

**2009 ANNUAL REPORT OF THE  
PROTECTOR OF CITIZENS**

15 March 2010  
Belgrade

## *C O N T E N T S:*

INTRODUCTORY REMARKS AND GENERAL ASSESSMENT .....	3
GENERAL OVERVIEW OF HUMAN AND MINORITY LIBERTIES AND RIGHTS IN THE REPUBLIC OF SERBIA .....	8
RIGHTS OF PERSONS WITH DISABILITIES .....	8
GENDER EQUALITY .....	17
GOOD GOVERNANCE .....	30
RIGHTS OF PERSONS DEPRIVED OF LIBERTY .....	40
CHILD RIGHTS .....	62
RIGHTS OF NATIONAL MINORITIES .....	85
FACTS ABOUT THE PