public administration.

II TYPICAL CASES

Irregularity in the work of the Business Registers Agency

The Protector of Citizens received a complaint which alleged the Business Registers Agency had violated the provisions of the Law on Companies which govern forcible liquidation of companies by not applying Articles 546 and 547 of the Law on Companies, i.e. by not conducting forcible liquidation. The Protector of Citizens sought clarification from the Agency. Upon receiving a reply and verifying the allegations stated in the complaint, the Protector of Citizens issued a recommendation to the Agency in which he advised it to remedy the irregularities in its work and to apply the provisions of the Law on Companies which govern forcible liquidation of companies in the future whenever the statutory conditions for doing so are met.

²⁷⁸ Official Gazette of RS", No. 38/01, 18/03, 45/05, 123/07, 123/07 - new law, 30/10 - new law, 93/12, 119/12, 51/14 and 52/14 - decision of the Constitutional Court.

Ministry of Economy fails to meet its obligations under the Decree

A complainant alleged that the Ministry of Economy had not met its obligations under the Decree on Registration of Outstanding Debt of Socially-Owned Enterprises under Enforceable Judgements for Employment-Related Claims, in that it failed to propose to the Government a method for settling the registered claims within the statutory timeframe. The Protector of Citizens initiated an investigation of the Ministry of Economy pursuant to the complaint and found the Ministry had obtained information on the total amount of claims and forwarded it to the Government, but failed to propose a solution for settling those claims. For this reason, the Protector of Citizens issued a recommendation advising the Ministry to forthwith remedy this omission and submit to the Government a proposal for a method of payment of citizens' registered claims.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **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.
2. **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.
3. **The Ministry of Economy** should fulfil its duty under the Decree on the Conditions for and Manner of Attracting Direct Investment to regulate in detail the manner and procedure of overseeing recipients' compliance with their contractual obligations.
4. **The Ministry of Economy and the Privatisation Agency** should make additional efforts and undertake appropriate measures and activities to ensure the completion of ongoing privatisations by the deadline set out in the Law on Privatisation, so as to avoid another extension of the time limit for completion of privatisation, as has already been the case.
5. **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.

2.12. JUSTICE SECTOR

I BACKGROUND

1. Government's achievements

- 1.1. Laws amending the Law on Notaries Public²⁷⁹ have been enacted.
- 1.2. The Fee Rate Schedule of Notaries Public²⁸⁰ has been amended.
- 1.3. The Law on Public Attorney's Office²⁸¹ has been enacted.
- 1.4. The Law amending the Law on Enforcement and Security²⁸² has been enacted.
- 1.5. The Law on Mediation²⁸³ has been enacted.
- 1.6. The state has improved its record of compliance with the decisions of the Constitutional Court which awarded compensation for damages to claimants for violations of the right to trial within a reasonable time.

2. Results achieved by the Protector of Citizens

- 2.1. The Opinion issued to the Ministry of Justice and the Chamber of Notaries Public, which drew attention to the need to review the regulations which granted notaries public the exclusive power to draw up certain types of contracts, the amounts of notary public fees and the fact that the procedure for appointment of notaries public was regulated by secondary legislation and which reminded the said authorities of their duty to consistently apply the statutory criteria for the appointment of notaries public, has had a direct influence on the quality of amendments to the regulations which govern the work of notaries public and their and fees/rewards.
- 2.2. The Opinion sent to the Ministry of Justice and subsequently forwarded to the National Assembly, in which the Protector of Citizens pointed to the issues observed in the implementation of the provisions of the Law on Enforcement and Security pertaining to the operations of the so-called "private bailiffs" has helped remedy the shortcomings of those legislative provisions that left scope for abuse due to their corruption potential.
- 2.3. Recommendations of the Protector of Citizens issued to the Ministry of Justice in previous reporting periods due to non-compliance with the decisions of the Constitutional Court which awarded compensation for damages to claimants for violations of the right to trial within a reasonable time have resulted in payments of the awarded compensations.
- 2.4. In 2014, the Protector of Citizens received 466 complaints in this field, in which complainants alleged 492 violations of rights. In the same period, he completed the investigations in a total of 542 cases received in 2014 and in earlier years. Out of the total of 35 investigations conducted, 18 (51.43%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 18 the recommendation, of which 9 (50%) have been accepted, 9 (50%) have not been complied with and 0 are still pending. Based on the number of identified (36) and remedied (27) omissions, the rate of efficiency in this sector is 75%.

²⁷⁹ Official Gazette of RS No. 121/14 and Official Gazette of RS No. 06/15.

²⁸⁰ Official Gazette of RS, No. 103/14 and 138/14.

²⁸¹ Official Gazette of RS No. 55/14.

²⁸² Official Gazette of RS No. 139/14..

²⁸³ Official Gazette of RS No. 55/14.

3. Shortcomings at the national level

3.1. Although the introduction of notaries public was supposed to increase legal certainty and make transactions more effective and expedient, the initial stages of their work have been marred by numerous omissions.

3.2. In a show of their disapproval of the new legislation which granted notaries public the exclusive power to draw up certain types of contracts, attorneys went on a strike during the reporting period, which continued for several months and prejudiced the exercise of the right to trial within a reasonable time and the right of access to justice.

3.3. The legislative arrangements governing the work of bailiffs have revealed a number of weaknesses, including: the scope for abuse and corruption potential in the assignment of cases filed by enforcement creditors from the public sector on the basis of authentic documents; the mechanism of serving enforcement resolutions to enforcement debtors; the remedy available against the resolution by which a bailiff decides on a motion for enforcement on the basis of an authentic document; the amount of rewards and fees for their work; and the oversight and accountability mechanisms applicable to bailiffs.

3.4. After many failed attempts to regulate the field of free legal assistance, the Law on Free Legal Assistance has not yet been enacted, which continues to act as a barrier to access to justice, especially for the financially vulnerable.

3.5. Although the Ministry of Justice has paid compensation for damage under decisions of the Constitutional Court after the Protector of Citizens issued his recommendations, the Ministry has not complied with its statutory duty to provide a reply to the Protector of Citizens after the initiation of his investigations and to inform him of its compliance with the recommendations.

3.6. Exercise and protection of the citizens' constitutional and legal right to compensation for unjustified detention and or violations of the right to trial within a reasonable time remains fraught with difficulties, as there are no mechanisms in place that would provide for a clear and predetermined procedure for exercising the right to compensation.

3.7. The Ministry of Justice has been honouring citizens' claims for exoneree compensation only after the Protector of Citizens initiated investigations.

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 2013 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 adopt secondary legislation to establish clear, predetermined and precise procedures for exercising the entitlement to compensation awarded by decisions of the Constitutional Court;
- 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.

5. Explanation

A key event in this reporting period was the appointment and beginning of work of notaries public, introduced in the country's legal system under the Law on Notaries Public. Although

the introduction of notaries public was supposed to increase legal certainty and make transactions more effective and expedient and although the establishment of this service has been prepared for years, the initial stages of their work have been marred by numerous omissions in the appointment of notaries public, the establishment of their chamber, insufficiently regulated oversight of their eligibility and the debate about their fee rates. Following the delegation of public powers to non-state entities, notaries public have been vested with some of the powers formerly exercised by the government through its authorities.

Upon learning about possible irregularities in the procedure of appointment of notaries public, the Protector of Citizens initiated an investigation of the Ministry of Justice on own initiative and subsequently issued his opinion. The Opinion of the Protector of Citizens stated that the exercise of citizens' rights and interests based on the law would have been more free and more affordable and the introduction of a modern notary public service would have been more successful if the process of introducing the notary public service in Serbia had been gradual, if it had not been granted the exclusive power to draw up certain types of contracts, if other bodies (courts and the bar) had retained their competitive (parallel) powers in relation to those granted to notaries public and if citizens had been given the right to shape their own transactions and choose the wording of their agreements.

A positive development which followed after the Protector of Citizens issued his Opinion was the fact that, under the Law amending the Law on Notaries Public²⁸⁴, notaries public lost the exclusive power to draw up property sale agreements. Earlier amendments imposed a duty on notaries public to pay a percentage of their fees to a public revenue account, as called for by the Protector of Citizens.²⁸⁵ This eliminated one of the shortcomings highlighted by the Protector of Citizens, but it remains to be seen whether there would be any future comprehensive review of the criteria for determining the fees and rewards payable to notaries public.

In the reporting period, two years after bailiffs first began their work, the most common issues in their work came to light. These were in part due to certain shortcomings in the applicable legislation in this field, as the Protector of Citizens learned from the complaints he received and from media reports on this topic. Upon analysing the problems highlighted by citizens in their complaints filed with this authority, the Protector of Citizens recognised the importance of and the need for comprehensive amendments to the Law on Enforcement and Security and expects the Ministry of Justice to undertake measures in this direction.

A significant novel feature introduced by the Law on Public Attorney's Office concerns the oversight of that Office, which will for the first time be conducted by the Ministry of Justice. This is expected to contribute to more efficient functioning of that authority. This development is important from the aspect of powers of the Protector of Citizens, as he is in charge of overseeing the work of both the Public Attorney's Office and the Ministry of Justice.

As the previous Law on Mediation failed to deliver the expected results in practice, the reporting period saw the enactment of the new Law on Mediation, which is expected to relieve courts of the burden of cases that could be efficiently and successfully resolved through mediation. From the viewpoint of competences of the Protector of Citizens, of significance are the powers vested in the Ministry of Justice under this Law, including the

²⁸⁴ Official Gazette of RS No. 06/15.

²⁸⁵ Official Gazette of RS No. 121/14.

power to issue, revoke and renew mediation licences. Since the Ministry of Justice has been granted new powers, its capacities will have to be improved so that it could successfully and effectively exercise its powers under the law.

A positive development observed in the work of the Ministry of Justice in the reporting period is the fact that it has complied with the recommendations of the Protector of Citizens issued in previous reporting periods to that Ministry due to non-compliance with the decisions of the Constitutional Court which awarded compensation for damages to claimants for violations of the right to trial within a reasonable time, as well as the fact that the Ministry has been more cooperative in the investigations that followed.

In this reporting period, similarly as in earlier years, a large number of citizens contacted the Protector of Citizens because of violations of the right to a trial within a reasonable time. Although the Law on Organisation of Courts, which provides for a new mechanism for the protection of this right, has taken effect, there has been no corresponding reduction in the number of complaints against violations of this right.

Upon investigation of the Ministry of Justice, the Protector of Citizens found that the Ministry failed to decide on citizens' applications for exoneree compensation within the statutory period of 90 days provided for in the Law on Rehabilitation.²⁸⁶ In most cases, the Ministry remedied the shortcomings once the investigations were initiated and decided on the applications for exoneree compensation, although there have been cases in which the Ministry made new omissions in the procedure. If the Ministry fails to pass a decision within the statutory period, an applicant may sue for damages before the competent court, but citizens should nevertheless be able (especially in clear-cut situations) to exercise their rights as swiftly and as simply as possible, without undergoing additional procedures and incurring additional expenses, which will certainly be the case if the file a lawsuit, while the authority in charge simply passes the duty on to other authorities.

II TYPICAL CASES

Identical applications cost RSD 39,300 in May, RSD 390 in September

Although the institute of protection of the right to trial within a reasonable time has been introduced, there are no legislative provisions that would regulate the payment of court fees charged on applications, which resulted in a problem presented in a complaint filed with the Protector of Citizens. Namely, the complainant intended to file an application with the Higher Court of Belgrade immediately after the effective date of this Law. Enclosed with the application was a claim for a fair and reasonable compensation. She was required to pay a stamp duty of RSD 39,300, which caused her to withdraw her application. The Ministry of Justice informed the Protector of Citizens that the Supreme Court of Cassation had first taken the legal stand that applications for the protection of the right to trial within a reasonable time with claims for compensation were subject to court fees that vary according to the amount of the claim. However, the Court subsequently retracted this stand and took a new stand that court fees payable for such applications were to be determined in accordance with tariff numbers 4 and 5 of the fee rate schedule set out in the Law on Court Fees²⁸⁷, which meant the applicable rate in this case was RSD 390. This situation, which the Protector of Citizens lacks the authority to resolve since he has no oversight powers over courts, stems from a lack of precise legislative provisions when new mechanisms are introduced in the legal system.

²⁸⁶ Official Gazette of RS No. 92/11.

²⁸⁷ Official Gazette of RS No. 28/94 and 93/12.

Refusal to serve an executive document blocks access to judicial protection

After the Protector of Citizens initiated an investigation, the Ministry of Justice undertook measures to decide on a citizen's application for exoneree compensation citizens, who took recourse to the Protector of Citizens because the Ministry had not responded to his application. However, during the procedure and deliberation of the application, the Ministry made a new omission. Namely, it refused to provide the applicant with a copy of an agreement bearing the stamp and signature of an authorised person until the amount provided for in the agreement is paid in full.

The Ministry of Justice thus denied the complainant his right to possible judicial protection in the enforcement procedure. This omission was subsequently remedied, as the amount provided for in the agreement was paid.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **The Ministry of Justice** should expedite its drafting of the Law on Free Legal Assistance.
2. **The Ministry of Justice** should thoroughly review the Fee Rate Schedule of Notaries Public.
3. **The Ministry of Justice and the Chamber of Notaries Public** should consider the possibilities for further regulation of the procedure for the appointment of notaries public, in order to avoid any arbitrariness in the application of the selection criteria in the future and to increase the transparency of the selection procedure.
4. **The Ministry of Justice** should enact instruments which provide for a clear and predetermined procedure for exercising the right to compensation awarded by decisions of the Constitutional Court and wrongfully detained/convicted persons.
5. **The Ministry of Justice** should undertake timely measures to build the capacities of relevant authorities in view of the new powers granted to that Ministry under the Law on Public Attorney's Office and under the Law on Mediation.
6. **The Ministry of Justice** should comprehensively amend the Law on Enforcement and Security to eliminate the shortcomings observed in the implementation of that Law, in particular by providing for stronger oversight mechanisms and separate and clearly defined powers of the Ministry of Justice and the Bailiffs' Chamber in relation to the work of bailiffs.

2.13. DEFENCE SECTOR²⁸⁸

I BACKGROUND

1. Government's achievements

- 1.1. The Law amending the Law on Serbian Armed Forces²⁸⁹ has been enacted.
- 1.2. The Law amending the Law on Defence²⁹⁰ has been enacted.

2. Results achieved by the Protector of Citizens

- 2.1. The comments made by the Protector of Citizens to the Draft Law amending the Law on Serbian Armed Forces have been acknowledged and the identified shortcomings have been eliminated.
- 2.2. Pursuant to a recommendation of the Protector of Citizens, a violation of the right to a substantiated decision with the right of recourse for applicants in public calls for the hiring of professional servicemen has been eliminated.
- 2.3. After the Protector of Citizens initiated an investigation, an omission concerning the exercise of trade union rights with regard to determination of representativeness of trade unions by the Ministry of Defence as an employer has been eliminated.
- 2.4. Investigations by the Protector of Citizens have in most cases contributed towards rectification of omissions attributable to "administrative silence", as the Ministry of Defence complied with the Protector's recommendations while the investigations into the legality and regularity of its work were still underway.
- 2.5. In 2014, the Protector of Citizens received 84 complaints in this field, in which complainants alleged 85 violations of rights. In the same period, he completed the investigations in a total of 77 cases received in 2014 and in earlier years. Out of the total of 22 investigations conducted, 10 (45.45%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 1 recommendation, of which 0 (0%) have been accepted, 0 (0%) have not been complied with and 1 is still pending. Based on the number of identified (10) and remedied (10) omissions, the rate of efficiency in this sector is 100%.

3. Shortcomings at the national level

- 3.1. Cooperation between the Ministry of Defence and the Ministry of Labour, Employment, Veteran and Social Affairs has not been effective and efficient enough to address the issue of determination of pension amounts for the servicemen of the Serbian Armed Forces who do not have documents evidencing the amounts of their past salaries.
- 3.2. There is still no legal basis for determining the amount of pensions in cases where the Ministry of Defence has no records of the amounts of past salaries, which still prevents many professional servicemen of the Serbian Armed Forces from exercising their entitlement to a pension proportionate to their past salaries.
- 3.3. The Military Health Care Administration of the Ministry of Defence has still not passed an implementing regulation that would set out the conditions for superior officers'

²⁸⁸ The work of the Military Security Agency and the Military Intelligence Agency, both of which report to the Ministry of Defence, is presented separately in the section of this Report dealing with security services.

²⁸⁹ Official Gazette of RS No. 10/15.

²⁹⁰ Official Gazette of RS No. 10/15.

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.

3.4. A Bylaw on Harmonisation of Vocational, Academic and Scientific Titles with the regulations in force after the enactment of the Law on Higher Education has not been passed.

3.5. The fact that the Ministry of Defence retired a major after learning he was a transgendered person is a serious violation of citizens' rights and freedoms and the most striking example of violation of the right to gender identity.

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 2013 Annual Report of the Protector of Citizens:

- 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;
- That the **Ministry of Defence** should pass the Bylaw on Harmonisation of Vocational, Academic and Scientific Titles with the regulations in force after the enactment of the Law on Higher Education.

5. Explanation

The Ministry of Defence has prepared a Draft Law amending the Law on Serbian Armed Forces and Draft Law amending the Law on Defence and presented them to the Protector of Citizens for an opinion. The Protector of Citizens has found certain provisions of the Draft Law amending the Law on Serbian Armed Forces to be legally deficient, because they denied certain professional servicemen of the Serbian Armed Forces the right to receive a statement of reasons for administrative decisions and the right of recourse.

The Ministry of Defence acknowledged the comments raised by the Protector of Citizens. As a result, the version of the Law amending the Law on Serbian Armed Forces enacted by the National Assembly provides that administrative matters concerning professional servicemen of the Serbian Armed Forces are to be resolved in accordance with the Law on General Administrative Procedure and the Law on Administrative Disputes.

On the other end of the scale, this example of good cooperation between authorities is countered by the fact that the Ministry of Defence has not made a single step to remedy the shortcomings in the regulations which govern the calculation of the personal coefficient for retired professional servicemen in cases when there are no data on salaries and allowances, i.e. on the calculation base used in the pension system, although the Protector of Citizens highlighted the importance of this issue and emphasised it was necessary to take action to address it. These omissions in the legislative provisions still 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 2013, the Ministry of Defence cooperated with other public authorities and launched an initiative with the Ministry of Labour, Employment and Social Policy to consider the opportunities for providing a legal basis for cases like these in the Law on Pension and Disability Insurance; however, this form of cooperation did not continue in 2014 and a solution to this problem is still not in sight.

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 are still no rules in place that would govern the right of professional servicemen to take specialist medical examinations, because such examinations are available at military medical establishments only during regular working hours. As a result of a shortcoming in the 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 unless access to medical records is allowed.

Furthermore, the Bylaw on Harmonisation of Vocational, Academic and Scientific Titles has not been passed in this reporting period, although the Military Academy of the Ministry of Defence had taken the initial steps already in 2013.

Nevertheless, there has been a decline in the number of complaints against the Ministry of Defence and the Serbian Armed Forces in 2014. The significantly lower number of complaints is an indication that the Ministry of Defence has continued with the effective and efficient exercise of its delegated powers, in no small part due also to the investigations conducted by the Protector of Citizens. Similarly as in previous reporting periods, the Ministry of Defence responded to investigations into the legality and regularity of its work by remedying the omissions involving “administrative silence” and passed administrative documents within a reasonably short timeframe.

The Military Trade Union of Serbia took recourse to the Protector of Citizens due to “administrative silence”, claiming the Ministry of Defence had not replied to its application for a decision to grant or deny it a representative status. After the Protector of Citizens launched an investigation, the Ministry of Defence initiated a procedure to decide on the application. The omissions remedied pursuant to the application of the Military Trade Union are significant because the right to trade union association in the Armed Forces (subject to applicable restrictions) is guaranteed under the Law on Serbian Armed Forces, reflecting the wording of the Opinion given by the Protector of Citizens on the Bill of the current Law.

II TYPICAL CASES

Ministry of Defence begins remedying omissions in public calls for the hiring of professional servicemen

Upon conducting an investigation, the Protector of Citizens found the Ministry of Defence had acted contrary to the principles of good governance and violated the rules of public calls for hiring when it failed to pass a substantiated decision with a statement of reasons for rejecting a candidate for professional military service with advice on the right to recourse. The only explanations concerning the reasons for his rejection were given to the complainant orally and in the form of written communications.

The Protector of Citizens issued a recommendation to the Ministry of Defence in which he advised it to remedy the identified omissions. The Ministry of Defence replied during the period left for compliance, stating it had initiated the procedure to pass an administrative document in accordance with the rules of public calls for hiring and the Decree on Admission to Professional Military Service, in accordance with the guidelines set out in the recommendation. It also asked for an extension of the period for compliance and remedying of the omissions, due to the complex nature of the case and the fact that the procedure for

passing such decisions involves multiple organisational units of the Ministry of Defence and the Serbian Armed Forces.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT 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 determination of pension amounts for the servicemen of the Serbian Armed Forces who do not have documents evidencing the amounts of their past salaries.
2. **The Ministry of Defence** in cooperation with the **Ministry of Labour, Employment, Veteran and Social Affairs** should initiate an amendment of relevant legislation in order to provide for a legal basis for determining the amount of pensions in cases where the Ministry of Defence has no records of the amounts of past salaries.
3. **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. **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.

2.14. LOCAL SELF-GOVERNMENT SECTOR

I BACKGROUND

1. Government's achievements

1.1. The Protector of Citizens found no significant achievements of the government in this sector in 2014.

2. Results achieved by the Protector of Citizens

2.1. Various activities undertaken by the Protector of Citizens contributed to a significant improvement in the cooperation with local self-government authorities and national authorities.

2.2. Prompted by complaints from a large number of citizens about the activities undertaken by local self-governments to enforce orders for the demolition of illegally built properties, the Protector of Citizens found that the failure of those authorities to enforce their own orders to be an omission and issued recommendations to all local self-governments with a view to ensuring more effective protection of citizens' rights.²⁹¹

2.3. In 2014, the Protector of Citizens received 409 complaints in this field, in which complainants alleged 546 violations of rights. In the same period, he completed the investigations in a total of 357 cases received in 2014 and in earlier years. Out of the total of 73 investigations conducted, 28 (38.36%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 14 the recommendation, of which 7 (50%) have been accepted, 7 (50%) have not been complied with and 0 are still pending. Based on the number of identified (42) and remedied (35) omissions, the rate of efficiency in this sector is 83.33%.

3. Shortcomings at the level of local self-government

3.1. During this reporting period, certain local self-governments have not complied with the recommendations issued to them.

3.2. Local self-government 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.

3.3. Local self-government authorities still do not take all necessary steps to rectify the issues in their work that result in failure to implement or inefficient implementation of their own decisions.

3.4. Local self-government authorities still fail to provide clear and 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-government authorities.

3.5. Local self-government authorities still frequently exploit the fact that citizens often lack sufficient information: they prolong the procedures without justification and fail to exercise their inspection powers.

²⁹¹ For more details see Sectors of Transport, Construction and Infrastructure in this Report.

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 2013 Annual Report of the Protector of Citizens:

- That **local self-governments** should act lawfully, efficiently and economically pursuant to citizens' requests;
- That **local self-governments** should provide 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-government authorities and should furthermore organise their work in a manner that would prevent the identified or similar issues from repeating;
- That **local self-governments** should take all necessary measures and actions to eliminate obstacles and create assumptions for timely, efficient and economical enforcement of their own decisions.

4.2. The Administration of the City Municipality of Palilula in Belgrade has not complied with the recommendations issued to it in connection with its non-enforcement of its own decision.

4.3. The competent authorities of the Municipality of Bor have not complied with the recommendations issued to them in connection with the failure to act on an appeal and other submissions filed by a complainant with those authorities, as well as with the recommendation issued because the chairman of the Municipality of Bor refused to comply with his statutory 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 2014. During the reporting period, the citizens usually complained against the work of local self-governments because of delays in the handling of submissions, failure to respond to reports of environmental noise and failure to enforce orders issued by inspectorates (municipal inspectorate, traffic inspectorate). 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, communal waste removal, parking, public transport and maintenance of graveyards and grave plots. Specifically, the grievances included utility bills, the quality of utility services, construction or non-existence of water supply and sewerage systems and towing of illegally parked vehicles. Citizens have also alleged that negligence and insufficient involvement in addressing municipal issues resulted in the flooding of certain communities.

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 or the Provincial Ombudsman. In certain cases, taking into account the seriousness of the allegations and the fact that some self-governments still do not have local ombudsmen, the Protector of Citizens used his mediation powers and sent submissions to competent local self-governments, pointing to the importance and urgency of addressing the issues within their spheres of competence.

In this reporting period, similarly as in earlier years, local self-government authorities usually rectified omissions after an investigation into their work was launched pursuant to complaints relating to belated acting on requests. The citizens were mostly satisfied with this response and the Protector of Citizens accordingly closed his investigations. Overall, cooperation between local self-government authorities and the Protector of Citizens has been fair and adequate; indeed, there have been noticeable improvements in this regard compared with the previous period.

The only local self-government that had poor and unsatisfactory cooperation with the Protector of Citizens in this reporting period was the municipality of Bor. The chairman of the municipality failed to comply with the requests for information relevant for the investigation of a complaint by the Protector of Citizens. Obstruction of investigations, refusals to provide replies and documents and other forms of refusal to cooperate which prevent the Protector of Citizens from deciding on the merits of a complaint are impermissible in the legal order, because they breach imperative legal provisions.

The competent authorities of the municipality of Bor did not comply with the recommendations issued in connection with their failure to rule on an appeal and other submissions to those authorities made by a complainant, nor did they comply with the recommendation issued due to the municipality chairman's refusal to cooperate with the Protector of Citizens. The chairman of the municipality of Bor did not provide a reply even after he was issued a recommendation to fully cooperate with the Protector of Citizens and to timely and within the specified periods reply to the instruments issued by this authorities for the purpose of obtaining information and gaining access to all available data that may be relevant for the investigations conducted by the Protector of Citizens.

The Administration of the City Municipality of Palilula in Belgrade did not comply with the recommendations issued in connection with its failure to administratively enforce a decision which had been final and enforceable since 2007.

Local self-government 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. The competent authorities of local self-governments should undertake all available measures to facilitate the enforcement and effectively enforce their own decisions. Lack of financial resources is no justification for repeating identical or similar omissions. It is inadmissible for local self-governments to face identical or similar issues year after year and yet fail to undertake all available measures and actions to eliminate the identified problems in order to prevent breaches of rights and justified expectations of the local populace.

II TYPICAL CASES

Municipality of Vrsac remedies omissions in its work

Following a complainant's allegations that the municipality of Vrsac had not paid pension and disability insurance contributions and health insurance contributions on his behalf although he qualified as a self-employed artist, the Protector of Citizens initiated an investigation of the Municipality's work. The Municipality subsequently remedied the omission in its work by having its Municipal Assembly pass a Decision on the Conditions for and Manner of Qualifying for Payment of Contributions for Self-Employed Artists and Other Cultural Occupations, in accordance with Article 70 of the Law on Culture²⁹², after which it

²⁹² Official Gazette of RS No. 72/09.

proceeded to pay the complainant's pension and disability insurance contributions and health insurance contributions.

City Municipality of Zvezdara breaches the Law on Republic Administrative Fees

The Protector of Citizens issued a recommendation to the Administration of the City Municipality of Zvezdara in Belgrade in connection with the breach of Article 19 paragraph 1 item 5 of the Law on Republic Administrative Fees²⁹³ it had committed when it charged a fee to a complainant for certifying a statement by two witnesses, which the complainant needed in order to demonstrate his eligibility for an exemption from court fees and charges. According to the said provision of the Law on Republic Administrative Fees, fees are not charged on documents and actions required to demonstrate eligibility for statutory tax incentives and exemptions from public revenue charges. The Administration of the City Municipality of Zvezdara complied with the recommendation, issued a formal letter of apology to the complainant and filed a request for a refund of unlawfully collected fees with the competent branch of the Tax Administration.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **Local self-governments** should focus on acting more efficiently and more economically pursuant to citizens' requests.
2. **Local self-governments** should become more involved in addressing municipal problems faced by the citizens in their territories.
3. **Local self-governments** should take all necessary measures and actions to eliminate obstacles and create assumptions for timely, efficient and economical enforcement of their own decisions.
4. **Local self-governments** should take a more active role in addressing issues in connection with the holders of tenancy rights in apartments owned by citizens, the so-called "protected tenants".
5. **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-government authorities.
6. **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 or as soon as citizens bring these to their attention.

²⁹³ Official Gazette of RS, No. 43/03, 51/03 - corrigendum, 61/05, 101/05 - new law, 5/09, 54/09, 50/11, 70/11 - adjustment of dinar amounts, 55/12 - adjustment of dinar amounts, 93/12, 47/13 - adjustment of dinar amounts, 65/13 - new law and 57/14 - adjustment of dinar amounts

2.15. SECTORS OF URBAN PLANNING, CONSTRUCTION AND CADASTRE, NATURAL DISASTERS AND RESTITUTION

CONSTRUCTION, TRANSPORT AND INFRASTRUCTURE

I BACKGROUND

1. Government's achievements

- 1.1. The Law amending the Law on Planning and Construction²⁹⁴ has been enacted.
- 1.2. The Law amending the Law on Legalisation of Buildings²⁹⁵ has been enacted.
- 1.3. The Inspection Department within the Ministry of Transport, Construction and Infrastructure has become a single department in order to improve its efficiency.
- 1.4. A Group for Oversight and Cooperation in the Field of Anti-Corruption / Anti-Corruption Team has been formed within the Ministry of Transport, Construction and Infrastructure.

2. Results achieved by the Protector of Citizens

- 2.1. Enactment of the Law amending the Law on Planning and Construction has ensured a significant level of compliance with the essence of the orders and proposals made by the Protector of Citizens in a cumulative recommendation addressed to local self-governments and in the 2013 Annual Report of the Protector of Citizens regarding ways to overcome the issue posed by the lack of financial resources for enforcement of demolition orders, to improve the effectiveness and accountability of inspectorates within the Ministry and to introduce simpler and more efficient procedures for issuing building permits.
- 2.2. In 2014, the Protector of Citizens received 190 complaints in this field, in which complainants alleged 284 violations of rights. In the same period, he completed the investigations in a total of 399 cases received in 2014 and in earlier years. Out of the total of 57 investigations conducted, 24 (42.11%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 6 the recommendation, of which 0 (0%) have been accepted, 0 (0%) have not been complied with and 6 are still pending. Based on the number of identified (24) and remedied (24) omissions²⁹⁶, the rate of efficiency in this sector is 100%.

3. Shortcomings at the national level

- 3.1. Financial transfers to local self-governments for delegated powers, including in particular the enforcement of demolition orders, are insufficient.
- 3.2. The Law on Legalisation of Buildings has not produced the intended results in terms of diligence and efficiency of acting pursuant to applications for legalisation.
- 3.3. The regulatory framework still does not focus on the preventive role of the building inspectorate and does not provide for a qualitative oversight of its work.

²⁹⁴ Official Gazette of RS No. 145/14.

²⁹⁵ Official Gazette of RS No. 117/14.

²⁹⁶ The number of identified omissions is the sum of terminated investigations, the number of recommendations that have been complied with and those that have not been complied with, while the number of remedied omissions is calculated as the sum of terminated investigations and recommendations which resulted in compliance.

3.4. The issue of corruption and politicisation of local self-government authorities that perform duties delegated to them under the Law on Planning and Construction (issuing of building permits and certificates of occupancy, inspections etc.) remains.

3.5. There is not enough transparency and road users are not given sufficient information about the rules of using highways in an open toll system.

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 2013 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;
- That the Republic of Serbia should enact a systemic law on inspection (as announced) which would provide for a comprehensive reform of operations of inspectorates in order to improve their work.

4.2. **Local self-government 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

Acting on the complaints by a number of citizens who claimed that local self-governments had failed to take any action pursuant to enforceable demolition orders issued for illegal buildings, the Protector of Citizens closed the investigations by issuing a single recommendation addressed to all local self-governments. In this way he pointed to the desired course of action needed to prevent the circumstances which resulted in this situation from occurring in the future. The same recommendation was also forwarded for information purposes to the ministry in charge of construction.

During the investigations, the Protector of Citizens found that the competent authorities of the local self-governments concerned had delayed the enforcement of the demolition orders, contrary to the principle of efficiency of proceedings. The Protector of Citizens learned from the replies provided by the local self-government authorities that the causes for this negative trend in the enforcement of demolition orders included: lack of financial resources for the enforcement of the orders; non-existence of dedicated organisational units within the organisational structure of local self-governments that would be in charge of enforcing the decisions; belated and unsuccessful public procurements for the contractors who would perform these works where the authorities do not have appropriate organisational units; lack of a clear schedule of work for the enforcement of demolition orders and/or failure to adhere to an existing schedule; and failure of local self-government authorities to decide on citizens' requests for subsequent issuing of building permits and certificates of occupancy for buildings within the statutory time limit.

The Ministry of Transport, Construction and Infrastructure proposed the ultimately enacted amendments to the Law on Planning and Construction the Ministry of Transport in an effort to contribute, as far as the regulatory framework is concerned, to greater efficiency and effectiveness in the enforcement of demolition orders. Indeed, the novel arrangements introduced by the amendments stem from a fact which the Protector of Citizens also found in his investigations and which he highlighted as a matter of utmost priority in his single recommendation, namely that there is an apparent shortage of the financial resources needed for the enforcement of those orders. The new wording of Article 171 paragraph 6 now stipulates 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. From the viewpoint of the investigations conducted by the Protector of Citizens, who usually serves as a point of recourse for persons who hold a direct interest in the demolition of a building, this amendment is a major step forward; however, however, there is still a question mark over its effectiveness in practice. Moreover, this measure must not be seen as relieving the competent authorities to penalise illegal builders for their illegal acts and to demolish illegal buildings.

Furthermore, the amended provision of the Law which governs the enforcement of demolition orders no longer requires local self-governments to form a special organisational unit in charge of enforcing those orders. In this case, the legislator, quite reasonably, chose to cut costs and avoid an unnecessarily bloated administration, which certainly created a burden for small local self-governments, taking into account the fact that the actual physical demolition is entrusted to companies registered for that purpose.

Progress in addressing this issue is also evident from the willingness of the competent Ministry – judging by its operating plan and programme for the coming months and years – to systematically review the type and number of buildings scheduled for demolition, to set out criteria for demolition and to strengthen the preventive function of the building inspectorate, which should prevent illegal building.

One of the reasons for non-enforcement of demolition orders is the fact that local self-government authorities fail to decide on citizens' requests for after-the-fact building permits and certificates of occupancy within the time limit set by the law, which then, in accordance with the applicable regulations in this field, becomes a preliminary issue in the procedure of enforcement of decisions ordering the removal of properties built without a building permit.

This trend of inexpedient deciding on applications for legalisation, observed in the previous period, has continued, although a special law has been enacted to regulate this matter, with faster and more efficient handling of those requests set as one of its main objectives. Negative effects of the Law on Legalisation of Buildings are best illustrated by the fact that the very first amendments to that Law, adopted exactly one year of its enactment, clearly demonstrate that the time limits for requesting and providing the complete documentation set out in the original provisions were unrealistically set and had to be extended because they had already expired.

Inexpedient and inefficient acting of the authorities in charge of deciding on applications for legalisation is in no small part due to the obviously incorrect and inexpedient application of the provisions of this Law which specify the documentation that must be enclosed with an application. Based on citizens' complaints and the ensuing investigations into the regularity and lawfulness of work, the Protector of Citizens found that, as authorities in charge of the legalisation process delay the passing of lawful decisions in order to further stall the process, they adhere to an interpretation of the Law on Legalisation of Buildings which is contrary to the spirit of that Law and the legislator's intention.

II OTHER ACTIVITIES

Cooperation agreed between inspectorates, the Ministry of Transport, Construction and Infrastructure and the Secretariat of the Protector of Citizens

In a meeting between Minister Zorana Mihajlovic and the Protector of Citizens held on 17 September 2014, the parties acknowledged the Ministry of Transport, Construction and Infrastructure was efficient in acting pursuant to justified citizens' complaints filed with the Protector of Citizens and agreed that improving the effectiveness and accountability of inspectorates within the Ministry of and within local self-governments was a priority issue for further cooperation between the two authorities.

Furthermore, the Protector of Citizens pointed to numerous omissions regarding the effectiveness, expedience and accountability of building inspectorates within local self-governments, while Minister Mihajlovic highlighted the problem of insufficient numbers of Republic building inspectors (7) and shortcomings in the inspection procedure, which should be addressed by the new Law on Inspections which is currently in preparation.

To mutual satisfaction, the outcome of the meeting was an agreement on direct cooperation between the Ministry's inspectorates and the Secretariat of the Protector of Citizens to ensure that merits of citizens' complaints are examined as expediently as possible.

III TYPICAL CASES

Administration of the City Municipality of Vozdovac and Secretariat for Legalisation undertake action to avoid demolition of a building constructed by the Municipality of Vozdovac without a building permit

Acting pursuant to a complaint about unlawful and irregular actions of the Administration of the City Municipality of Vozdovac resulting from deliberate stalling of administrative enforcement of a demolition order for years and actions of the Secretariat for Legalisation, which passed a resolution to terminate the procedure instead of passing a meritorious decision on the application for legalisation, thereby breaching the rules of administrative procedure, the Protector of Citizens initiated an investigation of regularity and legality of work of this authority.

The Protector of Citizens issued a recommendation to the Administration of the City Municipality of Vozdovac and the Secretariat for Legalisation in which he advised them to undertake all necessary measures within their sphere of competence in order to remedy the identified shortcomings and to refrain from taking any actions that would be contrary to the principles of efficiency, economy and effectiveness and could further delay the legalisation process and enforcement of the demolition order.

City Secretariat reviews omissions in its work and passes a resolution to refer the case back

Acting pursuant to a complaint filed by the tenants of an apartment building in Vojvode Vlahovica street in Belgrade against the work of the Secretariat for Urban Planning and Construction of the City Administration of the City of Belgrade for failing to decide within the statutory period on motions for a repeated procedure for issuing a certificate of occupancy, the Protector of Citizens initiated an investigation of regularity and legality of work of this authority.

The Secretariat for Urban Planning and Construction of the City Administration of the City of Belgrade informed the Protector of Citizens within the specified period it had remedied the shortcoming after initiation of the investigation and had passed a resolution referring the case back for repeated deliberation of the application for a certificate of occupancy.

IV PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **The Government in cooperation with the Ministry of Transport, Construction and Infrastructure and the Ministry of Finance** should draft and propose to the National Assembly a budget law that would provide for higher allocations for the duties delegated to local self-governments (including in particular enforcement of orders for demolition of illegal buildings).
2. **The Ministry of Transport, Construction and Infrastructure**, acting in its oversight capacity and in cooperation with local self-governments, should apply increased supervision, reorganisation, employment of new officers and professional advancement of its employees in order to increase its professional capacities, ensure stricter depoliticisation of its staff and prevent corruption.
3. 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** as the main authority in charge of inspection, in particular 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.
4. To address the backlog of applications for legalisation, all authorities involved in this process should make additional efforts to ensure the Republic of Serbia finally completes the legalisation process, an institute not known in the EU law. In this context, it will be necessary to undertake the following:
 - **The Ministry of Transport, Construction and Infrastructure**, as the authority in charge of enforcing the Law on Legalisation of Buildings should review its human and administrative capacities, the qualifications of its staff and the efficiency of authorities in charge of the legalisation process and undertake measures to improve them where appropriate;
 - To ensure greater efficiency, local self-governments should improve their cooperation with other public authorities for the purpose of obtaining documentation *ex officio*;
 - Local self-governments should reorganise their work to ensure compliance with the statutory time limits in those legalisation procedures where it is not possible to pass a meritorious decision on the application (belated applications);
 - A uniform practice should be introduced, in which the Ministry would coordinate the work of local self-governments to ensure identical outcomes in identical legal and factual situations (by issuing internal operating instructions and by posting typical cases on its website);
5. **The Ministry of Transport, Construction and Infrastructure** should prepare a draft of amendments to the Law on Road Traffic Safety which will not violate or prejudice citizens' rights guaranteed by the Constitution and by laws.
6. The **competent Ministry**, in cooperation with the road maintenance company JP "Putevi Srbije", should undertake measures and activities in order to better inform drivers of their rights and responsibilities regarding the use of highways in an open toll system.

REAL ESTATE CADASTRE

Republic Geodetic Authority

I BACKGROUND

1. Government's achievements

- 1.1. The Bylaw on Real Estate Appraisal²⁹⁷ has been passed to regulate the procedure, manner and methodology of appraising real estate included in the cadastre.
- 1.2. The Bylaw on Cadastral Classification and Capability Evaluation of Land²⁹⁸ has been passed.
- 1.3. As of November 2014, the Republic Geodetic Authority allows online public access to the Register of Property Sales, which includes an orthophotograph with a street plan as background.

2. Results achieved by the Protector of Citizens

- 2.1. The investigations conducted by the Protector of Citizens have significantly contributed to rectification of the identified omissions in the work of the Republic Geodetic Authority.
- 2.2. As a result of the Recommendations of the Protector of Citizens, a Real Estate Cadastre Office decided on all requests filed by a citizen in connection with a single legal issue, after initially initiating separate administrative cases for each of the requests. This enabled the authority to act efficiently and lawfully.
- 2.3. In an opinion given pursuant to a proposal of the Republic Geodetic Authority, the Protector of Citizens explained that, upon expiration of the time limit for filing restitution claims, those persons who failed to support their claims with evidence should be ordered to pay statutory fees for the operations and services of the Authority.
- 2.4. In 2014, the Protector of Citizens received a total of 237 complaints in this field, in which complainants alleged 323 violations of rights. In the same period, he completed the investigations in a total of 261 cases received in 2014 and in earlier years. Out of the total of 189 investigations conducted, 157 (87.71%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted investigations and issued 8 recommendations, of which 7 (87.50%) have been accepted, 1 (12.50%) have not been complied with and 0 are still pending. Based on the number of identified (165) and remedied (164) omissions²⁹⁹, the rate of efficiency in this sector is 99.39%.

3. Shortcomings at the national level

- 3.1. The issue of belated or wrongful acting of Real Estate Cadastre Offices pursuant to citizens' request remains widespread. In some cases this is due to ongoing procedures pursuant to earlier claims.³⁰⁰
- 3.2. Many Real Estate Cadastre Offices do not issue certificates of identification and title changes (technical lists of changes) for cadastral parcels included in the land pool for

²⁹⁷ Official Gazette of RS No. 113/14.

²⁹⁸ Official Gazette of RS No. 63/14.

²⁹⁹ The number of identified omissions is the sum of terminated investigations, the number of recommendations that have been complied with and those that have not been complied with, while the number of remedied omissions is calculated as the sum of terminated investigations and recommendations which resulted in compliance.

³⁰⁰ Article 125 of the Law on Land Survey and Cadastre.

reparcellation from the time of their consolidation, claiming they do not have the necessary documentation in their archives.

3.3. Citizens continue to experience problems when attempting to obtain 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.

3.4. Discrepancies have been observed in a number of cadastral municipalities between the data recoded 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.

3.5. Certain Real Estate Cadastre Offices demand of citizens to apply for their cases to be transferred to another processor in cases where the official appointed to their case resigns or is absent from work over a longer period of time (due to illness, maternity leave etc.).

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 2013 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 of title or other changes in properties without the problems hitherto associated with this procedure;
- That Appropriate measures should be taken to increase the capacities of **Real Estate Cadastre Offices** for efficient operation. To that end, the possibility of hiring additional staff should be considered, to enable the Offices to fulfil their mandate properly and within the statutory time limits, especially in respect of claims filed before 2014.

4.2. **The Mayor and the Chairman of the City Assembly of Belgrade** have not responded to the Opinion in which the Protector of Citizens stated it was imperative that the city take part in the repeated land survey in one city municipality and address the issues faced by citizens due to discrepancies between the data recorded in real estate cadastres and the factual situation on the ground.

4.3. **The Republic Geodetic Authority and the competent Real Estate Cadastre Offices** have not complied with the Recommendation of the Protector of Citizens which advised them to find the file of a missing administrative case in order to provide a copy of the examination and expert appraisal report pursuant which a complainant requested on several occasions.

5. Explanation

Based on a number of investigations, the Protector of Citizens found that Real Estate Cadastre Offices still do not act expediently pursuant to citizens' applications and often exceed the statutory time limits by a long margin.

Cooperation with technical and administrative supervision departments and legal departments within the Republic Geodetic Authority enabled Real Estate Cadastre Offices to better address the identified shortcomings by passing relevant administrative documents, issuing the requested documentation, deleting records etc.

One of the reasons often put forth to explain inexpedient handling of applications is the fact that in some cases there are prior applications for registration of the same property for which a final decision is still pending, so there was no legal basis for handling subsequent

applications. In cases where decisions pursuant to prior applications were appealed and the authority of second instance exceeded the time limit for deciding on the appeal, a new investigation of the competent Ministry of Transport, Construction and Infrastructure was launched.

Upon learning that a complainant had filed multiple applications which essentially concerned the same legal matter, namely a change of the holder of the right to use certain cadastral parcels in a cadastral municipality, and that a separate administrative case had been initiated pursuant to each of those applications, which complicated the procedure and resulted in belated and excessively lengthy handling of the complainant's applications, the Protector of Citizens issued a recommendation in which he advised the authority it should examine whether the cases could be pooled together and then immediately proceed as instructed in the decision of the second-instance authority, which was done within the specified time.

Acting on an initiative of the Protector of Citizens, in 2011 the Director of the Republic Geodetic Authority ordered Real Estate Cadastre Offices to issue, free of charge, excerpts from real estate cadastres and certificates of identification of cadastral parcels according to old and new land surveys to those persons who indicate in their applications that they need these documents for filing claims with the Restitution Agency. As the time limit for filing restitution claims has expired, the Director of the Republic Geodetic Authority asked the Protector of Citizens for advice on how to treat future applications for those documents. Upon expiration of the time limit for filing restitution claims, those persons who failed to support their claims with evidence should be ordered to pay statutory fees for the operations and services of the Authority. This will reduce the potential for abuse and prevent citizens from using the fee-exempt document for any purposes other than filing restitution claims with the Restitution Agency.

It was pointed to the attention of the Protector of Citizens that the residents of a community in Belgrade faced a problem because of a discrepancy between the factual situation on the ground and the data recorded in the real estate cadastre. The official records include names of persons who are not users of the land parcels concerned, which has caused problems with legalisation of the buildings. In view of the complexity of this problem, the Protector of Citizens believed it was necessary to enlist the assistance of the professional community and held a number of meetings with members of the competent municipal administration and the Republic Geodetic Authority. It was found that similar issues existed in other city municipalities as well. The meetings resulted in a list of proposed activities with a Specification which included an estimate of the financial resources required for their implementation. As this problem affected many citizens, as a result of earlier omissions made by public authorities, the Protector of Citizens issued an Opinion on the need to repeat the land survey in order to ensure the legal situation reflects the factual situation and underscored that the city budget for 2015 will have to include funds earmarked for this purpose and allocated to the competent city municipality. The addressees of the Opinion have not replied to the proposal made by the Protector of Citizens.

The 2013 Annual Report of the Protector of Citizens stated citizens were sometimes not able to obtain from Real Estate Cadastre Offices 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. The official explanation was that document files dating from that period were not stored in the archives of the Republic Geodetic Authority. However, some Offices have been issuing these data and documents without any issues, while others have been referring citizens to the archives of competent court, because the courts had not handed

over to them their land register files and document files because of the sheer size of the material, which thus remained stored in the court archives. It is apparent from citizens' complaints that this problem continues to impede the work of some Real Estate Cadastre Offices.

The Republic Geodetic Authority, within its mandate, keeps records of market prices of properties, which includes details of property sale agreements and tenancy agreements. The details taken from property sale agreements are not verified and are simply stated as they appear in those documents. The formation of the Register of Property Sales will increase transparency in the Serbian real estate market, thus contributing to its further development.

II TYPICAL CASES

Real Estate Cadastre Office does not issue certified documentation from its official records

A complainant claimed he had asked a Real Estate Cadastre Office for certain documents he needed for filing a restitution claim with the Restitution Agency. He found the documents he received to be uncertified copies, without an accompanying document indicating the case number and bearing the official seal to attest it was a true copy. The documents therefore did not qualify as valid public documents. Acting pursuant to this complaint, the Protector of Citizens initiated an investigation into the regularity and lawfulness of work of the competent Real Estate Cadastre Office.

The Real Estate Cadastre Office made a reference to the Law on Verification of Signatures, Manuscripts and Transcripts³⁰¹, which stipulates that signatures, manuscripts and transcripts are verified by a decision of a designated officer of a municipal court or municipal administration, and claimed the complaint was unfounded, as the complainant had received photocopies of the documents he had requested from that authority.

As the Law on Property Restitution and Compensation³⁰² states that claimants must enclose original evidence or certified photocopies and the complainant could not have the document issued to him certified by a primary court or any other administrative authority because he did not hold the original document to demonstrate the copy was true to the original, the Republic Geodetic Authority was asked to give its opinion whether the Real Estate Cadastre Office acted properly in this specific case.

The Republic Geodetic Authority informed the Protector of Citizens the Office had made additional efforts and cooperated with the competent local authorities to find the original versions of the requested documents. As a result, the complainant received certified photocopies of those documents.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. The Republic Geodetic Authority **and local self-government 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.
2. All competent authorities should make efforts to ensure that all **Real Estate Cadastre Offices** integrate their land register files and document files dating back to the period when

³⁰¹ Official Gazette of RS No. 39/93.

³⁰² Official Gazette of RS, No. 72/11, 108/13 and 142/14.

land registers were used, in order to enable citizens to obtain the documents they need as evidence of past title changes.

3. There is still a need and duty to undertake appropriate measures to ensure more efficient functioning of **Real Estate Cadastre Offices** and their acting pursuant to received applications within the statutory time limits.

Ministry of Construction and Urban Planning

I BACKGROUND

1. Government's achievements

1.1. The Law amending the Law on Special Conditions for Registration of Title to Properties built without a Building Permit³⁰³ has been enacted.

2. Results achieved by the Protector of Citizens

2.1. The Protector of Citizens has continued monitoring compliance with and implementation of the measures set out in his Opinion of December 2013, which highlighted a need to undertake appropriate measures to increase the capacities for efficient handling of appeals lodged against decisions of Real Estate Cadastre Offices.

2.2. With a view to ensuring expedited and efficient handling of complaints filed by citizens in cases where authorities of second-instance fail to adjudicate their appeals, the Protector of Citizens introduced a procedure for direct phone contact between the Secretariat of the Protector of Citizens and the competent department of the Ministry, which has shortened the proceedings.

3. Shortcomings at the national level

3.1. Similarly as in earlier years, in 2014 the Ministry of Transport, Construction and Infrastructure has not acted timely when handling appeals against the decisions of Real Estate Cadastre Offices (with delays longer than the statutory two-month limit, in some cases even several years after the appeal was lodged).

3.2. The issue of scarce human and technical resources of the Ministry of Construction, Transport and Infrastructure needs to be addressed to enable the Ministry to exercise the full scale of its powers, including its statutory duty to cooperate with the Protector of Citizens.

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

4.1. There have been no unaccepted recommendations or opinions in this sector.

5. Explanation

Similarly as in earlier years, the largest issue in the work of the Ministry of Construction, Transport and Infrastructure in the field of land survey and real estate cadastre has been belated handling of appeals against the decisions of Real Estate Cadastre Offices, which violates on a daily basis the citizens' rights guaranteed by the Constitution and laws.

The problem of cooperation between the Ministry and the Secretariat of the Protector of Citizens still persists. Investigations into the work of this authority take longer than necessary, sometimes even more than a year, because of the failure of the responsible officers at the Ministry to comply with their statutory duty to respond to the demands of the Protector of Citizens and provide the requested information within the specified period. The explanation provided by the Ministry in its communication with the Protector of Citizens as

³⁰³ Official Gazette of RS No. 145/14.

the main reason for its inexpedience is the lack of human resources. Namely, not only has the Ministry not increased its staff I 2014, but two of its employees left, leaving the Ministry unable to cope with the workload of more than 23,700 pending cases and act expediently with only about a dozen employees. This goes to confirm the opinion of the Protector of Citizens that appropriate measures should be undertaken in order to increase the capacities for efficient handling of appeals at the Department of Administrative Affairs in the Field of Land Survey and Land Cadastre.

It should be noted that there have been situations where complaints informed the Protector of Citizens they had received a second-instance decision, but the Protector of Citizens receives no confirmation of this fact from the Ministry.

II TYPICAL CASES

Adjudication of an appeal takes five years

A complainant claimed the other party in the proceedings had appealed against a decision of a Real Estate Cadastre Office passed in 2009. The Ministry did not adjudicate the appeal until the end of 2014, and even then only after the Protector of Citizens initiated an investigation pursuant to the complaint. The investigation pursuant to the complaint was subsequently terminated as a result.

Outdated records of appeal cases

A complainant, as an interested party in a proceeding, claimed the Republic Public Attorney's Office had appealed against 21 decisions of a Real Estate Cadastre Office passed in 2011 and 2012. Although the complaint stated the exact numbers under which the appeal cases were filed by the Ministry, during the investigation the Ministry replied it did not have on its records the cases referred to by the complainant. The Ministry gave an accurate report of the cases referred to in the complaint only after an urging from the Protector of Citizens. It took another urging from the Protector of Citizens for the Ministry to adjudicate all appeals that had not been adjudicated on time, which violated the complainant's rights.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **The Ministry of Transport, Construction and Infrastructure** should hire an appropriate number of employees at its Department of Administrative Affairs in the Field of Land Survey and Land Cadastre in order to increase the expedience and quality of its work.
2. **The Ministry of Transport, Construction and Infrastructure** should designate a civil servant who would be in charge of liaising with the Secretariat of the Protector of Citizens in connection with complaints against the Ministry.

RESTITUTION

I BACKGROUND

1. Government's achievements

1.1. The Law amending the Law on Property Restitution and Compensation³⁰⁴ has been enacted.

2. Results achieved by the Protector of Citizens

2.1. Investigations have contributed towards rectification of omissions in the work of the Restitution Agency and its regional units, which accepted all requests and suggestions made by the Protector of Citizens.

2.2. The Director of the Restitution Agency and his associated acknowledged the opinion of the Protector of Citizens that an appropriate decision must be passed in each procedure in which a claimant filed a complete claim for restitution and compensation a year ago or earlier, but restitution in kind is found to be unfeasible.

2.3. In 2014, the Protector of Citizens received 29 complaints in this field, in which complainants alleged 34 violations of rights. In the same period, he completed the investigations in a total of 30 cases received in 2014 and in earlier years. Out of the total of 11 investigations conducted, 8 (72.73%) investigations were closed by issuing recommendations in an expedited procedure. Based on the number of identified (8) and remedied (8) omissions³⁰⁵, the rate of efficiency in this sector is 100%.

3. Shortcomings at the national level

3.1. Due to contradictory time limits set out in the Law on Property Restitution and Compensation³⁰⁶ and the Law in Rehabilitation³⁰⁷, any property seized from persons for whom rehabilitation procedures were initiated after 3 March 2014 and resulted in a decision to rehabilitate them will not be eligible for restitution.

3.2. The inability to obtain certificates of identification and title changes for cadastral parcels included in the land pool for reparable from the time of their seizure to the time of their reparable results in inefficiency and creates problems in the procedures for restitution of reparable land.

3.3. As the number of final and enforceable decisions on restitution of seized property (restitution in kind) increases, there is an increasingly common problem with their enforcement in situations where local self-governments or other entities ordered to return property refuse to cede the title voluntarily.

3.4. Amendments to the Law on Property restitution and Compensation of December 2014 have extended the time limit for determination of compensation coefficients and the time limits for determination of basic elements, issue amounts, terms and conditions of distribution and initial date of collection of government bonds issued as public debt to

³⁰⁴Official Gazette of RS No. 142/14.

³⁰⁵ The number of identified omissions is the sum of terminated investigations, the number of recommendations that have been complied with and those that have not been complied with, while the number of remedied omissions is calculated as the sum of terminated investigations and recommendations which resulted in compliance.

³⁰⁶ Official Gazette of RS, No. 72/11, 108/13 and 142/14.

³⁰⁷ Official Gazette of RS No. 92/11.

restitution beneficiaries under final and enforceable decisions awarding compensation, with a further extension of the time limit for disbursement of advance compensation payments.

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 2013 Annual Report of the Protector of Citizens:

- That the Government should accept the initiative of the Protector of Citizens for harmonisation of the time limits provided for by the Law on Property Restitution and Compensation and those provided for by the Law on Rehabilitation through 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.

5. Explanation

Based on the investigations conducted by the Protector of Citizens it was found that the Restitution Agency did not pass decisions in cases where restitution in kind was not possible and compensation had to be awarded instead. This was due to the fact that the earlier version of the Law on Property Restitution and Compensation³⁰⁸ contained contradictory provisions, under which advance compensation payments were awarded in a decision to award compensation and paid once that decision became final and enforceable, although the exact amount of compensation could not be determined at that time.

However, this practice continued even after the enactment of the Law amending the Law on Property Restitution and Compensation³⁰⁹, which extended the determination and disbursement of advance compensation payments beyond 31 March 2015, by which date the Serbian Government was supposed to have set the coefficient for determining the amounts of compensation, including any advance payments. The Agency stated it no longer had the duty to pass decisions to award compensation and explained it would continue passing those decisions only after it is able to determine the exact amount of compensation under each decision once the compensation coefficients have been set.

In a meeting held to reach an agreement on this legal issue, the Protector of Citizens pointed out the Agency had a duty to pass a partial decision to award compensation, while the actual amount of the compensation and the advance payment due could be set out in a supplemental decision once the conditions for doing so are met. Representatives of the Agency were advised that the existence of a decision to award compensation allows citizens to take recourse against the decision on the form of restitution, the amount of the basis used in the calculation of compensation, the property subject to compensation and other issues. The parties agreed that, in the situations where restitution in kind is not possible, but there is a possibility of restitution, the Agency would pass a decision to deny the claim for restitution, which the claimant can then appeal, subject to an understanding that the claimant may continue exercising his rights in the compensation award procedure once such decision becomes final and enforceable.

The Director of the Restitution Agency informed the Protector of Citizens that many Real Estate Cadastre Offices do not issue certificates of identification and title changes (technical

³⁰⁸ Official Gazette of RS No. 72/11.

³⁰⁹ Official Gazette of RS No. 108/13.

lists of changes) for cadastral parcels included in the land pool for reparation from the time of their consolidation, claiming they do not have the necessary documentation in their archives, which created additional problems in the procedure before the Agency. In an effort to help citizens, the Agency demanded such certificates through official channels, but with little success.

In a meeting held between the Protector of Citizens and representatives of the Agency and the Republic Geodetic Authority it was agreed that a procedure for amendments to the Law on Property Restitution and Compensation should be initiated in order to overcome this issue and set out detailed conditions for the restitution of land created from reparation land pools.³¹⁰ However, the amendments adopted in December 2014 did not bring solutions for the issues and problems identified in the process of land created from reparation land pools.

The Protector of Citizens has faced the problem of enforcement of final and enforceable decisions on restitution of seized property. The enforcement procedure is not regulated by the Law on Property Restitution and Compensation. Through subsidiary application of the Law on General Administrative Procedure³¹¹ in situations where local self-governments or other entities ordered to return property refuse to cede the title voluntarily to claimants, the Restitution Agency is required to enforce its decision as the competent authority of first instance. It remains to be seen whether the Agency has sufficient capacities (human, material etc.) to assume this obligation or it would be more expedient to provide for another arrangement.

Citizens have also complained about the actions of archives where they obtained the documents they needed in the procedures before the Restitution Agency. They invoked the Law on Property Restitution and Compensation and claimed that charging of fees for the work of the authorities concerned, for the issuing of certificates and copying of found documents constituted a violation of their right. Since it is an undisputable fact that the complainants had a duty to pay the fees for the work and services of those authorities, regardless of the fact that they needed those documents for the restitution procedure, they were first acquainted with the text of the relevant legislative provisions and then advised of the fact that competent archives had no option but to charge the statutory fees.

II TYPICAL CASES

Authority realises its mistake and remedies the omission

A complainant claimed she took recourse to the Protector of Citizens after several unsuccessful attempts to have a copy of a document she needed in a procedure before the Restitution Agency certified by a Municipal Administration.

She had also contacted city and national archives, but they informed her in writing they did not hold the original of the decision on seizure of property, because documentation on nationalised property remained at the Municipal Administration.

As the document in question ought to be kept permanently in the archives of the Municipality and the complainant held a copy of the decision, the Protector of Citizens initiated an investigation into the regularity and lawfulness of work of the Municipal Administration.

³¹⁰ Article 24 paragraph 2 of the Law on Property Restitution and Compensation

³¹¹ Official Gazette of FRY No. 33/97 and 31/01. and Official Gazette of RS No. 30/10.

As the woman in question was elderly and had to make multiple trips to the offices of the Municipality in order to have her copy of the document certified, even though she resided quite a distance from the head office of the Municipality concerned, the Protector of Citizens drew the attention of the authority that principles of good governance required it to send a copy of the decision to the complainant's home address or alternatively send her a certificate which would indicate the reasons why this could not be done.

The head of the Administration replied that, in accordance with the requests made by the Protector of Citizens and in an effort to remedy the omission and improve the work of the authority, the Administration obtained the original of the decision in question and sent a certified copy to the complainant, with a formal letter of apology.

Regional unit of the Restitution Agency passes a decision on restitution in kind and remedies the identified shortcoming

A complainant claimed that she, as the heir to the previous owner of a seized property, in 2012 filed a restitution claim pursuant to which the competent regional unit of the Restitution Agency did not pass a partial decision on restitution of seized property (restitution in kind) in due time.

Upon initiating an investigation, the Protector of Citizens was informed by the Director of the Agency that the said authority had found in the procedure pursuant to the claim that flats, arable land and a vineyard had been seized from natural persons and all buildings were subsequently demolished to make way for new ones. For that reason it was not possible to return the property in kind and the best the complainant could hope for was compensation. Based on this explanation, the complaint was rejected as unfounded.

In a subsequent submission, the complainant stated the reply given by the Agency's Director made no mention of a building with shops on its ground floor, which she alleged had remained intact since the seizure. The City had the right of use of the shops in the disputed building and they were leased to tenants. The complainant enclosed photographs of the building with shops on the ground floor, to which her claim for restitution in kind pertained. Pursuant to this submission, the Protector of Citizens initiated a new investigation into the regularity and lawfulness of work of the Restitution Agency.

The Agency informed the Protector of Citizens it had reviewed the claim and passed a partial decision which gave the complainant a title to five shops with the accompanying urban building land, in accordance with her proportionate share under the law, while the remainder of the claim would be adjudicated by a separate decision.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. In order to harmonise the existing regulations relevant for the protection and exercise of citizens' rights and ensure their harmonised and expedient application, **the Government** should harmonise the time limits provided for by the Law on Property Restitution and Compensation and those provided for by the Law on Rehabilitation through 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.

2. In order to ensure more efficient restitution of seized property, **the competent Ministry and the Government** should amend the Law on Property Restitution and Compensation to provide for the procedure of restitution in kind for land created from reparcelled land pools.

3. **Amendments to the Law on Property Restitution and Compensation** should regulate the procedure of enforcement of final and enforceable decisions on restitution of seized property (restitution in kind), in view of the fact that this problem will become increasingly common for restitution recipients as the number of such decisions increases.

NATURAL DISASTERS

I BACKGROUND

1. Government's achievements

- 1.1. The Law on Post-Flood Rehabilitation in the Republic of Serbia³¹² has been enacted.
- 1.2. The Decree on Formation of the Office for Reconstruction and Flood Relief³¹³ has been passed.
- 1.3. Acting under the Law on Post-Flood Rehabilitation in the Republic of Serbia, the Government has passed a number of decrees pertaining to the government-funded reconstruction programme.

2. Results achieved by the Protector of Citizens

- 2.1. The investigations conducted by the Protector of Citizens have helped rectify omissions in the work of the competent local authorities in charge of acting pursuant to citizens' applications for natural disaster relief.
- 2.2. In compliance with the pertinent recommendation given by the Protector of Citizens, the Mayor and the Town Administration of Kraljevo have sent a complainant a written statement of reasons for rejection of his application for rehabilitation of a residential property damaged in the 2010 earthquake.
- 2.3. In compliance with the pertinent recommendation given by the Protector of Citizens, authorised officials have compiled a report on damage on the complainant's residential property and the Mayor, whose duty also includes acting as the commander of the town's Committee for Emergencies, promised to adjudicate the application in the first following session.
- 2.4. In 2014, the Protector of Citizens received 31 complaints in this field, in which complainants alleged 36 violations of rights. In the same period, he completed the investigations in a total of 19 cases received in 2014 and in earlier years. Out of the total of 11 investigations conducted, 2 (18.18%) investigations were closed by issuing recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 9 the recommendation, of which 4 (44.44%) have been accepted, 4 (44.44%) have not been complied with and 1 is still pending. Based on the number of identified (10) and remedied (6) omissions³¹⁴, the rate of efficiency in this sector is 60%.

3. Shortcomings at the national level

- 3.1. Proper cooperation between the Protector of Citizens and the authorities of certain local self-governments in the course of investigations into the regularity and lawfulness of work in the procedures for granting relief to citizens whose property was damaged by natural disasters remains an issue.

³¹² Official Gazette of RS No. 75/14.

³¹³ Official Gazette of RS, No. 55/14, 110/14 and 136/14.

³¹⁴ The number of identified omissions is the sum of terminated investigations, the number of recommendations that have been complied with and those that have not been complied with, while the number of remedied omissions is calculated as the sum of terminated investigations and recommendations which resulted in compliance.

3.2. There are no regulations that would govern the reconstruction and relief in the aftermath of the earthquake in the Kolubarski district (1998), the earthquake in Kraljevo (2010) and numerous fires, landslides, floods etc. (before 2014), or any future reconstruction and relief efforts in the event of natural disasters.

3.3. Assessment of damage caused by natural disasters and the choice of relief measures are governed by the Instructions on Uniform Methodology for the Assessment of Damage caused by Natural Disasters³¹⁵ - a regulation dating back more than three decades. This procedure needs to be updated.

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 2013 Annual Report of the Protector of Citizens:

- That the Government should pass regulations which would provide for the procedure of repair of damage and allocation of solidarity assistance to citizens as relief for the natural disasters which occurred before 2014 and those that might occur in the future in the territory of the Republic of Serbia.

4.2. The chairman of the Municipality of Mionica has 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, through the Republic Commission for Determining the Damage Caused by Natural Disasters, for allocation of earthquake relief funds to the municipality.

4.3. The Government did not accept the Opinion of the Protector of Citizens that it should pass a relevant regulation to provide for the procedure of natural disaster relief and thus ensure consistent, fair and unbiased acting of the competent authorities.

4.4. The Government did not accept the Opinion of the Protector of Citizens in which he reiterated the need to adopt precise arrangements for providing assistance to citizens whose property was damaged by natural disasters and the proposal to award solidarity assistance at least to the socially vulnerable.

5. Explanation

The most frequent reason for dissatisfaction is the fact that the applicants have not been informed about the reasons for which they cannot exercise the right to refurbishment of damage or allocation of funds of solidarity assistance, as well as that they cannot file an objection, complaint or other legal remedy because enactments of the competent authorities which they contest does not contain reference to available legal recourse. Upon reviewing the applicable regulations, the Protector of Citizens found that, except in the case of the floods of May 2014, there are no uniform, clear and predictable provisions governing disaster relief. The Opinion issued by the Protector of Citizens to the Government therefore underscored it was necessary to adopt provisions that would govern the handling of citizens' applications for disaster relief and allocation of solidarity assistance awarded to local self-governments for this purpose. The Protector of Citizens explained there were no provisions in place that would specify the applicable time limits or criteria for ranking citizens for the granting of assistance according to priority; likewise, there was no recourse and no authority in charge of reviewing the regularity and lawfulness of the decisions, which prevented

³¹⁵ Official Gazette of SFRY No. 27/87.

citizens from exercising their right of appeal or the right to take other recourse against decisions adjudicating on their rights and interests based on the law.

Acting pursuant to a complaint, the Protector of Citizens issued a recommendation to the chairman of the Municipality of Mionica in which he advised him of his duty to reply to the complainant's submission and explain the reasons why the competent municipal authorities had not included her building in the lists submitted to the Construction and Development Directorate of the Kolubarski District in the aftermath of the earthquake with the Decisions on Determination of Priorities and Approval of Construction and Rehabilitation of Individual Residential Buildings of 2010, 2011 and 2012, although the building was included in the records of that authority and the municipal Damage Assessment Committee suggested its demolition and construction of a new building. The Recommendation also called on the chairman to make records of persons in need of assistance, determine the amount needed for the rehabilitation of damaged buildings and make a proposal to the Government, through the Republic Commission for Determining the Damage Caused by Natural Disasters, for allocation of earthquake relief funds to the municipality of Mionica, whose citizens have been suffering in the aftermath of the earthquake for more than fifteen years. The competent authorities have not replied to the Recommendation.

In parallel with the Recommendation, the Protector of Citizens also issued an Opinion to the Government in which he advised it of the need to regulate the procedure for awarding solidarity assistance to citizens and to prevent divergent practices in identical or similar situations, so as to provide legal certainty and reduce the threat of abuse and wastefulness in public spending. While the Protector of Citizens is fully aware that the current Government cannot be held accountable for the failure of those who were in powers in years and decades past to rehabilitate past damage from the funds provided for that purpose, he pointed out that at least those who are socially vulnerable should be awarded assistance, in order to justify their reasonable expectations based on the actions, instruments and announcements of competent public authorities. The Government's Secretariat General informed the Protector of Citizens the Opinion was forwarded to the Office for Reconstruction and Flood Relief for further action.

Although he had timely stated that the Opinion did not apply to the procedures initiated in connection with the floods of May 2014, but to earlier natural disaster, including in particular the earthquake that struck the Kolubarski District in 1998, the Director of the Office informed the Protector of Citizens that the Law on Post-Flood Rehabilitation in the Republic of Serbia addressed the shortcomings highlighted in the Opinion.

By enacting the Law on Post-Flood Rehabilitation in the Republic of Serbia and its implementing regulations, the government has undeniably made a positive step forward, in that it has provided for relief for the floods and landslides in the areas struck by the May 2014 floods. However, that Law does not apply to other natural disasters and its effective period will be just one year of the date of its coming into force. This means there are still no regulations that would govern the procedure and establish the criteria for awarding assistance to citizens for the recovery from those natural disasters that occurred before 2014, as well as those that may occur in the future in the territory of the Republic of Serbia.

In 2014, the Protector of Citizens received a number of complaints from citizens of Kraljevo who claimed the procedures for awarding solidarity assistance had been fraught with irregularities. One complainant stated he did not understand why his application for solidarity assistance had been rejected and sought clarification from the competent authority, but received no response concerning the reasons for rejection. Another complainant claimed

the competent committee had not conducted the procedure and assessed the damage caused to his residential property, although he had filed a claim three years earlier.

As the local self-government of Kraljevo has not provided written replies to the Protector of Citizens in connection with the procedures initiated pursuant to these claims even after repeated warnings, it has thus breached its duty to cooperate with the Protector of Citizens, which further delays the already unreasonably lengthy procedures before this authority.

The practice of inadequate cooperation is not a new development: it impeded the investigations of competent town authorities pursuant to the complaints of citizens whose homes had been damaged by the November 2010 earthquake. The replies were provided only after (one or more) written urgings or after they were reminded by phone of their duty to cooperate with the Protector of Citizens, or after pleading with the authorised officials (in the Mayor's cabinet, in the Committee for Emergencies or in the Town Administration) to send a reply.

The Protector of Citizens issued a Recommendation in which he, without commenting on the merits of the claims, pleaded with the authority to pass a decision or provide a written statement of reasons for rejection of the second complainant's claim. The Recommendation also reminded the authority of the duty to cooperate with the Protector of Citizens and to provide replies and requested information within the specified periods and give him access to any data pertinent to his investigations. After expiration of the period for compliance with the recommendation – and even then only after a written urging – the authority sent a reply in which it stated it had complied with the recommendation.

In an effort to provide relief in the aftermath of the disastrous floods of May 2014, the National Assembly passed a Law which provides for the adoption of government assistance programmes for certain areas that suffered the greatest damage and sets out the procedure for the award of that assistance.

Pursuant to that Law, the Government special government assistance programmes for the areas affected by the floods, in which it defined the manner and scope of implementation of specific measures and the criteria for their implementation.

The complaints filed with the Protector of Citizens in connection with the May floods mostly related to the acting of various local self-government units in assistance award procedures, failure to pass decisions and refusals to recognise the right to assistance; furthermore, some citizens were grieved by the amounts of compensation awarded to them, the conditions in the makeshift camps, denial of assistance available to farmers, non-enforcement of decisions to award assistance etc.

After the adoption of the Decree on Determination of the Government Reconstruction Programme for Users of Damaged and Devastated Family Residences³¹⁶, users and tenants of the damaged properties who obviously suffered damage due to the floods are also entitled to government assistance. Demonstrating the status of a tenant was made easier by the fact that, in the absence of a tenancy agreement, the landlord's statement made for the record was sufficient to grant this entitlement.

³¹⁶ Official Gazette of RS No. 116/14.

II OTHER ACTIVITIES

Visits to makeshift camps and shelters for flood victims

Immediately after the disastrous floods in May, the Protector of Citizens, acting in his preventive role and within his mandate to improve the work of public authorities and the exercise of citizens' rights, organised visits to the makeshift camps in the territory of the City of Belgrade in the second half of May 2014 for the purpose of preparing internal reports and examining the overall situation. In cooperation with representatives of competent authorities and responsible persons at the makeshift camps, he collected information on the intake arrangements and provision of information to the flood victims, on their health situation, the living arrangements at the camps, issuing of identity documents and other paperwork, provision of technical assistance and other circumstances relevant for the flood victims, including in particular children and other vulnerable categories (older persons, persons with disabilities and pregnant women).

The information thus collected was invaluable for the assessment of the overall situation, the work arrangements put in place by the competent authorities and the cooperation and exchange of information between the competent authorities in emergency situations.

III TYPICAL CASES

Subtenants also qualify for assistance

The Protector of Citizens received a complaint from a citizen who believed he had been wronged by the actions of the competent authorities of the City Municipality of Obrenovac because he was denied assistance in the aftermath of the May floods.

The complainant claimed he had been living in Obrenovac with his family as a subtenant for several years. He claimed the flat they lived in had been damaged by the May floods and submerged in water, which destroyed much of his family's possessions. However, he claimed he had been informed he did not qualify for assistance as he was a subtenant, while the landlord also did not qualify for assistance because he did not live in the flat.

In the investigation procedure, the Protector of Citizens received a reply from the City Municipality of Obrenovac with its interpretation of the adopted Government Reconstruction Programmes, which included the criterion that damage must be reported on a building in which the claimant resided permanently, while the instructions issued by the Office for Reconstruction and Flood Relief stated that government assistance would not be paid when a property was occupied by a subtenant rather than the landlord; instead, a special government programme would be adopted for the properties occupied by subtenants.

On 28 October 2014, the Government passed the Decree on Determination of the Government Reconstruction Programme for Users of Damaged and Devastated Family Residences and the City Municipality of Obrenovac recognised the entitlement to government assistance in this specific case and granted financial assistance to the citizen in question.

IV PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **The Government** should pass regulations which would provide for the procedure of repair of damage and allocation of funds to the citizens for construction/repair of homes destroyed/damaged by natural and other disasters, particularly to establish the criteria which would ensure equal treatment and legal certainty for citizens in those procedures.

2. **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.
3. **Local self-government 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 both citizens and government authorities.

2.16. SECTORS OF ENERGY AND MINING, CONSUMER PROTECTION, AGRICULTURE AND ENVIRONMENT

ENERGY AND MINING

I BACKGROUND

1. Government's achievements

- 1.1. The Energy Law³¹⁷ has been enacted.
- 1.2. A number of implementing regulations have been passed to regulate in detail electricity generation and distribution.

2. Results achieved by the Protector of Citizens

- 2.1. After an analysis of the allegation raised in complaints and analysis of primary and secondary legislation in the fields of electricity generation and distribution, the Protector of Citizens decided to initiate an investigation into the regularity and lawfulness of work of the Public Enterprise "Elektroprivreda Srbije" (Electric Power Industry of Serbia), the Ministry of Mining and Energy and their subsidiaries in charge of electricity distribution.
- 2.2. In 2014, the Protector of Citizens received 82 complaints in this field, in which complainants alleged 93 violations of rights. In the same period, he completed the investigations in a total of 29 cases received in 2014 and in earlier years. Out of the total of 8 investigations conducted, 1 (12.5%) investigations were closed by issuing recommendations in an expedited procedure. Based on the number of identified (1) and remedied (1) omissions, the rate of efficiency in this sector is 100%.

3. Shortcomings at the national level

- 3.1. Old and obsolete facilities remain in operation, although their functionality and working order are questionable.
- 3.2. Energy sector operators are not efficient when deciding on citizens' requests.
- 3.3. Electricity bills sent to citizens do not contain completely clear and comprehensible information.
- 3.4. The response of energy sector operators to reports of malfunctions and breakdowns and suspected malfunctions of energy meters, as well as their compliance with their duty to verify the accuracy of energy meters in accordance with the law, is often inexpedient or absent.
- 3.5. The Decree on Subsidized Energy Customers or Vulnerable Heat Energy Consumers³¹⁸ has not been amended.
- 3.6. Complaints by electricity consumers are handled by the power service provider.
- 3.7. Energy sector operators often do not act in accordance with the Law on General Administrative Procedure³¹⁹ when adjudicating citizens' claims in administrative procedures.

³¹⁷ Official Gazette of RS No. 145/14.

³¹⁸ Official Gazette of RS, No. 90/13 and 44/14 – new bylaw.

³¹⁹ Official Gazette of FRY No. 33/97 and 31/01 and Official Gazette of RS No. 30/10.

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 2013 Annual Report of the Protector of Citizens:

- That the **Ministry of Mining and Energy** should harmonize the Decree on Subsidized Energy Customers or Vulnerable Heat Energy Consumers with the Law on Energy with the aim to ensure a rounded legal system which would regulate the position of persons whose lives could be at risk as a result of disconnection or restricted supply of electricity or natural gas because of their health status, disability or physical inability as the status of subsidized energy customers.

5. Explanation

The Decree on Subsidized Energy Customers was not amended in 2014, although legal grounds for such amendments existed both under the former Energy Law and the current one. Households whose members could be at risk as a result of disconnection or restricted supply of electricity or natural gas because of their health status, disability or physical inability are still unable to exercise their right guaranteed by the law.

The National Assembly enacted the new Energy Law. The most important changes introduced by the new law are those in the fields of electricity generation and distribution. The Energy Law provides for the establishment of a Procedure for the Connection of Buildings to the Distribution Grid, sets out its content and introduces a duty to post the Procedure on the website of the operator and the Energy Agency, which is a major step forward compared with the previous Law because it contributes to greater transparency in the operations of energy sector operators and better provision of information to customers. The Law also vests the Energy Agency with new powers, provides for a duty to obtain consent for the said Procedure introduces shorter time limits for deciding on approvals for connection to the electricity grid and defines in detail the duties of the customer and the operator when a construction is made.

The Energy Law now requires electricity distributors to separately state on their bills the costs of access to the system at standard tariffs, the amounts of statutory fees and taxes and other liabilities or information in accordance with the law. A key change is that funding for the granting of the status of subsidised energy customers are provided from the national budget of the Republic of Serbia.

Consumers have been afforded greater protection from the acts of electricity suppliers. The Law provides that each electricity supplier must provide an organisational unit, body or individual with sufficient work experience and qualifications for handling complaints and grievances and for impartial deciding on them within the timeframe set by the law.

New implementing regulations provide for the following: adjustment of the total monthly household income threshold for granting the status of a subsidised energy customer or vulnerable heating energy customer; operation of the electricity distribution system; monitoring of technical and commercial indicators and regulation of the quality of distribution and supply of electricity and natural gas; changes in the operating rules for electricity distribution companies; methodology for electricity billing for public consumption; guarantee of origin for electricity generated from renewable sources of energy; conditions for allocation and use of the Budget Fund for Improvement of Energy Efficiency of the Republic of Serbia; and criteria for exemption from the duty of conducting energy audits.

In the past, the Protector of Citizens drew attention to a large number of complaints relating to the status of electricity customers, all of which indicated that customers mostly faced identical or similar issues, namely: the manner of handling and deciding on customers' complaints about electricity bills; non-compliance with court decisions; belated notification of malfunctions and damage on metering devices; failure to rectify the malfunctions and damage; failure to act on owner's request for disconnection from the grid; actions taken before, during and after disconnection from the grid; "administrative silence" in the form of failure of competent bodies of electricity distribution companies to reply to citizens' communications, submissions and applications; acting on applications for connection to the grid etc. The Protector of Citizens initiated an investigation in the lawfulness and regularity of work of energy sector operators and of the Ministry of Energy and Mining in order to examine and weigh the merits of the complaints filed by end buyers of electricity against the actions of government authorities or companies. The investigations also aimed to analyse the provisions of primary and secondary legislation in this field in order to identify any shortcomings that result or may result in unfair and incorrect decisions.

Energy sector operators are inefficient when deciding on customers' applications and complaints, do not adhere to the timeframe provided for by the law and the decisions they pass often lack factual and legal substantiation and explanation.

Energy sector operators are not particularly quick to respond to reports of malfunctions of metering devices, which causes damage to consumers, as they are forced to pay for electricity billed using malfunctioning metering equipment.

Monthly electricity bills are still not clear and comprehensible, include items that are not part of monthly consumption (outstanding debt, court fees) and for certain items citizens still have no accurate information as to what exactly they are paying for.

II TYPICAL CASES

Legal relationship between energy sector operator and consumer

A complainant – a construction developer – filed an application for connection of a new building to the electricity grid. Although the complainant had completed all formalities required for connection, the competent authorities failed to act within the statutory period in order to connect the new building to the electricity grid, which is causing significant financial outlays for the complainant.

Handling of reports of malfunctions and damage to metering devices or suspected malfunctions of metering devices by energy sector operators

Pursuant to a request for adjustment of electricity bills due to a malfunctioning metering device, a complainant received a laboratory report and 11 adjusted electricity bills, with no explanation how the bills were adjusted. The complainant filed a complaint because the malfunction was found only after 12 months, during which time he incurred a huge debt through the fault of the energy sector operator. He also made a proposal to sign an agreement on debt repayment in 11 instalments. The distribution company "Elektrodistribucija Beograd" d.o.o. informed the complainant that the adjustments at the metering point had been done in accordance with the applicable regulations and explained he would be disconnected from the electricity grid if he refused to sign an agreement on debt repayment in 6 monthly instalments. The complainant signed the proposed agreement to avoid disconnection from the grid.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **The Government** should pass an instrument which will grant the status of subsidised energy consumers to persons whose households include members whose lives could be at risk as a result of disconnection or restricted supply of electricity or natural gas because of their health status, disability of physical inability.
2. **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.
3. **The Ministry of Energy and Mining** and **energy sector operators** should ensure efficient and correct adjudication of claims made by electricity consumers.
4. **The Ministry of Energy and Mining** should ensure that electricity bills are comprehensible and clearly state what the customer is paying for.
5. **The Ministry of Energy and Mining** and **energy sector operators** should ensure lawful, efficient and expedient acting in cases of reported, identified or suspected malfunction of metering devices.
6. **The Ministry of Energy and Mining** and **energy sector operators** should ensure that customers' complaints are adjudicated by a body outside the energy sector operator concerned, which is an interested party in such cases.
7. **The Ministry of Energy and Mining** and **energy sector operators** should ensure that electricity bills are prepared in accordance with the law.

CONSUMER PROTECTION

I BACKGROUND

1. Government's achievements

- 1.1. The Law on Consumer Protection³²⁰ has been enacted.
- 1.2. Efforts to implement the Consumer Protection Strategy for the Period 2013-2018³²¹ have continued.

2. Results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens informed many citizens of consumer rights and the available protection mechanisms by referring them to other competent services and consumer protection associations and informed them of their right to file lawsuit or take other recourse.
- 2.2. In 2014, the Protector of Citizens received 217 complaints, in which complainants alleged 232 violations of rights. In the same period, he completed the investigations in a total of 107 cases received in 2014 and in earlier years.

3. Shortcomings at the national level

- 3.1. A National Programme for the Protection of Vulnerable Consumers has not been adopted.
- 3.2. Mechanisms for out-of-court settlement of consumer disputes are ineffective.

³²⁰ Official Gazette of RS No. 62/14.

³²¹ Official Gazette of RS No. 71/13.

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

- 4.1. In this sector there are no recommendations or opinions that have not been complied with.

5. Explanation

The National Assembly enacted the new Law on Consumer Protection, thus continuing the implementation of the Consumer Protection Strategy for the Period 2013-2018. The new Law focuses on the protection of minors, reduces the period in which sellers must reply to complaints from 15 to 8 days and repeals lawsuit fees for consumer disputes with claims of up to RSD 500,000, which facilitates lawsuits for citizens and allows them to better exercise their rights as consumers.

The new Law focuses on the protection of consumers' collective interests and provides for a special administrative procedure for collective consumer protection handled by the Ministry of Trade, Tourism and Telecommunications. Consumer associations and federations now have the power to initiate proceedings for the protection of consumers' collective interests.

The new Law also provides for more active involvement of citizens, through representatives of registered consumer associations and federations, in the work of the National Consumer Protection Council, one third of whose members are now representatives of registered associations and federation. The Law also expands the powers of the National Council, which now has the power to give opinions and recommendations on consumer protection matters to the bodies in charge of consumer protection.

With regard to consumer associations and federations, the new Law specifies that their activities include also the provision of legal assistance to consumers in the exercise of consumer rights, as well as the conduct of consumer surveys and research and publication of the results. The associations and federations now have greater powers, including the power to initiate proceedings for the protection of consumers' collective interests.

The Ministry of Trade, Tourism and Telecommunications keeps a National Register of Consumer Complaints, which once a year publishes and submits to the National Consumer Protection Council a report on the operations of the National Register of Consumer Complaints.

The Protector of Citizens lacks the authority to oversee the work of companies and sole traders, against whose actions he received the most complaints in the field of consumer protection. For this reason he dismissed most of the complaints in this field because he declined jurisdiction; however, in such cases the citizens were given information, guidelines and instructions on how to protect their consumer rights and which authorities and organisations to contact.

II OTHER ACTIVITIES

Cooperation with consumer protection organisations

In order to adopt a holistic approach to the issues of consumer protection, in 2014 the Protector of Citizens cooperated with consumer protection associations. He made a visit to the National Consumers' Organisation of Serbia, in which the two parties exchanged information on the problems faced by consumers, the investigations conducted by the Protector of Citizens in the field of consumer protection and the nature of citizens' complaints filed with this authority.

III TYPICAL CASES

Excessive mobile phone bill

After entering into a mobile service contract with the operator Telekom Srbija a.d. for 24 months, a complainant received excessively high bills which she claims she could not have made. As the complainant refused to pay the bills, calls from her SIM card were temporarily blocked, but the number was not deactivated. After the contract expired, Telekom Srbija renewed it without the complainant's consent and demanded of her to pay the charges incurred after the expiration of her contract.

Delivery of non-conforming goods

A complainant received a delivery of furniture from a seller which did not conform to the contract. Acting pursuant to her complaint, the seller made certain adjustments, but the goods still remained non-conforming. The complainant demanded a refund from the seller due to non-conformity of the goods, which the seller refused. The complainant then sent a petition to the market inspectorate in connection with the seller's actions and the market inspectorate took action within its sphere of competence, whereupon it found that the seller had acted on the complaint within the statutory time limit. The complainant was therefore instructed to file a refund lawsuit in a court.

IV PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **The Government** should pass a National Programme for the Protection of Vulnerable Consumers.
2. **The Ministry of Trade, Tourism and Telecommunications** should improve mechanisms for out-of-court settlement of consumer disputes.

AGRICULTURE AND ENVIRONMENT PROTECTION

I BACKGROUND

1. Government's achievements

- 1.1. The Law on Financing and Provision of Financing for Agricultural Production³²² has been enacted.
- 1.2. The Law amending the Law on Incentives in Agriculture and Rural Development³²³ has been enacted.
- 1.3. The Law amending the Law on Planning and Construction³²⁴ has been enacted.
- 1.4. The Strategy for Agriculture and Rural Development of the Republic of Serbia in the Period 2014-2024³²⁵ has been adopted.
- 1.5. The Decree on Adoption of the Packaging Waste Reduction Plan for the Period 2015-2019³²⁶ has been passed.
- 1.6. The Decision on the Formation of the National Council for Climate Change³²⁷ has been passed.

2. Results achieved by the Protector of Citizens

- 2.1. The recommendations of the Protector of Citizens which the Veterinary Directorate of the Ministry of Agriculture and Environment Protection accepted have improved that authority's handling of reports and submissions falling within the competence of the veterinary inspectorate.
- 2.2. The Opinion of the Protector of Citizens issued to the competent Ministries and the Building Directorate of Serbia pointed to the need to undertake all necessary measures to eliminate the consequences of the presence of hazardous substances in the walls of residential properties in the "Ivan Ribar" community in Belgrade, which was a step forward in resolving this and other similar problems faced by the citizens who own apartments in the buildings constructed from materials which contain hazardous substances.
- 2.3. In 2014, the Protector of Citizens received 74 complaints in this field, in which complainants alleged 92 violations of rights. In the same period, he completed the investigations in a total of 60 cases received in 2014 and in earlier years. Out of the total of 36 investigations conducted, 5 (13.89%) investigations were closed by issuing of recommendations in an expedited procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 3 recommendations, of which 2 (66.67%) have been accepted, 1 (33.33%) has not been complied with and 0 are still pending. Based on the number of identified (8) and remedied (7) omissions³²⁸, the rate of efficiency in this sector is 87.50%.

³²² Official Gazette of RS No. 128/14.

³²³ Official Gazette of RS No. 142/14.

³²⁴ Official Gazette of RS, No. 132/14 and 145/14.

³²⁵ Official Gazette of RS No. 85/14.

³²⁶ Official Gazette of RS No. 144/14.

³²⁷ Official Gazette of RS No. 127/14.

³²⁸ The number of identified omissions is the sum of terminated investigations, the number of recommendations that have been complied with and those that have not been complied with, while the number of remedied omissions is calculated as the sum of terminated investigations and recommendations which resulted in compliance.

3. Shortcomings at the national level

- 3.1. The Republic of Serbia still has 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.
- 3.2. Some planning documents in the field of environment protection have not yet been adopted.
- 3.3. The Law on Protection from Environmental Noise 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. There is a lack of interdepartmental cooperation with respect to protection of the right to a healthy environment, which incorporates public health protection.
- 3.5. The competent public authorities tend to disregard their duty to review their own decisions in the face of justified public health and environmental concerns in the cases of long-distance high-voltage power lines constructed in the immediate vicinity of residential properties.
- 3.6. The citizens of Zajaca, including the youngest ones, 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.

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 2013 Annual Report of the Protector of Citizens:

- That 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 sources of pollution in the town of Zajaca and to ensure continual monitoring of water and soil pollution.

4.2. **The Ministry of Agriculture and Environment Protection** and the Public Enterprise "Elektromreze Srbije" have not complied with the recommendation of the Protector of Citizens to conduct a basic environmental impact assessment for the construction of the long-distance power line through the community of Radmilovac.

5. Explanation

The Government has adopted the Strategy for Agriculture and Rural Development of Serbia for the next ten years. The aim of this document is to define the development of agriculture and the food industry within the framework of the concept of sustainable development and sustainable management of natural resources, as well as to introduce a support model and set the direction for future reforms of the agrarian policy and relevant institutional frameworks.

The newly-enacted Law on Financing and Provision of Financing for Agricultural Production aims to improve the position of farmers by introducing an appropriate financing system. The amendments to the Law on Incentives in Agriculture and Rural Development provide opportunities for improvements in agricultural production and promote investment in primary production.

Acting in compliance with the recommendations of the Protector of Citizens in connection with the actions of veterinary inspectorates, the Veterinary Directorate of the Ministry of

Agriculture and Environment Protection informed the Protector of Citizens if had accepted all recommendations issued to it and pledged to strive towards full adherence to the principle of officiality whenever it receives a submission alleging a violation of a law it is in charge of enforcing. It was also stated that the Veterinary Directorate would in the future refrain from treating unpaid administrative charges on filed requests as a formal deficiency which precludes any action of the authority concerned; instead, in such cases the Directorate would apply the provisions of the Law on Republic Administrative Fees.

In the recommendation issued to the Ministry of Agriculture and Environment Protection and the Public Enterprise “Elektromreze Srbije” (Serbian transmission system operator), the Protector of Citizens stated it would not be sensible to begin the construction of a structure with environmental impact planned many years ago without first examining the actual situation on the ground. He quoted justified concerns of members of the local community that this structure would have adverse effects on the environment and human health in its immediate vicinity. The Protector of Citizens therefore recommended that the competent authorities, based on the actual situation on the ground and bearing in mind the interest in preserving the quality of the environment in the town of Vinca and the community of Radmilovac, should conduct a new environmental impact assessment. Although the Protector of Citizens emphasised that the *de facto* situation on the ground was a primary consideration in this case and underscored the need to determine the prevailing public interest, recalling that public authorities should be prepared to reconsider their decisions from the aspects of expediency and cost-effectiveness, as well as on the basis of the principles of justice and fairness, notwithstanding any approvals and building permits already issued for this structure, the Ministry of Agriculture and Environment Protection and the Public Enterprise “Elektromreze Srbije” replied there was no basis or purpose for reviewing the environmental impact assessment procedure.

In 2014, the Republic of Serbia had no major legislative activities in the field of environment protection, although there is much scope for improvements in the legislation in this field and for further harmonisation with the EU regulations, both in terms of substantive provisions and in terms of the provisions pertaining to inspection. Namely, the ongoing investigations by the Protector of Citizens have shown there is some confusion with regard to determining which inspection body should be in charge of certain cross-departmental issues. An example of this is the case of unpleasant odours and vapours emanating from the craft shops within residential buildings or from illegal buildings, i.e. where the powers of multiple inspectorates overlap. The drafting of a Law on Inspection is underway and it is expected to bring more clarity with regard to this issue.

On the other hand, the fact that certain areas remain unregulated, e.g. the quality of indoor air, is a serious concern. Although an implementing regulation sets out detailed requirements for monitoring conditions and air quality requirements outdoors³²⁹, the Republic of Serbia still has no reference thresholds for indoor pollutants, in areas where the population generally tends to spend most of their time.

Acting pursuant to a complaint filed by the homeowners in the community “Dr. Ivan Ribar” in Novi Beograd, after initiating investigations of the competent Ministries, the Protector of Citizens issued an opinion to the competent authorities and the Building Directorate of Serbia in which he supported the efforts of the Ministry of Transport, Construction and Infrastructure to address the issue of remedial action needed to eliminate the consequences

³²⁹ Decree on Monitoring Conditions and Air Quality Requirements (Official Gazette of RS, No. 11/20, 75/20 and 63/20)

of the hazardous substances found in the walls of those buildings. The Protector of Citizens expressed his view that the wronged homeowners should be offered other options in addition to rehabilitation of their flats in order to overcome the problem which they face through no fault of their own, namely that they should be offered an option to terminate the property sale agreements and receive a full refund plus expenses, or an option to relocate to other flats built by the Building Directorate of Serbia as the developer.

He also highlighted the need to adopt regulations that would govern the quality of building materials used in construction, as well as the quality of indoor air, all of which were identified as concerns during the investigations. Certain positive steps came in the form of the Law amending the Law on Planning and Construction³³⁰, which *inter alia* provides for the adoption of an implementing regulation that should set out technical requirements and properties of construction products intended for permanent installation in buildings, for the purpose of ascertaining whether buildings contain organic pollutants. The period for adoption of this instrument expired on 15 February 2015.

During this investigation and in the processing of earlier complaints, the Protector of Citizens observed a lack of cooperation between Ministry of Agriculture and Environment and the Ministry of Health in connection with issues that concern both environment protection and public health. This is reflected primarily in the power for initiating the drafting of laws and implementing regulations that pertain to both of these fields, as well as in the implementation of environment protection measures which concern public health.

In the past months, the Protector of Citizens received a number of communications and complaints from citizens who complained about noise emanating from hospitality and catering establishments and the actions taken by the inspection authorities in this field. In an investigation of the Secretariat for Environment Protection of the City of Belgrade on own initiative, the Protector of Citizens received a reply from that authority which pointed to a number of issues and difficulties faced by inspectors during inspection procedures and divergent practices of other inspectorates, which results in ineffective and inefficient inspections. Furthermore, it was stated that the statutory timeframe for the preparation of strategic noise charts and local action plans on noise protection, as some of the measures and requirements of noise protection under the law, had not expired.

Although the investigation is still underway, from the reply received from the competent authority it is apparent that shortcomings persist in this field as well, but there is also scope for improving the legislative provisions and expanding the powers of environment protection inspectors.

Although they had announced they would comply with the recommendations of the Protector of Citizens and eliminate the source of pollution in the community of Zajaca and ensure continual monitoring of air, water and soil pollution, the Ministry of Agriculture and Environment Protection and the Ministry of Health have not done so. The waste dump identified as the main source of pollution has not been rehabilitated and there is no mechanism in place for continual monitoring of water and soil pollution.

II OTHER ACTIVITIES

Meeting with environmental civil society organisations

With the aim of establishing cooperation with the civil society, exchanging past experiences and presenting specific issues faced by the Protector of Citizens in his practice so far, on the

³³⁰ Official Gazette of RS No. 132/14.

occasion of the International Human Rights Day, on 9 December 2014 the Secretariat of the Protector of Citizens held a meeting with members of environmental civil society organisations. In an atmosphere of active exchange of views and discussion, the participants discussed the importance of the right to a healthy environment and touched upon the issues of water pollution, noise pollution and non-ionizing radiation. They also presented typical cases and complaints received in this field.

The participants concluded the legislation in this field was non-harmonised and interdepartmental cooperation within government authorities was lacking.

In the end, they expressed their mutual belief this was just the first step of future fruitful cooperation between the Protector of Citizens and CSOs in this field. Civil society organisations welcomed the initiative of the Protector of Citizens for cooperation and his intention to involve all stakeholders in order to educate and promote the right to a healthy environment, which is encompassed by the broader right to health care.

III TYPICAL CASES

Veterinary Directorate remedies omission in connection with actions taken by veterinary inspectorate pursuant to citizens' reports and submissions

The Protector of Citizens received a complaint from several animal welfare organisations, which voiced their dissatisfaction with the actions of local veterinary inspectors and the Veterinary Inspectorate of the Ministry of Agriculture and Environment Protection pursuant to their reports against the work of animal holding facilities. As an example, they quoted the actions taken by the Veterinary Directorate in response to a request made by an animal welfare organisation to urgently put a ban on euthanizing of dogs and cats at a shelter. Namely, instead of acting *ex officio*, the Veterinary Directorate demanded the payment of an administrative charge for the filed request, threatening to refrain from any action or dismiss the request unless evidence of payment of the Republic administrative charge was provided.

In the course of the investigation, the Protector of Citizens found omissions in the work of the Veterinary Directorate and the Ministry of Agriculture and Environment Protection, firstly because the failure to act *ex officio* pursuant to the submission filed by the citizens' association in the context of inspection of compliance with the laws within its remit and, secondly, because it had ordered the payment of the Republic administrative charge for a submission, for which there is no basis in the law, and then even went so far as to threaten to refrain from any action unless the payment is made.

The Veterinary Directorate of the Ministry of Agriculture and Environment Protection fully accepted the recommendations.

Public Water Management Company "Srbijavode" Belgrade remedies omission

The Protector of Citizens received a complaint in which the complainant claimed she had sent multiple applications to the Public Water Management Company "Srbijavode" Belgrade in order to be granted easement for the laying of pipes; however, the Public Water Management Company "Srbijavode" Belgrade never replied to any of those applications. The Protector of Citizens demanded of the Public Water Management Company "Srbijavode" Belgrade to provide information on the subject matter of this complaint. After being contacted by the Protector of Citizens, the Public Water Management Company "Srbijavode" Belgrade informed this authority it had accepted the complainant's appeal and granted the easement she had requested, thus remedying the omission against which the complainant had taken recourse.

IV PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. **The Government** should set out detailed technical requirements and properties of construction products intended for permanent installation in buildings.
2. **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.
3. **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.
4. **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.
5. **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 provisions that would set in detail the powers of environmental inspectors in cases of noise emanating from hospitality and catering establishments.
6. **The Ministry of Agriculture and Environment Protection and the Ministry of Health** should cooperate more closely and exchange information in the field of environment protection that concern public health.
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 Vinca 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 implement continual monitoring of air, water and soil pollution in the town of Zajaca and eliminate the source of the pollution.

2.17. SECURITY SERVICES SECTOR

I BACKGROUND

1. Government's achievements

1.1. The Constitutional Court declared unconstitutional³³¹ the provisions of Articles 13, 14 and 15 of the Law on Security Information Agency³³², which provided for derogation from the principle of confidentiality of letters and other communication. The unconstitutional provisions have been amended.³³³

1.2. Following amendments to the Code of Criminal Procedure, access to the so-called retained data is possible only pursuant to an order of a pretrial judge.³³⁴ There are no more laws in the Republic of Serbia that allow invasion of privacy of citizens' communication in contravention of the Constitutional guarantees.

1.3. Efficient actions of all security services and other competent authorities have enabled the Belgrade Pride Parade to go ahead as planned, without mass violence.

2. Results achieved by the Protector of Citizens

2.1. After the media reported that the Security Information Agency had used secret searches in a number of cases, the Protector of Citizens conducted an investigation of its work on own initiative in order to determine whether the said measure was used lawfully and regularly. Following the investigation, he issued cumulative conclusions, opinions and recommendations to the Agency, all of which were accepted.

2.2. Efficient organisational measures and IT solutions have been put in place to expedite preliminary judicial review and ruling on requests for access to communications and communication data, as recommended by the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection;

2.3. The Government has not proposed and the parliament has not enacted any laws that would derogate from the constitutional guarantees of privacy of communication and other human rights. The Government duly acknowledged the opinions of the Protector of Citizens on new legislation (Amendments to the Law on Security Information Agency) and made relevant modifications in its drafts.

2.4. In 2014, the Protector of Citizens received 12 complaints in this field. In the same period, he completed the investigations in a total of 4 cases received in 2014 and in earlier years. One investigation was closed by a recommendation issued in an expedited inspection procedure. In the remaining cases, the Protector of Citizens conducted inspections and issued 9 the recommendation, of which 9 (100%) have been accepted, 0 (0%) have not been complied with and 0 are still pending. Based on the number of identified (10) and remedied (10) omissions³³⁵, the rate of efficiency in this sector is 100%.

³³¹ Decision of the Constitutional Court IUz. - 252/02 of 26 December 2013, published on 27 June 2014.

³³² Official Gazette of RS, No. 42/02 and 111/09.

³³³ Law amending the of the Law on Security Information Agency, Official Gazette of RS No. 66/14.

³³⁴ Official Gazette of RS, No. 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14.

³³⁵ The number of identified omissions is the sum of terminated investigations, the number of recommendations that have been complied with and those that have not been complied with, while the number of remedied omissions is calculated as the sum of terminated investigations and recommendations which resulted in compliance.

3. Shortcomings at the national level

3.1. Most of the 14 systemic recommendations issued jointly by the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection, which were designed to significantly bolster the existing guarantees for the respect of citizens' rights in the security sector, have not been adopted.

3.2. Members of security services who, in good faith, draw attention to unlawful and irregular actions by the services are often exposed to retaliation, against which there is no sufficiently effective legal or factual protection.

3.3. The Ministry of Defence disregarded its statutory duty to cooperate with the Protector of Citizens in investigations.

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 2013 Annual Report of the Protector of Citizens:

- 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.
- 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 to report their findings relevant for the respect for human rights to the Protector of Citizens and competent parliamentary committees, especially if they are ignored by the leaders of their own bodies or if they reveal serious alleged or confirmed violations of human rights.
- To analyse the implementation of the Law on Data Confidentiality (including the adoption of necessary secondary legislation, declassification of old documents, conduct of investigations, issuing of security clearance certificates...) 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 build the capacity of independent oversight institutions 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.

5. Explanation

After the media reported that the Security Information Agency had used secret searches in a number of cases, the Protector of Citizens conducted an investigation of its work on own initiative in order to determine whether the said measure was used lawfully and regularly. The decision to initiate the investigation was influenced by the essence of “secret searches”, which allow a significant invasion of the rights stemming from the right to a private life³³⁶, as well as the fact that “secret searches” are not specifically provided for by the law. Also, the conditions for their use, the method of their use and the processing and use of the results are not regulated by a law; instead, they are governed by implementing regulations marked as highly classified, which undermines the principle of lawfulness of work and increases the threat of incorrect application of regulations and violation of citizens’ rights. In the offices of the SIA, the Protector of Citizens had direct access to data on all procedures in the SIA used or had the approval to use secret searches in the period of one year before the date of the investigation.

During the investigation it was found that the SIA respected the constitutional guarantee of inviolability of residence when conducting secret searches. Certain irregularities were identified in individual cases and the Protector of Citizens made a general comment on the excessively broad interpretation of a specific legal standard by the Agency.

After the investigation, the Protector of Citizens issued ten recommendations to the Security Information Agency.³³⁷ The Security Information Agency informed the Protector of Citizens it had accepted all recommendations and their practical implementation will be verified in the next reporting period.

Acting on his own initiative, based on information learned from the media, the Protector of Citizens demanded of the Ministry of Defence and the Ministry of Internal Affairs to provide information in connection with a situation that had occurred during the Pride Parade in Belgrade on Sunday, 28 September 2014, when a physical confrontation took place between members of the Military Police and members of the Gendarmerie of the Ministry of Internal Affairs. He Protector of Citizens believed the confrontation involved a breach of citizens’ rights through use of excessive force by the Gendarmerie officers, while other facts known at the time indicated a possibility of other omissions in terms of lawfulness and regularity of work of the public authorities within the remit of the Protector of Citizens.

The Ministry of Internal Affairs provided the requested information and supported it with relevant documentation, while the Ministry of Defence refused to comply with its statutory duty to provide the requested documentation in connection with the case and to present to the Protector of Citizens all required communications and statements. A communication addressed to the Ministry of Defence received a negative response from the Military Security Agency, which informed the Protector of Citizens that determination of facts and circumstances of relevance for the said case was the responsibility of the public prosecution and advised the Protector of Citizens to contact the relevant public prosecutor.

³³⁶ Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette of Serbia and Montenegro, No. 9/03, 5/05 and 7/05; Official Gazette of RS – International Treaties No. 12/10.

³³⁷ The Report of investigation of the SIA with recommendations is available at: <http://www.ombudsman.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/3454-2014-09-15-12-40-15>.

Faced with a refusal of the Ministry of Defence to cooperate, which effectively barred the Protector of Citizens from exercising his preventive function, he initiated an investigation on his own initiative.

As he completed the formalities required to initiate the investigation, the Protector of Citizens reminded the Ministry of Defence that the Protector of Citizens had the power to conduct investigations regardless of any proceedings before other public authorities, including public prosecution, and that there was no positive legislation that would prevent the Protector of Citizens from investigating a matter in parallel with the public prosecution, as the two authorities dealt with different types of illegalities and irregularities.

Public prosecution offices investigate suspected criminal offences and prosecute the perpetrators, while the Protector of Citizens investigates whether public authorities made omissions in their work to the detriment of any of the citizens' rights, it being understood that such omissions need not (and indeed usually do not) qualify as criminal offences.

The fact that no criminal offence was committed does not mean there was no omission (illegality, irregularity) to the detriment of citizens' rights, just as the fact that the Protector of Citizens found an omission does not mean that a criminal offence was committed, does not impose any duty on judicial authorities and does not prejudice the outcome of any proceedings they (or any other authority) may conduct.

The Ministry of Defence submitted a reply in which it stated its belief that this was not a case of refusal to provide the Protector of Citizens with the requested information, but a misunderstanding stemming from different interpretations of the regulations which govern the powers and status of public prosecution offices and the Protector of Citizens respectively. According to the Ministry of Defence, as from the time when the public prosecutor launched an investigation, the Ministry of Defence and the Military Security Agency "no longer had possession of the data for the purposes of disclosure; indeed, the only way it could make those data available to any third party, including by analogy the Protector of Citizens, within the meaning of the aforementioned provision of the Code of Criminal Procedure, was if the competent public prosecutor, who handled the preliminary investigation proceedings, gave approval for such disclosure." The Ministry of Defence asked the public prosecution office for an opinion whether "making the data available to third parties for the purpose of conducting any proceedings other than criminal investigation could prejudice the work of judicial authorities" and therefore suggested that the Protector of Citizens "wait until the ongoing preliminary investigation proceeding is closed."

Article 38 of the Law on Data Confidentiality³³⁸ explicitly states who and under which conditions has the right to access data used in an ongoing criminal investigation. The Law specifies those are the government authorities appointed by the National Assembly (one of which is the Protector of Citizens), heads of government authorities appointed by the National Assembly, judges of the Constitutional Court and judges. Such access is subject to certain conditions under the Law, namely: the data must be necessary for an investigation they conduct, they must have special security clearance and they must personally access the data. It is not incumbent upon any government authority to assess compliance with these requirements or to grant approval for data access; instead,

³³⁸ Official Gazette of RS number 104/2009.

the holders of those powers are held accountable for the lawfulness of their work in the manner provided for in the Constitution and the organic laws. This is why the public prosecution office never responded to the repeated requests of the Ministry of Defence (which the Minister of Defence mentioned in public on several occasions) for the competent public prosecutor to “allow” the Ministry to give the Protector of Citizens access to the requested data.

In compliance with his duty under the Law on the Protector of Citizens³³⁹, based on the facts learned in the investigation and in the belief that certain actions of employees of government authorities qualify as criminal offences, the Protector of Citizens filed a criminal report against two members of the Military Police Administration with the Higher Public Prosecution Office in Belgrade on 14 January 2015, on the basis of reasonable doubt that, during the events which took place on 28 September 2014 in Belgrade, they committed the criminal offence “attack on an official in the performance of duty” pursuant to Article 323 of the Criminal Code of the Republic of Serbia³⁴⁰. In parallel, the Protector of Citizens joined the public prosecutor’s criminal report against seven members of the Gendarmerie in connection with their indictment for the criminal offence of “ill-treatment and torture” pursuant to Article 137 of the Criminal Code³⁴¹.

By refusing to cooperate with the Protector of Citizens, the Ministry of Defence committed a gravest breach of its duties explicitly provided by the law. The Protector of Citizens has already stated in previous Annual Reports that any obstruction of the investigations conducted by this authority – be it by refusing to cooperate as required by the law, by denying access to documents and statements, by persecuting persons for cooperating with the Protector of Citizens or in any other way – should be met with harsh penalties.

After the amendments of the Code of Criminal Procedure, the police no longer have the power to obtain the so-called retained data (records of telephone communications and mobile masts) or locate the caller pursuant to an order issued by a public prosecutor. Under the new provision, the so-called retained data can be accessed only pursuant to an order issued by a pretrial judge. In this way, the provisions of the Code of Criminal Procedure have been harmonised with the Constitution, as called for by the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection as far back as in 2013, when they filed a Motion for Constitutional Review of the contested provision with the Constitutional Court.³⁴²

II TYPICAL CASES

Control visit to Military Security Agency cancelled

The Protector of Citizens cancelled a previously announced preventive control visit to the Military Security Agency because the Agency unlawfully refused to give the Protector of Citizens access to the data it held in connection with the events that unfolded during the 2014 Pride Parade. The Military Security Agency was informed that the Protector of Citizens was unable to perform his control function if the Agency persists in cherry-picking the

³³⁹ Article 20 paragraph 2 of the Law on Protector of Citizens.

³⁴⁰ Official Gazette of RS, numbers 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13 and 108/14.

³⁴¹ The First Primary Public Prosecution Office in Belgrade, to which the criminal report was referred in the meantime, informed the Protector of Citizens after the end of this reporting period that, in the opinion of that Prosecution Office, the acts committed by the indicted members of the Military Police did not contain elements of the criminal offence “attack on an official in the performance of duty” or any other criminal offence prosecuted *ex officio*.

³⁴² Article 286 paragraph 3 of the Code of Criminal Procedure (Official Gazette of RS, No. 72/11 and 101/11).

situations in which it feels it should comply with its duties in relation to this oversight authority.

Security vetting did not violate complainant's rights

The Protector of Citizens received a complaint from a military officer who claimed his rights had been violated in a security vetting procedure, as he was informed after the vetting procedure that he could not be cleared for certain duties. After conducting an investigation, the Protector of Citizens found no reason to believe that the Military Security Agency had acted unlawfully or irregularly in the security vetting procedure, with disregard for the applicable regulations and procedures, nor did he find any reason to believe that the conclusion reached by the Agency was in any way arbitrary or blatantly wrong.

III PROPOSALS FOR IMPROVING CITIZENS' POSITION IN RELATION TO GOVERNMENT AUTHORITIES

1. 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.
2. 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.
3. To integrate the procedures applicable to electronic communication service providers and their responsibilities.
4. To provide for an indelible trail of access to telecommunications, with all data necessary for subsequent investigation of legality and regularity of access.
5. To provide for efficient oversight of the private security sector.
6. 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.
7. 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 competent parliamentary committees, especially if they are ignored by the leaders of their own bodies or if they reveal serious alleged or confirmed violations of human rights.
8. To analyse the implementation of the Law on Data Confidentiality, including 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.
9. To build the capacity of independent oversight institutions for handling and keeping confidential information.
10. To enact a new Law on Security Information Agency to ensure, among other things, predictability in the use of special measures.
11. To re-examine the police powers of the intelligence/security services, i.e. their participation in criminal proceedings.

PART III: COOPERATION BY THE PROTECTOR OF CITIZENS

3.1. PROTECTOR OF CITIZENS IN THE MEDIA

During the reporting year there have been fewer articles about the Protector of Citizens, but he had a slightly higher presence in television reports of the media outlets with national coverage compared with the previous year.

In a total of 16 daily and weekly papers covered by the analysis, 563 articles of various genres were published. The majority of the texts were published by the following dailies: Danas, Politika, Blic, Dnevnik and Vecernje novosti. Out of a total of 243 reports on nine television stations analysed by this institution in 2014, most were broadcast on RTS (Serbian Broadcasting Corporation) 1, B92 TV, Pink TV and RTV (Radio Television of Vojvodina) 1.

The media reported about this institution on the basis of statements given by the Protector of Citizens and his deputies or other officials, on the basis of reports from events, on the basis of announcements or in the form of news. The majority of announcements and information released by the Protector of Citizens to the media are planned to be information-neutral. Journalists have covered extensively almost all initiatives and comments of this institution, such the institution's involvement in the cases of "missing babies", the situation of asylum-seekers, enactment of the Law on Notaries Public and enactment of the Law on Whistleblower Protection.

The Protector of Citizens and his deputies appeared on television on 12 occasions to comment on current events in the society and the activities of this institution. During the year, the press published 9 comments relating to the work and activities of the Protector of Citizens. These included also the authored texts written by the Ombudsman himself and his deputies – a total of 13 texts, most of them in the Danas daily, while NIN magazine published the largest number of interviews – 7. In these texts, the Protector and his deputies shared their opinions on the issues of tabloidization and media freedom and censorship, depoliticisation of social events, racial discrimination, protection of persons with mental difficulties, child rights, domestic violence, rights of detainees, human rights and work of the Security Information Agency.

Press articles and television reports in the local media across Serbia 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 2008-2014

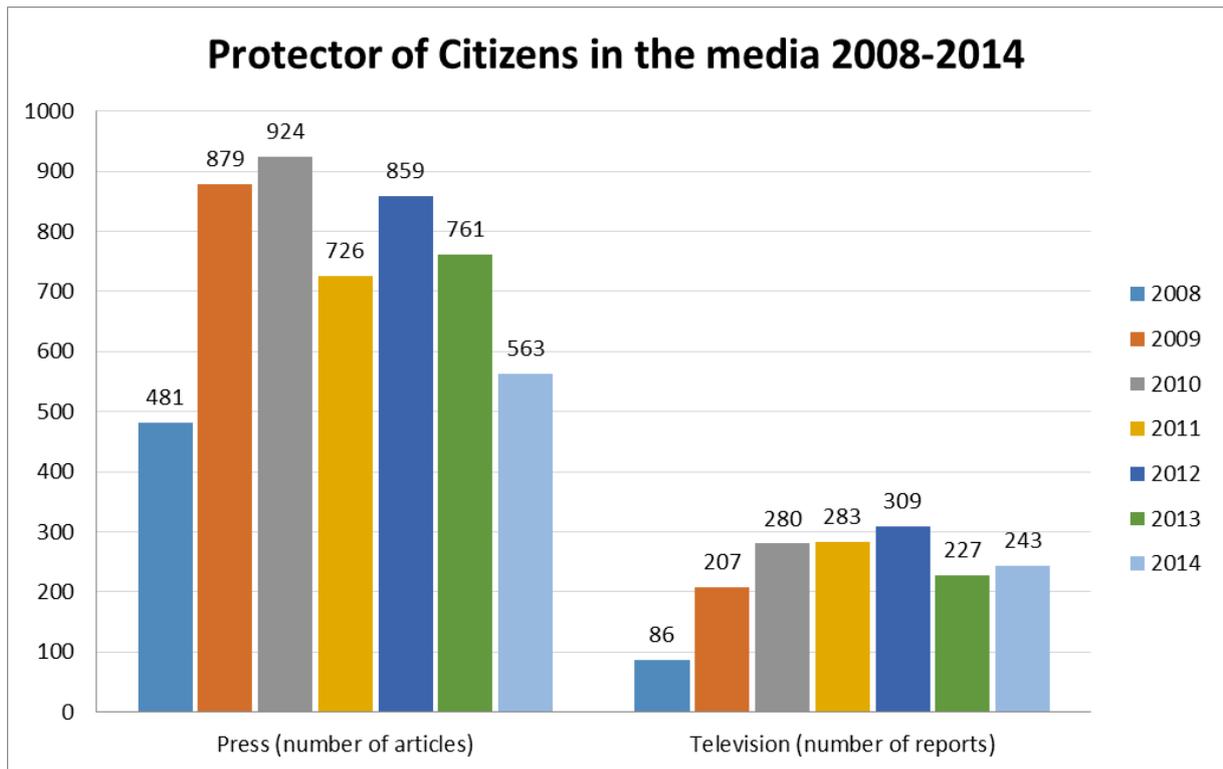


Chart 12 - Number of announcements in daily papers

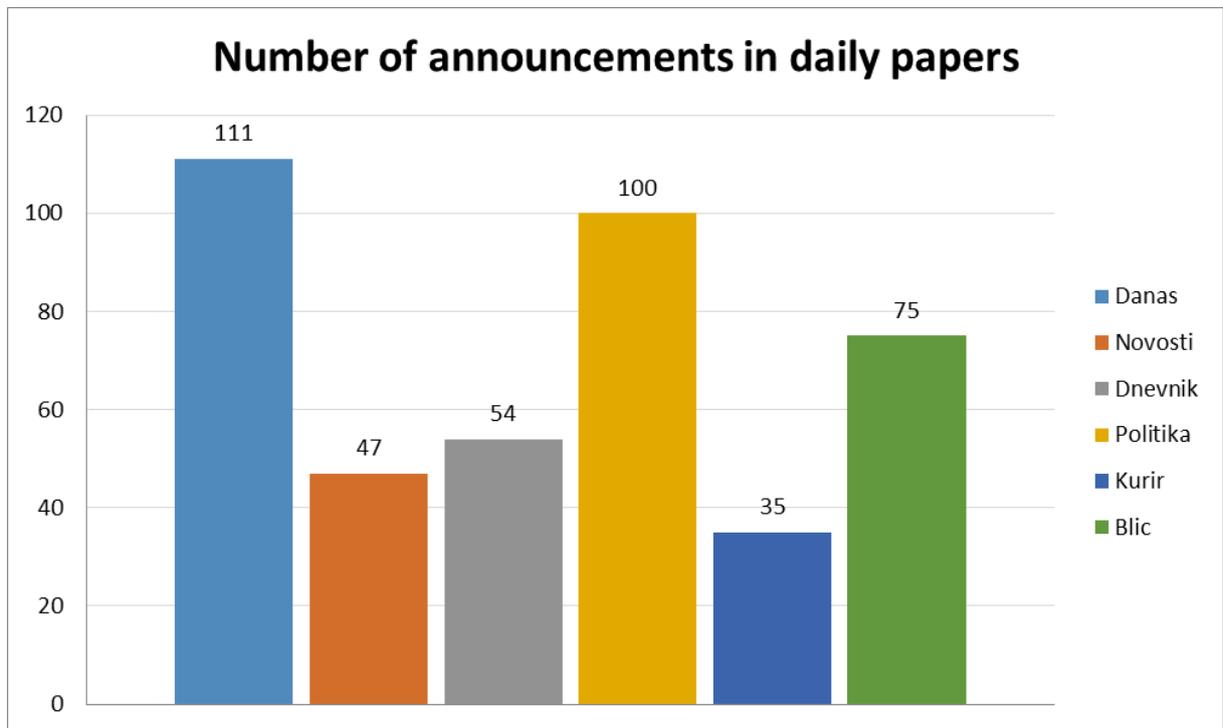
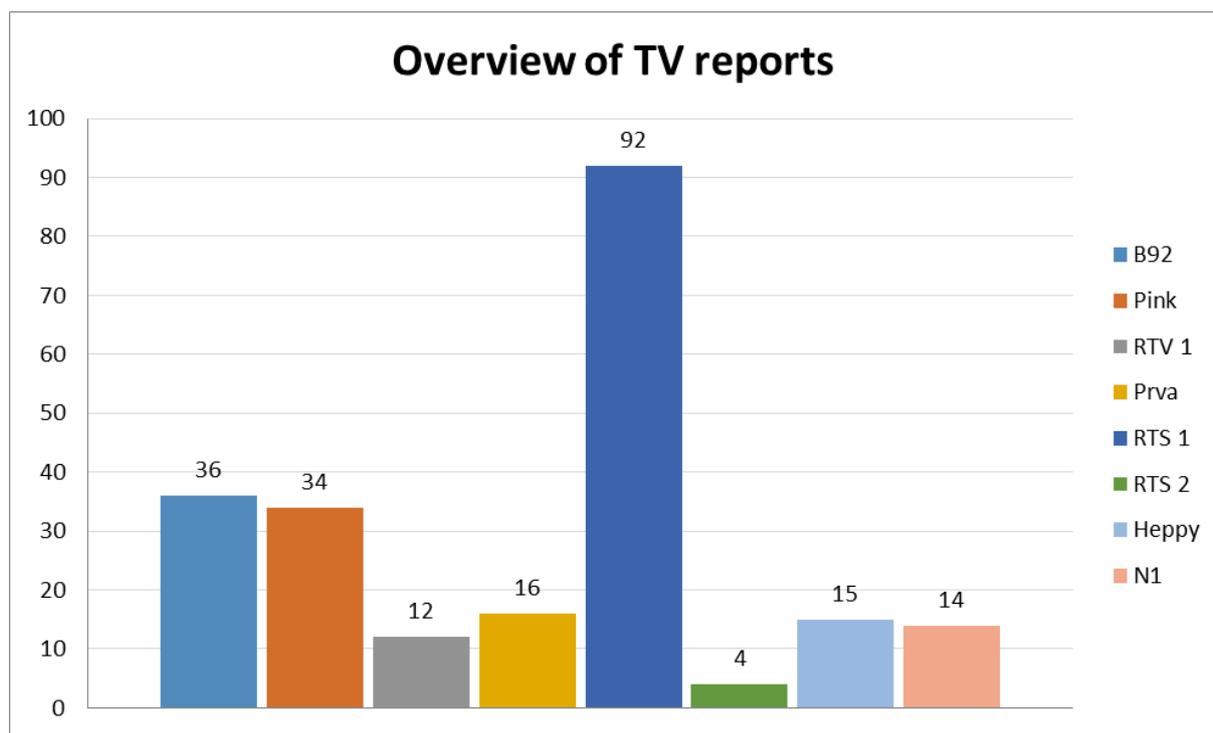


Chart 13 - Number of television reports



3.2. COOPERATION WITH PUBLIC AUTHORITIES EXCLUDED FROM OVERSIGHT BY THE PROTECTOR OF CITIZENS

During this reporting period, the Protector of Citizens made efforts again to improve relations with public authorities excluded from his oversight – the National Assembly, the President, the Government, the Constitutional Court, courts and public prosecutor’s offices.

Improvement of cooperation with the National Assembly was observed during the reporting period. The aspects of cooperation which include review of his Annual Report, monitoring of compliance with his recommendations and relations with competent parliamentary working bodies are of particular importance for the Protector of Citizens.

The National Assembly passed two Resolutions in connection with the review of the 2013 Annual Report of the Protector of Citizens, as opposed to four Resolutions last year.³⁴³ The Resolutions were passed on the basis of proposals made by the Committee on Human and Minority Rights and Gender Equality and the Committee on Judiciary, Public Administration and Local Self-Government. The Plenum of the National Assembly did not review the Proposal of the Resolution of the Committee on the Rights of the Child, because the Committee’s session had finished just before the beginning of the Plenum session.

The Plenum session of the National Assembly in which the parliament reviewed the annual reports of independent oversight authorities was interrupted due to a breach of the Rules of Procedure to the detriment of the heads of these authorities. They were denied the right to address the Assembly, after which they were forced to leave the session. The session was resumed on the following day, after an apology of the Speaker of the National Assembly.

³⁴³ Official Gazette of RS No. 60/14.

The Resolutions of the National Assembly *inter alia* once again ordered the Government to provide information categorised by public authorities and holders of public powers at the national level, which would specify: the number of recommendations issued by the Protector of Citizens to public authorities and holders of public powers at the national level; the number of implemented recommendations and the number of those that have not been implemented; and the reasons for non-compliance with the recommendations.³⁴⁴ Although the Government, as far as the Protector of Citizens is aware, made initial steps to comply with this duty, it did not report to the National Assembly on compliance with the recommendations of the Protector of Citizens by the specified date (31 December 2014).

The National Assembly reviewed the 2013 Annual Report of the National Preventive Mechanism for the first time. The parliament found the Report to be detailed and comprehensive, with an exhaustive presentation of activities aimed at improving the situation with regard to the status of persons deprived of liberty and creation of a torture-free society, with full respect for the dignity and rights of all persons whose freedom of movement is restricted. The National Assembly adopted by a majority vote the Conclusions³⁴⁵ in which the parliament ordered the competent authorities to comply with the recommendations of the Protector of Citizens and to report on the outcome to the National Assembly by 31 December 2014. According to the information available to the Protector of Citizens, the competent authorities have not done as instructed.

Furthermore, 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 Citizens (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 2014, the Protector of Citizens established particularly good cooperation with the Committee on Human and Minority Rights and Gender Equality and the Committee on the Rights of the Child.

The initially good cooperation with the Security Services Control Committee was damaged in January 2015, when a session of the Committee convened to investigate allegations of irregularities in the work of Military Security Agency 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 safety being flung his way. Yet he continued demanding information from the Ministry of Defence in connection with the incidents that took place during the 2014 Pride Parade, as well as information on the alleged investigation of political parties, trade unions and judicial authorities by the MSA. The Committee closed its session by adopting a Resolution 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.

However, it remains unclear in practice of the National Assembly whether the parliamentary committee responsible for the review of the Ombudsman's report should be the Committee on Constitutional and Legislative Issues – the committee which under the Law on the

³⁴⁴ Official Gazette of RS No. 60/14.

³⁴⁵ Official Gazette of RS No. 114/14.

Protector of Citizens proposes to the National Assembly a candidate for the Protector of Citizens.

In 2014, the Law amending the Law on Budget System³⁴⁶ 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. Although the National Assembly has time and again voiced its support to strengthening of the capacity of the Protector of Citizens, in practice serious issues arise whenever an attempt is made to obtain such approval to the extent that it poses a threat to the independence and performance of the Protector of Citizens.

In November 2014, the Protector of Citizens submitted to the National Assembly for approval a new Bylaw 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 Bylaw in a short time, the Plenum has still not debated this issue.

The existing provision of the Law, under which the National Assembly gives approval for the general instrument on organisation and job classification of the Secretariat of the Protector of Citizens, influences the independence of the Protector of Citizens by reducing organisational flexibility, efficiency and adaptability to changes. Due to the fact that the National Assembly did not vote on this issue, the Protector of Citizens has not been able to properly plan his 2015 budget, because he could not make provisions for the hiring of new employees in accordance with the Bylaw. The Protector of Citizens is therefore of the opinion that the procedure for passing the Bylaw 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 Bylaw 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 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.

3.3. INTERNATIONAL COOPERATION AND PROJECTS

In 2014, the Protector of Citizens continued intensive international cooperation at multilateral and bilateral levels. Cooperation with regional and European international organizations 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 and other meetings organized 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.

³⁴⁶ 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.

Strengthening of bilateral and multilateral cooperation with ombudsmen in the neighbouring countries has continued throughout 2014. The Protector of Citizens took part in regional conferences in Tirana and Ljubljana. In May, the Albanian ombudsman made a study visit to the Protector of Citizens.



Photo 9: *Visit of the Albanian Ombudsman Igli Totozani to the Protector of Citizens*

In 2014, several delegations of foreign ombudsmen and National Preventive Mechanisms (NPMs) expressed their desire to make study visits to the Protector of Citizens. Thus, a delegation of the Polish Ombudsman was introduced to the electronic document management system used by the Secretariat of the Protector of Citizens, while the delegations of Georgian and Ukrainian NPMs had an opportunity to learn about the experiences of the Protector of Citizens in his capacity of the NPM.

The Protector of Citizens exchanged experiences in the protection of rights of members of armed forces with his colleagues at a conference held in Geneva (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 government authorities to Georgian and Palestinian 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 regular reporting and participation in the first meeting of the Committee on Implementation of the Stabilisation and Association Agreement, the Protector of Citizens also had talks with Jean-Eric Paquet, Director for Western Balkans at the EU Directorate General European Neighbourhood Policy and Enlargement Negotiations. He also met with several expert EU missions. The Protector of Citizens participates in reporting in connection with EU accession on an ongoing basis. The Protector of Citizens has also had talks with several Council of Europe delegations.

During 2014, the Protector of Citizens also had meetings with high officials of the United Kingdom (David Lindington, Minister for Europe) and Germany (Christoph Stroesser, Federal Government's Commissioner for Human Rights).

Activities of the protector of citizens as a national human rights institution

In 2014, the Protector of Citizens carried out a number of activities as the national institution for the promotion and protection of human rights in Serbia (NHRI) granted 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")³⁴⁷.

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 his replies to the question sheets of the UN Committee on Economic, Social and Cultural Rights and the UN Committee on Forced Disappearances.

Towards the end of 2014, the Protector of Citizens submitted the required documentation for reaccreditation as a national human rights institution. A decision of the International Coordinating Committee's Sub-Committee on Accreditation to re-accredit the Protector of Citizens is due in the first quarter of 2015.

As part of his reporting activities in the field of international cooperation, the Protector of Citizens prepared and sent answers to various questionnaires of OHCHR. He also prepared contributions for reports according to the special UN procedures.

³⁴⁷ 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.

Projects

The two-and-a-half year project “Promoting Human and Minority Rights through more Intense Contact between the Protector of Citizens and Citizens“, implemented by the Protector of Citizens with financial support of the Government of the Kingdom of Norway, has continued in 2014. The aim of the project is to contribute to further capacity building and higher visibility of this institution in protection of human rights, as well as its higher availability for citizens in towns and smaller municipalities in Serbia. The project is implemented in cooperation with the Librarian Association of Serbia and public libraries in fifteen selected municipalities and towns/cities, from which citizens can contact the Secretariat of the Protector of Citizens by a video link and present their grievances. In 2014, a total of 972 citizens contacted the Protector of Citizens through a video link installed in local libraries, while 1,245 sought information on the competences of the institution. Eight local roundtables on the rights of vulnerable rights were held, with the participation of all stakeholders. The Protector of Citizens held a prize competition for the best work of art by primary school pupils and for the best report/essay by journalists and students on the subject of human rights of persons with disabilities and members of national minorities, as well as on the subject of gender equality. Finally, in cooperation with the Accessibility Review Association, the Protector of Citizens collected data on accessibility of public buildings and services at the local level. The data thus collected were fed into an Accessibility Map, which will be available on the website of the Protector of Citizens and which will contain information on physical accessibility of buildings for wheelchair users, communication accessibility and availabilities of local support services to persons with disabilities.

Within the framework 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), last year the Protector of Citizens once again participated in a number of activities with the aim to establish more efficient cooperation and communication between the National Assembly and independent institutions. In this context, an informational session was held in mid-2014 for new National Assembly deputies in order to introduce them to the powers of the Protector of Citizens and other independent institutions. The deputies also received a brochure with information on the powers of other independent institutions and a brochure with information on the powers, structure and achievements of the five independent institutions. Towards the end of 2014, a training programme for patient rights advisors and local health councils was also launched. The objective of the programme is to familiarise these mechanisms with the powers of the Protector of Citizens and other independent institutions, the manner of data collection and recording and other relevant facts that should be in the focus of those who handle patients’ complaints.

In early 2014, the Protector of Citizens and the United Nations Children’s Fund (UNICEF) began implementing a two-year Memorandum of Understanding and Cooperation. The purpose of the Memorandum is to strengthen the role of the Protector of Citizens in the facilitation of a more efficient protection of rights of children on the move and child victims of sexual violence and to empower the Panel of Young Advisors of the Protector of Citizens as a mechanism for participation of children and advocacy of interests of children from vulnerable groups. So far, the project has trained the members of the Panel of Young Advisors on the subject of peer education for working with children on the move. The members of the Panel of Young Advisors have also visited the programme “Roma Resource

Centre” of the Ecumenical Humanitarian Organisations, the Shelter for Children and Youth who live and/or work on the Streets, a Roma family and informal Roma settlements in Novi Sad and Nis.

In 2014, the OSCE (Organization for Security and Cooperation in Europe) Mission to Serbia continued capacity building of the institution of the Protector of Citizens in the fields of promotion of gender equality and support to activities of the National Preventive Mechanism (NPM). As regards gender equality, the support has been focused on monitoring compliance with the General Protocol and the Special Protocols on the Protection of Women against Domestic Violence and Intimate Partner Violence at the local level. Activities within the framework of the NPM have been focused on improving the dialogue between the NPM and policed administrations and psychiatric institutions.

The Danish Embassy has provided support for the drafting of a Model Law on Government Assistance in Cases of Natural Disasters. This law should improve the safety of citizens and set out clearer and more transparent procedures for the award of government assistance in cases of natural disasters.

PART IV: 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 2014, the Protector of Citizens received a total of 4877 complaints, which was approximately 3% lower than in 2013.

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 34 – Classification of complaints by fields and sectors, their number and percentage compared with the total number of complaints

Sector	No. of complaints	%
1 Justice sector	466	9.55
2 Child rights	417	8.55
3 Local self-government	409	8.38
4 Labour sector	337	6.91
5 Persons deprived of liberty	334	6.85
6 Internal affairs sector	330	6.76
7 Finance	285	5.84
8 Pension and disability insurance	269	5.51
9 Persons with disabilities and the elderly	254	5.21
10 Real estate cadastre	237	4.86
11 Consumer protection	217	4.45
12 Construction, transport and infrastructure	190	3.89
13 Education and science	155	3.18
14 Rights of national minorities	153	3.14
15 Economy and transport	151	3.09
16 Health	136	2.79
17 Gender equality	132	2.71

18	Defence	84	1.72
19	Energy and mining	82	1.68
20	Agriculture and environmental protection	74	1.52
21	Social security	44	0.90
22	Natural disasters	31	0.64
23	Restitution	29	0.59
24	Independent oversight authorities	16	0.32
25	Youth and sport	15	0.31
26	Security services	12	0.24
27	Culture and information	8	0.16
28	Foreign affairs and diaspora	7	0.14
29	Protection of whistleblowers	3	0.06
Total		4877	

The following table shows the data on percentage share of complaints received from different districts.

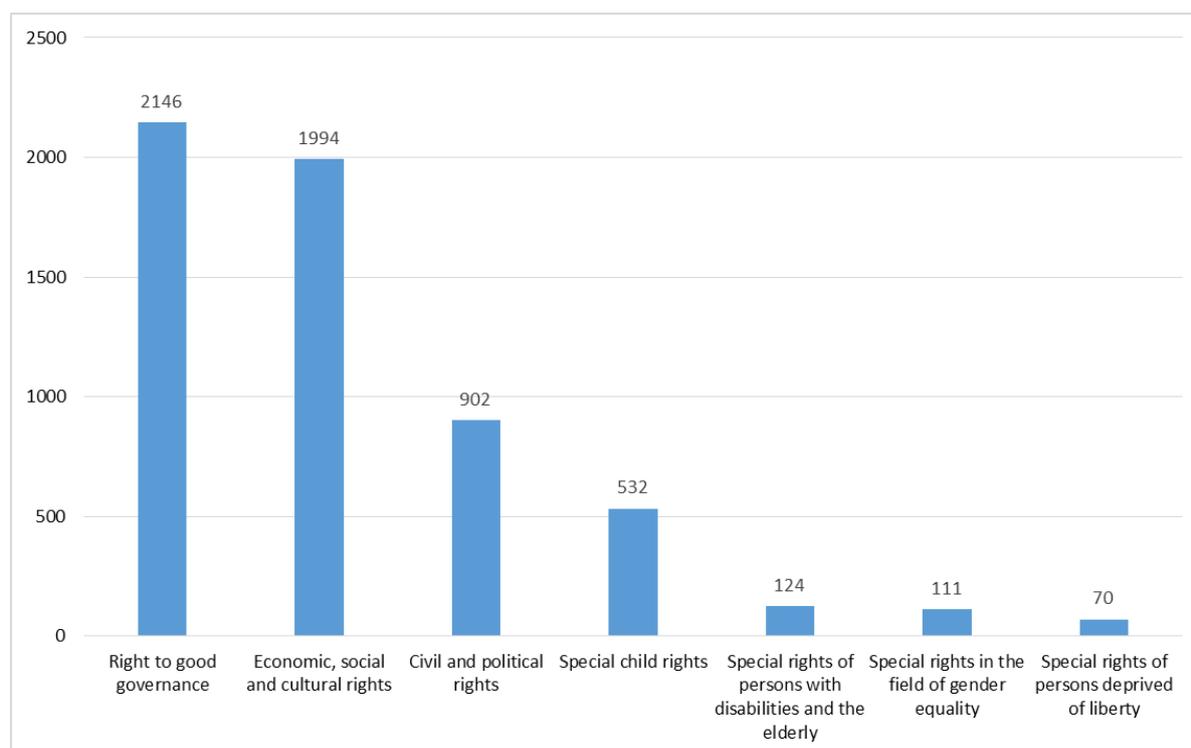
Table 35 - Number and classification of complaints according to addresses of complainants, with percentage share

Belgrade	1520	31.17%
Autonomous Province of Vojvodina	736	15.09%
Autonomous Province of Kosovo and Metohia	41	0.84%
Nisavski district	230	4.72%
Macvanski district	150	3.08%
Raski district	146	2.99%
Sumadijski district	146	2.99%
Branicevski district	142	2.91%
Zlatiborski district	129	2.65%
Pomoravski district	120	2.46%
Rasiniski district	114	2.34%
Jablanicki district (without Medvedja)	112	2.30%
Podunavski district	103	2.11%
Presevo, Bujanovac and Medvedja	32	0.66%
Other districts with less than 100 complaints	416	8.53%
Foreign countries	57	1.17%
Without information on address (e-mail)	683	14.00%
Total	4877	

4.1. CLASSIFICATION OF COMPLAINTS ACCORDING TO RIGHTS VIOLATED

By examination of 4,877 complaints lodged with the Protector of Citizens in 2014, it was found that most of the violations of rights reported by the citizens were violations of the principles of good governance and violations of economic and social rights.

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, 4,877 complaints received in 2014 related to a total 5,938 violations of rights.

Table 36 - 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 lodged
Right to good governance	2,146	44.00%
Economic, social and cultural rights	1,994	40.89%
Civil and political rights	902	18.49%
Special rights in the field of child rights	532	10.91%
Special rights of persons with disabilities and the elderly	124	2.54%

Special rights in the field of gender equality	111	2.28%
Special rights of persons deprived of liberty	70	1.44%
Special rights of members of national minorities	59	1.21%
Total violated rights in 4877 complaints	5,938	

In their complaints, citizens mainly reported violation of the principles of 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 administration in the total number of violated rights reported in complaints is presented in the following three tables.

Table 37 - Overview of violated civil and political rights, their number and percentage share in the total number of registered violations of these rights in complaints

Right to legal protection and legal remedy	209	23.17%
Right to a fair trial	200	22.17%
Right to trial within reasonable time	105	11.64%
Right to legal aid	100	11.09%
Right to inviolability of physical and psychological integrity	41	4.55%
Right to protection of refugees and internally displaced persons	36	3.99%
Right to protection against discrimination	33	3.66%
Right to freedom and safety	22	2.44%
Right to personal identification documents	22	2.44%
Right to personal data protection	21	2.33%
Right to protection from torture	17	1.88%
Right to damage compensation	16	1.77%
Right to citizenship	15	1.66%
Right to language and script	11	1.22%
Right to respect of dignity and free development of personality	9	1.00%
Right to protection against wrongful deprivation of liberty	9	1.00%
Other rights	36	3.99%
Total	902	

Table 38 - 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

Right to protection of property	471	23.62%
Right from pension and disability insurance	277	13.89%
Rights arising from work	258	12.94%
Protection of consumers' rights	243	12.19%
Right to health care	148	7.42%
Right to work	117	5.87%
Right to education	91	4.56%
Right to healthy environment	60	3.01%
Right to health insurance	58	2.91%
Right to social security	53	2.66%
Prohibition of abuse at work	36	1.81%
Property rights and labour rights in the privatisation process	30	1.50%

Right to compensation of damage caused by natural disasters	27	1.35%
Resolution of problems faced by students	26	1.30%
Freedom of information	22	1.10%
Right to protection families, mothers and single parents	13	0.65%
Right to be informed	11	0.55%
Right to housing	10	0.50%
Other rights	43	2.16%
Total	1994	

Table 39 - Overview of violated rights in the field of good administration, their number and percentage share in the total number of registered violations of rights in the field of good administration in complaints

Right to observance of law	434	20.22%
Right to protection against administrative silence	355	16.54%
Right to fair treatment by authorities	324	15.10%
Right to efficient work of authorities	284	13.23%
Right to receive a decision within the legally stipulated time limit	218	10.16%
Right to respect created legal expectations	206	9.60%
Right to absence of abuse of powers	130	6.06%
Right to protection against the violation of procedure	86	4.01%
Right to protection against the failure to act on judicial decisions	45	2.10%
Right to protection against failure to comply with enactments of administrative authorities	33	1.54%
Right to equal treatment of citizens	27	1.26%
Right to proportionality in the work of authorities	4	0.19%
Total	2146	

4.2.

4.3. CLASSIFICATION OF COMPLAINTS ACCORDING TO AUTHORITIES AGAINST WHICH THEY WERE LODGED

Most of the complaints pertain to the work of representatives of executive authorities, particularly ministries, against which about 23.62% of all complaints lodged. The citizens mainly complained about the work of authorities and organizations 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-government.

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 40 - Classification of complaints according to various authorities against which they were lodged

Ministries	1152	23.62%
Agencies, institutes, funds, administrations	806	16.53%
Institutions and other public services	793	16.26%
Local self-government	701	14.37%
Judicial authorities	638	13.08%
Companies, employers, natural persons	538	11.03%
Public enterprises	397	8.14%
Independent national authorities and independent bodies	54	1.11%
Highest national authorities (the Government, the National Assembly)	28	0.57%
Autonomous provinces	14	0.29%
National councils of national minorities	2	0.04%
Total all authorities	5123	

The following table shows ministries against which the citizens lodged most complaints.

Table 41 - Classification of complaints according to various ministries against which they were lodged

All ministries in the total number of complaints	1152	23.62%
Individual ministries compared with all ministries		
Ministry of Internal Affairs	392	34.03%
Ministry of Construction and Urban Planning	149	12.93%
Ministry of Education, Science and Technological Development	144	12.50%
Ministry of Finance	111	9.64%
Ministry Labour and Social Policy	86	7.47%
Ministry of Defence	85	7.38%
Ministry of Justice	82	7.12%
Ministry of Agriculture and Environment Protection	31	2.69%
Ministry of Health	21	1.82%

Ministry of Economy	18	1.56%
Other ministries	33	2.86%

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 42 - Classification of complaints according to various authorities against which they were lodged

Agencies, funds, institutes, administrations, etc. in the total number of complaints	806	16.53%
Individual authorities in the group compared with all authorities which belong to the group		
National Pension and Disability Insurance Fund	349	43.30%
Republic Geodetic Authority	124	15.38%
Republic Health Insurance Fund	79	9.80%
Tax Administration	99	12.28%
National Employment Service	41	5.09%
Privatisation Agency	26	3.23%
Restitution Agency	17	2.11%
Commissariat for Refugees and Migration	22	2.73%
Security services (SIA,MSA, MIA)	4	0.50%
Other agencies	12	1.49%
Other directorates	21	2.61%
Other administrations	12	1.49%
Institutions and other public services in the total number of complaints	793	16.26%
Individual institutions compared with all institutions		
Institutions in the field of social security	257	32.41%
Institutions in the field of education	212	26.73%
Institutions in the field of enforcement of penal sanctions	159	20.05%
Institutions in the field of health	148	18.66%
Institutions in the field of science and culture	14	1.77%
Institutions in the field of sport	2	0.25%
Institutions in the field of defence	1	0.13%
Local self-government authorities in the total number of complaints	701	14.37%
Individual authorities in the group compared with all authorities which belong to the group		

City of Belgrade and city municipalities	275	39.23%
Other towns/cities	221	31.53%
Other municipalities	205	29.24%
Judicial authorities in the total number of complaints	638	13.08%
Individual authorities in the group compared with all authorities which belong to the group		
Primary courts	336	52.66%
Higher courts	66	10.34%
Court of Appeal	29	4.55%
Commercial courts	56	8.78%
All prosecutor's offices	83	13.01%
Magistrates' courts	27	4.23%
Administrative Court	20	3.13%
Other judicial authorities	21	3.29%
Public enterprises in the total number of complaints	397	8.14%
Individual authorities in the group compared with all authorities which belong to the group		
Local public enterprises	234	58.94%
National public enterprises	163	41.06%
Other authorities in the total number of complaints	98	2.01%

4.4. OUTCOME OF HANDLING OF COMPLAINTS

The Protector of Citizens investigates every complaint, except complaints falling outside his competence and complaints which are untimely, premature, anonymous, incomplete or lodged by an unauthorised person.

In 2014, the Protector of Citizens investigated 4,877 cases, including 4,812 written complaints and 65 complaints initiated on his own initiative, of which he closed investigation in 3,045 cases. About 2,000 complaints from the previous years were also investigated, of which investigation was completed for 1,753 complaints, which means that in 2014 investigation was completed for the total of 4,798 complaints.

Table 43 - Outcome of handling of complaints from 2014 and from previous years

Dismissed complaints	2,778	57.90%
Unfounded complaints	1,042	21.72%
Cases covered by recommendations issued as the result of expedited oversight procedure	587	12.23%
Cases covered by recommendations issued as the result of oversight procedure	246	5.13%

Complaint dropped by complainant	113	2.36%
Opinion of the Protector of Citizens	20	0.42%
Announcement of the Protector of Citizens	6	0.13%
Death of complainant	6	0.13%
Total:	4,798	

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 44 - Reasons for rejection of complaints in 2014

Declined jurisdiction	1314	47.30%
Premature	947	34.09%
Incomplete	367	13.21%
Untimely	77	2.77%
Anonymous	42	1.51%
Unauthorized complainant	31	1.12%
Total:	2778	

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 81.39% of dismissed complaints the Protector of Citizens gave the citizens legal assistance in the exercise of their rights before the competent authorities.

Table 45 - Assistance provided in the form of legal advice

	Number	Percentage
Dismissed complaints	2778	100%
Declined jurisdiction - complainant referred to competent authority	1314	47.30%
Premature complaint - complainant advised on available remedies	947	34.09%
Total: assistance provided in the form of legal advice	2,261	81.39%

In addition to the provision of legal aid advice to the citizens through replies to complaints they lodged, more than 17,000 citizens contacted the Protector of Citizens in reception offices in Belgrade, Presevo, Bujanovac and Medvedja in 2014, 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 2,020 complaints, in addition to those dismissed for the reasons specified by the law (2,778), the Protector of Citizens identified irregularities in operations of administrative authorities in over 42% of cases and the authorities subsequently received recommendations or opinions of the Protector of Citizens explaining how to rectify the identified irregularities.

Table 46 - Outcome of launched investigations

1. Irregularities identified in operations of authorities		
Cases covered by recommendations issued as the result of expedited oversight procedure	587	29.06%
Cases covered by recommendations issued as the result of oversight procedure	246	12.18%
Opinion of the Protector of Citizens	20	0.99%
Statement of the Protector of Citizens	6	0.30%
Total	859	42.53%
2. No irregularities identified in operations of authorities		
Unfounded	1,042	51.58%
Complaint dropped by complainant	113	5.59%
Death of a complainant	6	0.30%
Total	1,161	57.47%
Total 1 and 2	2,020	100%

5.

PART V: RECOMMENDATIONS, OPINIONS AND LEGISLATIVE INITIATIVES OF THE PROTECTOR OF CITIZENS

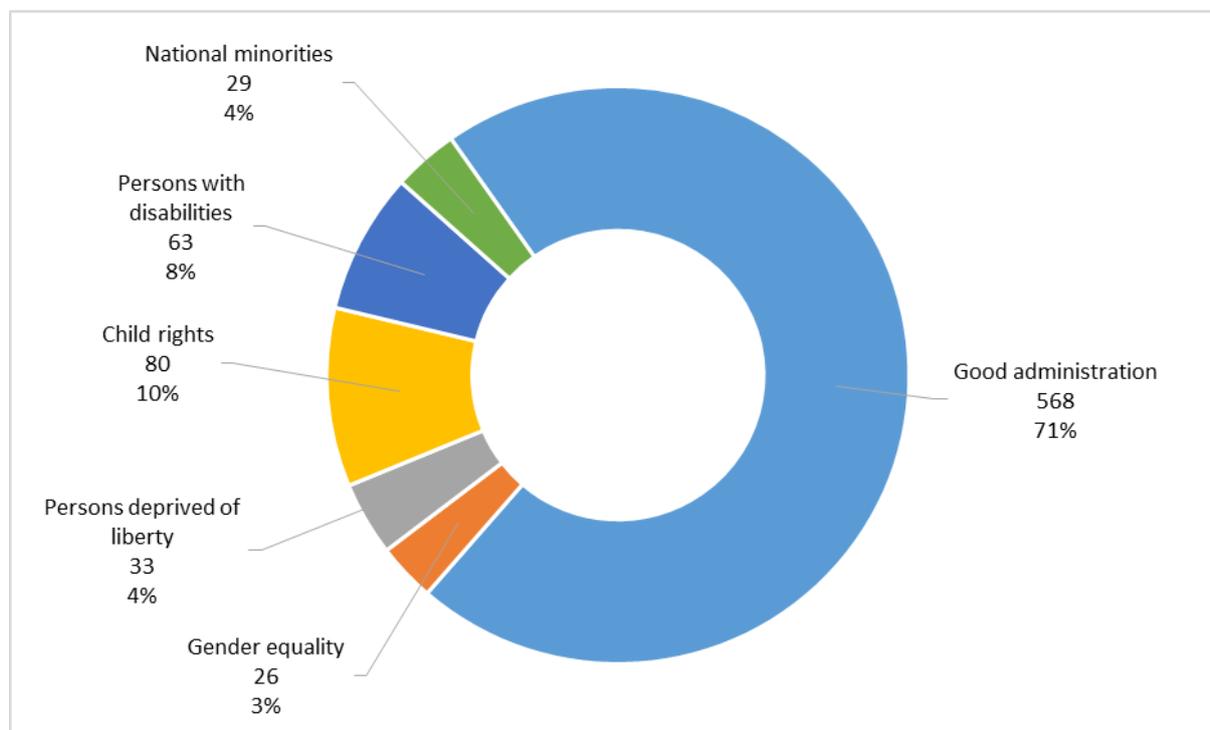
5.1. RECOMMENDATIONS

In 2014, acting upon citizen complaints or upon own initiative in 833 cases (from 2014 and from the previous years), the Protector of Citizens established deficiencies in the work of administration authorities, which caused the violations of citizens' rights, and referred 799 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), whether they relate to 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 – 568 or 71% - relate to the promotion of the respect of the good governance principles.

Chart 15 - Overview of recommendations by the field of the law



Note: As part of activities of the National Preventive Mechanism, the Protector of Citizens issued 345 recommendations relating to persons deprived of liberty to competent bodies in 2014, meaning that the total number of recommendations is 1,044, while the total number of recommendations relating to persons deprived of liberty is 378.

Percentage of implementation of recommendations of the Protector of Citizens by fields is presented in the table below.

Table 47 - Number the recommendations by fields with percentage of compliance

Field	Number	Implemented	%	Unimplemented	%	Within specified time limit	%
Gender equality	26	23	88.46%	3	11.54%	0	0.00%
Persons deprived of liberty	33	29	87.88%	4	12.12%	0	0.00%
Child rights	80	55	68.75%	16	20.00%	9	11.25%
Persons with disabilities	63	59	93.65%	2	3.17%	2	3.17%
National minorities	29	22	75.86%	7	24.14%	0	0.00%
Good governance	568	511	89.96%	36	6.34%	21	3.70%
Total	799	699	87.48%	68	8.51%	32	4.01%

Authorities implemented 689 recommendations within the specified time limit, while 10 recommendations were implemented upon expiry of the specified time limit, which means that the total of 699 (87.48%) were implemented. The authorities did not implement 68 recommendations, while the time limit specified for the authorities to implement recommendations has not expired for 32 recommendations.

The highest percentage of implementation is observed in the recommendations relating to rights of persons with disabilities and good governance.

The lowest percentage of implementation was observed in child rights, where only 66.25% of 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 (24.14%).

The authorities and organizations to which recommendations were mainly issued are presented in the table below.

Table 48 - Authorities to which recommendations were issued in investigation

Ministries	54	25.47%
Local self-government	54	25.47%
Social security institutions	24	11.32%
Education institutions	15	7.08%
Prisons	12	5.66%
National agencies	11	5.19%
Compulsory social insurance organizations	10	4.72%
Directorates within ministries	9	4.25%
Special organisations	8	3.77%
Police administrations and stations	7	3.30%

National directorates	3	1.42%
Institutions health	3	1.42%
Public enterprises	2	0.94%
Total	212	

Table 49 - Issued-to-unimplemented recommendations ratio by authorities issued after investigation

Authority	Number of recommendations issued	Number of unimplemented recommendations	%
National directorates	3	3	100.00%
Social security Institutions	24	11	45.83%
Directorates within ministries	9	4	44.44%
Ministries	54	22	40.74%
Local self-government	54	20	37.04%
Police administrations and stations	7	2	28.57%
Compulsory social insurance organizations	10	2	20.00%
Prisons	12	2	16.67%
Special organisations	8	1	12.50%
Education institutions	15	1	6.67%

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 50 - Ratio of unimplemented recommendation to the total number of unimplemented recommendations issued after investigation

Ministries	22	32.35%
Local self-government	20	29.41%
Social security institutions	11	16.18%
Directorates within ministries	4	5.88%
National directorates	3	4.41%
Police administrations and stations	2	2.94%
Compulsory social insurance organizations	2	2.94%
Prisons	2	2.94%
Education institutions	1	1.47%
Special organisations	1	1.47%
Total	68	

The highest percentage of unimplemented recommendations compared with the number of the recommendations issued to various authorities is observed in the Board of Directors of the Civil Aviation Directorate, because the total of three recommendations was issued to it and none of these recommendations was implemented.

5.2. OPINIONS

In 2014, the Protector of Citizens issued 18 opinions to public authorities, including:

1. Sixteen (16) 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. Two (2) 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 51 - The rights which are improved by opinions issued by the Protector of Citizens

Opinions in the field of economic, social and cultural rights	8	44.44%
Opinions in the field of civil and political rights	5	27.78%
Opinions in the field of the protection of rights of vulnerable population groups	4	22.22%
Opinions in the field of improvement of compliance with the good administration principles	1	5.56%
Total	18	

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 (2), rights of national minorities (1) and rights of persons with disabilities (1).

5.3. LEGISLATIVE INITIATIVES

The Protector of Citizens can use his legal right to submit legal initiatives if two cumulative conditions are complied with:

- When it is necessary to amend text of a law or a draft law to ensure full and unhindered 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 other authorized backer, competent for a specific field (usually the Government) fails to use its legislative initiative to ensure respect, exercise, protection and improvement of citizens' rights and there is a danger of delay.

Proposing of amendments and laws to the National Assembly is the last step the Protector of Citizens take, 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 on the basis of an initiative, a recommendation or other proposal made by the Protector of Citizens.

This is why the legislative activity of the Protector of Citizens is mainly reflected in submission of meaningful initiatives to public administration authorities, the operations of which he controls, to prepare and propose normative amendments. Only in exceptional cases does the Protector of Citizens submit legislative proposals directly to the National Assembly.

In 2014, the Protector of Citizens submitted to the Government 7 initiatives for amendments of regulations, including:

1. Initiative to amend the Law on Budget System (Official Gazette of RS No. 54/2009, 73/2010, 101/2010, 101/2011, 93/2012, 62/2013, 63/2013-corrigendum and 108/2013), which would be relevant for the exercise and protection of rights of employed persons with disabilities. The proposed amendment of the Law on Budget System would provide significantly greater protection to persons with disabilities who work part-time due to an increased volume of work, persons hired under a service contract or a temporary or occasional work contract, persons working through youth or students' cooperatives and other types of engagement at budget spending units. The National Assembly enacted the Law amending the Law on Budget System on 25 December 2014, but the bill did not incorporate the initiative of the Protector of Citizens.

2. Initiative to amend the Law on Road Traffic Safety (Official Gazette of RS Nos. 41/09, 53/10, 101/11 and 32/2013 - CC Decision) in order to remove the obligation imposed upon citizens to replace their paper-based driving licences with plastic chip-based ones against a fee by a specified date, regardless whether the paper document has expired or not. Under the proposed amendment, the current driving licences would remain valid until their original expiration date, except where the licence holder chooses to replace the licence before expiration. The National Assembly enacted the Law amending the Law on Road Traffic Safety on 25 May 2014, but the bill did not incorporate the initiative of the Protector of Citizens and instead merely extended the period in which all driving licences must be replaced from five to eight years of the effective date of that Law.

3. Initiative for harmonisation of the time limits provided for by the Law on Property Restitution and Compensation (Official Gazette of RS No. 72/11) and the Law on Rehabilitation (Official Gazette of RS No. 92/11) through 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. The National Assembly enacted the Law amending the Law on Property Restitution and Compensation on 25 December 2014, but the bill did not incorporate the initiative of the Protector of Citizens;

4. Initiative for the Government to propose to the National Assembly the Law amending the Law on Signing and Execution of International Agreements (Official Gazette of RS No. 32/13), which will harmonise the existing provisions of Article 3, 4, 5, 9, 11 and 13 with the Constitution of the Republic of Serbia by revoking the restrictive provisions concerning the right to propose laws and thus allow the Protector of Citizens and other backers of laws under the Constitution to propose laws on ratification of international agreements in accordance with their constitutional right of legislative initiative, as well as to perform other duties in connection with international agreements. As of the end of the reporting period, the Government did not adopt this initiative for amendments.

5. Initiative for the Government to adopt and submit to the National Assembly for enactment a Bill on Ratification of Optional Protocol to the UN Convention on the Rights of the Child on a communications procedure, which would for the first time give children a possibility to directly seek protection and exercise of their rights before an international body; in this way, a supranational assessment of threats to a child's right would be given by the most competent international body in the field of child rights. As of the end of the reporting period, the Government did not adopt this initiative for amendments.

6. Initiative for the Government to amend the Law on the Procedure of Registration with the Business Registers Agency, which would impose a duty on the Agency to serve written copies of registrar's decisions to sole traders affected by those decisions, even in cases where those sole traders were not the ones applying for registration of a data entry, change or deletion, as opposed to the current practice of serving written copies on applicants

only on their request. As of the end of the reporting period, the Government did not adopt this initiative for amendments.

7. Initiative for the Government to propose to the National Assembly the Law amending the Law on Financial Support to Families with Children (Official Gazette of RS No. 16/02, 115/05, 107/09 and 104/14), which would:

- extend the entitlement to parenting allowance to fathers of children whose mothers are foreign nationals or stateless persons, in cases where the father and/or the child is a Serbian national;
- extend the entitlement to parenting allowance to the father if the mother is not a resident of Serbia and the father and the child are residents;
- provide that a child who is a Serbian national should be entitled to child allowance even if he/she is in the care of parents who are not nationals or residents of the Republic of Serbia;
- revoke the requirement of compulsory health care insurance with the Republic Health Insurance Fund as a condition for exercising the entitlement to parenting allowance and child allowance;
- harmonise the Law on Financial Support to Families with Children with the Law on Basic Elements of the Education System and the principle of inclusive education. As of the end of the reporting period, the Government did not adopt this initiative for amendments.

In January 2014, the Protector of Citizens submitted to the National Assembly an amendment to the Bill on General Administrative Procedure. As the Bill was subsequently withdrawn, the amendment submitted by the Protector of Citizens was not debated.

In November 2014, the Protector of Citizens filed a motion for constitutional and legal review of three provisions of the Decree on Social Inclusion Measures for Welfare Recipients with the Constitutional Court. The Motion is still being deliberated by the Constitutional Court.

In the said Motion, the Protector of Citizens challenges the Government's power to govern by an implementing regulation an issue that should be within the remit of the National Assembly. He also stated that the said provisions were incompatible with the rights of citizens guaranteed by the Constitution and laws, such as the right to fair remuneration for work and the right to free choice of employment, as well as the freedom to decide on one's own health.

The Protector of Citizens contests the notion that community service work qualifies as a social inclusion measure, which, if refused by the recipient, may be punishable by a reduction or withdrawal of welfare benefits. Another contentious issue is the provision which defines medical treatment as an activation measure and introduces the threat of reduction or withdrawal of welfare benefits if the recipient refuses to comply with this obligation.

ANNEX I

I Human and Material Resources

Organizational Structure

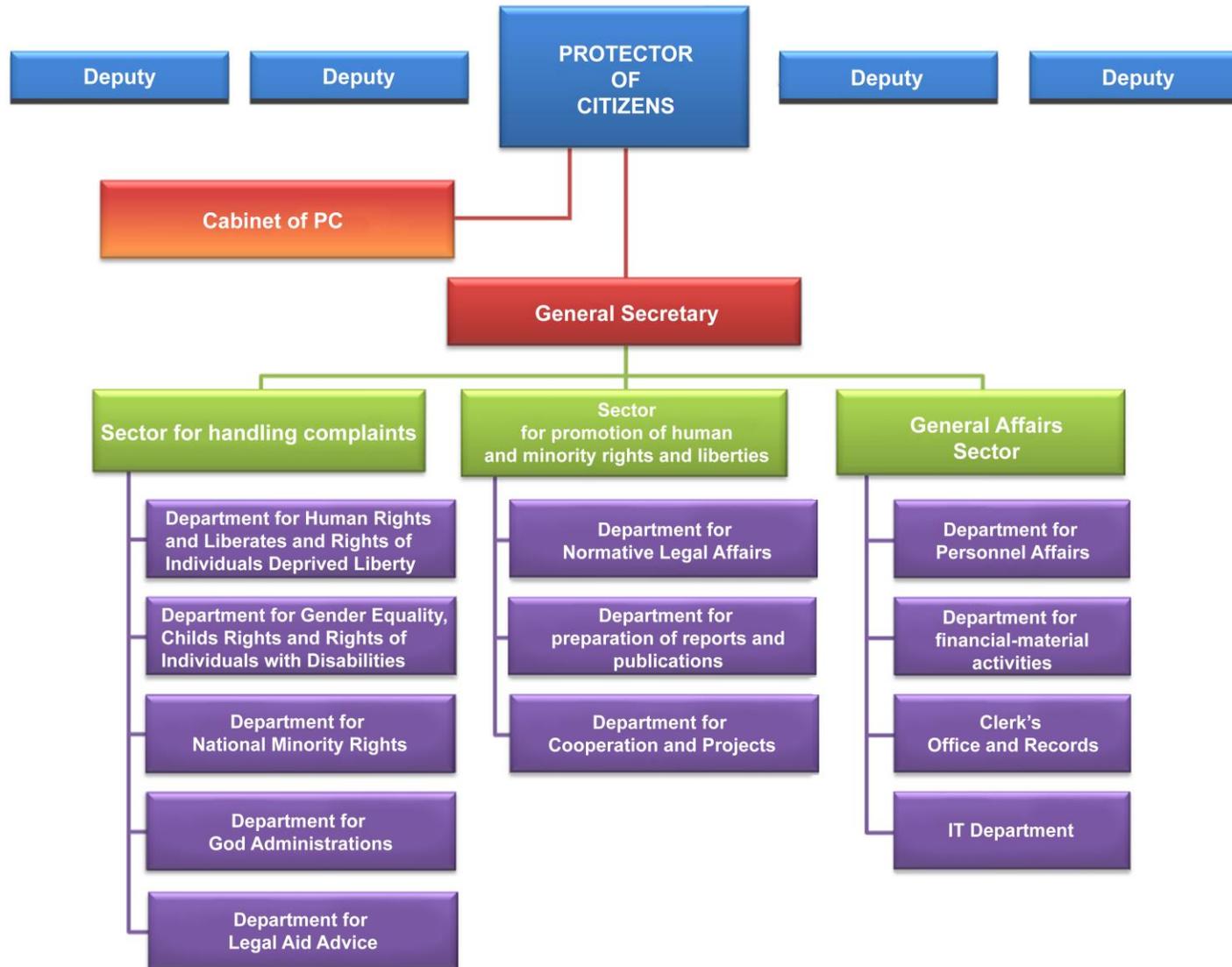
The Secretariat was established to carry out expert and administrative tasks within the mandate of the Protector of Citizens.

The Rulebook on Internal Organization and Job Classification in the Secretariat of the Protector of Citizens provides for a total of 50 posts, staffed by 59 civil servants in public office and in employment and 4 employees.

As at 31 December 2014, the Secretariat of the Protector of Citizens employed a total of 80 **persons**. Of that number, 52 civil servants are employed for an indefinite term, while 28 civil servants and employees (including 9 employed at the Cabinet) are in fixed-term employment. The total number of employees includes 69 employees with higher education and 11 with secondary school education. The Secretariat employs 59 women and 21 men. The above number of employees does not include the Protector of Citizens Sasa Jankovic and his deputies: Mr. Milos Jankovic, Ms Gordana Stevanovic, Mr. Robert Septi and Ms Vladana Jovic.

Taking into account the volume of work, the current number of employees is not sufficient for prompt and appropriate work of the institution. The constant increase of the number of citizens who contact the Protector of Citizens and the increase in the number of procedures resulting from it lead to the significant increase in workload. For this reason, the Protector of Citizens, in accordance with Article 38 paragraph 3 of the Law on the Protector of Citizens (Official Gazette of RS No. 79/05 and 54/07), submitted to the National Assembly the Republic of Serbia for approval the Rulebook on Internal Organization and Job Classification of the Secretariat of the Protector of Citizens number 48-709/2014 of 22 October 2014. The Committee on Administrative, Budgetary, Mandate and Immunity Issues, in its 31st session held on 10 November 2014, prepared a Draft Decision approving this Rulebook and voted to submit it to the National Assembly for debate and adoption.

ORGANISATIONAL CHART



OFFICE SPACE AND EQUIPMENT FOR WORK

The 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 repealed the Resolution 77 No. 361-1652/2010 of 29 March 2010 passed by the Commission for Allocation of Official Buildings and Offices of the Government and temporarily allocated to the Protector of Citizens the premises in Belgrade, Deligradska 16, of the total surface area of 1502.25 m², consisting of 57 offices, an archive room, 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 conditions are complied with to implement the Resolution 77 No. 361-3066/2011 of 27 April 2010 of the Commission for Allocation of Official Buildings and Offices of the Government, which allocated to the Protector of citizens the premises of a property consisting of a facility in Belgrade, Karadjordjeva 48, with the aim to ensure permanent premises necessary for operations of this authority.

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.

The premises in Deligradska 16 are no longer sufficient for the current number of employees in 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.

Independent provision of equipment for work has been 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, equipment for simultaneous translation and necessary office equipment. The offices in Deligradska 16 are equipped with office furniture inherited from the previous occupant. The Protector of Citizens also uses a fleet of 12 vehicles, of which six (two SUVs, one mid-range cars and three city cars) were received from OSCE and Council of Europe Grants within the framework of capacity building projects for the Protector of Citizens the Republic of Serbia, while the remaining six (one mid-range passenger van and three city cars) were purchased from the budget of the Protector of Citizens for the work of the Secretariat in the capacity of the National Preventive Mechanism. 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 (Official Gazette of RS NO. 49/14).

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.

Local offices in Presevo, Bujanovac and Medvedja

Pursuant to the Law on the Protector of Citizens and the General Instrument on Organization 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 Presevo, 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. Presevo, in the building of the Coordination Centre for the municipalities of Presevo, 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 Presevo, 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 Presevo 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 the funds of the UNDP donation within the framework of the PBILD project, “Strengthening Capacities for Inclusive Local Development in Southern Serbia”.

ANNEX II

II Financial Statement

Pursuant to the Law on Amendments to the Law on the Budget of the Republic of Serbia for 2014, funds in the amount of **RSD 176,580,000.00** have been allocated to the Protector of Citizens, which is an increase 7.78 % compared with **RSD 163,824,000.00** allocated in 2013.

In 2014, the Protector of Citizens spent a total of **RSD 159,448,912.98**, i.e. 90.30% of the allocated budget funds (the percentage of spending of the budget funds is lower by 5.09% compared with spending in 2013), which is an nominal increase of 2.04 % compared with the funds spent in 2013, when a total of **RSD 156,263,921.97** were spent.

The funds allocated from the budget were used to finance regular activities of the Protector of Citizens, in accordance with the financial plan.

Table 52 - Execution of the budget for 2014

Account position	Description	Allocated	Spent	%
411	Salaries, benefits, allowances			
411111	Salaries based on cost of labour		91,729,606.02	76.07
411112	Allowance for overtime working hours		2,037,219.49	1.69
411115	Allowances for time spent at work (accumulated years of service)		5,709,142.80	4.73
411117	Sick leave up to 30 days		766,322.33	0.64
411118	Compensation wage during absence from work-annual leave, paid leave		5,671,128.80	4.70
411119	Other allowances and compensation for employees		4,849,212.40	4.02
411131	Salaries of temporarily hired persons		51,948.06	0.04
Total 411		120,589,000.00	110,814,579.90	91.89
412	Contributions			
412111	Contributions for pension and disability insurance		11,326,672.12	57.85
412211	Contributions for health insurance		5,653,431.62	28.87
412311	Contributions for unemployment		739,436.03	3.78
Total 412		19,579,000.00	17,719,539.77	90.50

Account position	Description	Allocated	Spent	%
413	Compensations in kind			
413000	Compensations in kind		0	0
Total 413		200,000.00	0	0
414	Social benefits to employees			
414111	Maternity leave		3,847,933.88	52.62
414121	Sick leave over 30 days		94,551.03	1.29
414314	Assistance in case of death of an employee		105,664.00	1.44
414411	Benefits in case of medical treatment of an employee		119,453.44	1.63
Total 414		7,313,000.00	4,167,602.35	56.99
415	Compensation for employees			
415112	Transportation allowance (to and from work)		3,400,347.28	95.81
Total 415		3,549,000.00	3,400,347.28	95.81
421	Fixed expenses			
421121	Costs of banking services		32,656.30	0.54
421211	Electricity services		72,671.37	1.21
421225	Central heating		142,426.50	2.37
421323	Property protection services		467,218.58	7.79
421391	Contributions for the use of construction land etc.		413,753.73	6.90
421411	Telephone, telex and telefax		859,817.88	14.33
421412	Internet etc.		138,218.82	2.30
421414	Mobile phone services		1,635,869.59	27.26
421422	Delivery services		631,750.00	10.53
421512	Car insurance		331,560.00	5.53
421513	Equipment insurance		49,913.87	0.83
421522	Health insurance for employees		113,872.50	1.90
421619	Rent of other premises		34,500.00	0.58
421621	Rent of transport equipment		49,000.00	0.82

Account position	Description	Allocated	Spent	%
421911	TV licence fee		10,000.00	0.17
Total 421		6,000,000.00	4,983,229.14	83.05
422	Travel expenses			
422111	Travel allowance expenses for business trips		884,309.31	25.27
422121	Transportation allowances for business trips		73,249.53	2.09
422131	Accommodation costs for business trips		226,553.00	6.67
422199	Other expenses for business trips in the country		97,083.00	2.77
422211	Travel allowance expenses for business trips abroad		516,430.32	14.75
422221	Transportation allowances for business trips abroad		631,175.98	18.03
422231	Accommodation costs for business trips abroad		293,326.77	8.38
422299	Other expenses for business trips abroad		57,006.27	1.63
422321	Costs of travel as part of regular work		47,381.00	1.35
Total 422		3,500,000.00	2,826,515.18	80.76
Account position	Description	Allocated	spent	%
423	Contracted services			
423111	Translation services		953,283.20	11.67
423212	Software development services		5,800.00	0.07
423291	Other computer services (<i>updating of packages of legal, economic regulations</i>)		493,436.18	6.04
423311	Services of education and professional advancement of employees		314,900.00	3.85
423321	Seminar fees		201,908.00	2.47
423391	Expenditures for professional examinations		19,000.00	0.23
423399	Other expenditures for professional education		7,500.00	0.09
423413	Services of publication printing		1,437,674.14	17.62
423419	Other printing services		463,473.28	5.68
423432	Publishing of tenders and informative advertisements		377,061.50	4.63
423449	Other media services		374,400.00	4.58

Account position	Description	Allocated	Spent	%
423531	Technical evaluation services		190,675.72	2.33
423599	Other professional services (<i>outsourcing</i>)		1,300,544.50	15.93
423621	Catering services (<i>organization of conferences, round tables, meetings</i>)		742,727.84	9.09
423711	Entertainment (<i>organization of conferences, round tables, meetings</i>)		477,486.12	5.85
423712	Gifts		54,150.00	0.66
423911	Other general services		749,724.74	9.18
Total 423		8,166,000.00	8,163,745.22	99.97
425	Repairs and maintenance			
425211	Mechanical repairs		274,462.46	58.40
425222	Computer equipment		20,934.00	4.45
425229	Other repairs and maintenance of administrative equipment		33,342.00	7.09
425291	Current repairs and maintenance of products, engine-powered, immovable and engineless equipment		35,955.60	7.65
Total 425		470,000.00	364,694.06	77.59
426	Material			
426111	Office stationery		1,882,901.01	33.04
426191	Other administrative material		13,616.00	0.24
426311	Professional literature for regular needs of employees		730,238.30	12.81
426411	Petrol		2,566,703.43	45.04
426491	Other material for means of transport		195,495.43	3.43
426819	Other material for cleaning		137,653.60	2.42
426912	Spare parts		1,308.00	0.02
426919	Other material for special purposes		166,609.20	2.92
Total 426		5,699,000.00	5,694,524.97	99.92

Account position	Description	Allocated	Spent	%
462	Grants to international organizations			
462121	Current grants for international membership fees		734,825.51	
Total 462		735,000.00	734,825.51	99.98
482	Taxes, compulsory fees, fines and penalties			
482131	Vehicle registration		123,944.00	41.31
482231	City fees		3,670.00	1.22
Total 482		300,000.00	127,614.00	42.54
512	Machinery and equipment			
512221	Computer equipment		429,748.80	89.53
512232	Phones		3,958.80	0.82
512241	Electronic equipment		17,988.00	3.75
Total 512		480,000.00	451,695.60	94.10
TOTAL		176,580,000.00	159,448,912.98	90.30

In addition to the funds specified by the Law on the Budget, in 2014 the Protector of Citizens also used funds from **donations of international organizations and certain foreign countries.**

Table 53 - Ongoing projects

No.	Project	Financed by	Project budget for 2014	Project duration	Short description / Purpose / Beneficiaries
1	Judicial Reform and Government Accountability (JRGA)	USAID		2011 – 2016	Contribution to the promotion of responsible and efficient government, strengthening of the capacity of the Protector of Citizens and support to cooperation of the Protector of Citizens with civil society organizations and other independent institutions.
2	Promoting Human and Minority Rights through more Intense Contact between the Protector of Citizens and Citizens	Government of the Kingdom of Norway	€115,000,00 (contribution of the Government of the Kingdom of Norway € 98,500.00)	30 months: December 2012- June 2015	Contribution to the improvement of protection and respect of human rights of the citizens, particularly those living in towns and small municipalities in Serbia. The project will be implemented in cooperation with public libraries in 15 municipalities/towns in the territory of Serbia and NGOs dealing with human rights.
3	Capacity building of the Protector of Citizens for Efficient Monitoring of the Implementation of Deinstitutionalization	Embassy of the Kingdom of Norway / OHCHR	\$ 23,000.00	June 2013 – November 2014	The Protector of Citizen is the beneficiary of the project the aim of which is to contribute to the improvement of the position of persons with disabilities in Serbia through the deinstitutionalization process. The project will improve the capacities of the Protector of Citizens for monitoring of the exercise of the rights of persons with disabilities and the implementation of the Convention on the Rights of Persons with Disabilities.
4	Support to Strengthening of the Institution of the Protector of Citizens	OSCE Mission to Serbia		January – December 2014	Contribution to strengthening of the capacity of the Protector of Citizens for improvement of gender equality and implementation of activities of the National Preventive Mechanism (NPM). The support is focused on monitoring of implementation at the local level of the General and the Special Protocols for the Judiciary in cases of Domestic Violence and Intimate Partner Violence against Women, as well as on the improvement of the dialogue between NPM and police administrations and psychiatric institutions.
5	Improvement of the Position of the Most Vulnerable Child Groups	United Nations Children's Fund (UNICEF)	\$ 47,465.00	March 2014 – December 2015	The Protector of Citizens and the United Nations Children's Fund (UNICEF) initiated implementation of the two-year Memorandum of Understanding and Cooperation. The Memorandum is implemented with the aim of strengthening the role of the Protector of Citizens in ensuring of preconditions for improved 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 in advocacy of interests of children from vulnerable groups.
6	Annual conference of the Children's Rights Ombudspersons' Network	Save the Children International	€ 14,227.00	September 2014 - February 2015	The Protector of Citizens was a host to the regular Conference of the Network which was held in Belgrade and addressed the effects of restrictive economy policies on sustainability of services and programs for children. The Conference

	in South and Eastern Europe (CRONSEE)	North West Balkans Office	(contribution of SCI € 8,895.00)		was attended by members of CRONSEE, as well as representatives of relevant national institutions and civil society organisations dealing with child rights. Publishing of the compendium of works from the Conference is planned. After the Conference, a thematic meeting was held which addressed the protection of children on the Internet.
7	Preparation of the Model Law on State Aid in Cases of Natural Disasters	Embassy of the Kingdom of Denmark	€ 12,856.00	November 2014 – March 2015	The objective of the project is to contribute to improvement of citizens' safety and to ensure clearer and more transparent procedure for the award of state aid in cases of natural disasters. Drafting of the Model Law is planned as part of the project which will be submitted by the Protector of Citizens either as the Bill to the Government for a review or to the National Assembly for adoption.
8	Introduction of the System for Protection of Confidential Data of the Protector of Citizens	Embassy of the Kingdom of Denmark	€ 10,961.00	November 2014 – March 2015	The project will contribute to the improved protection of confidential data of the Protector of Citizens and higher security of premises where such data are kept and includes purchase and installation of necessary equipment and software.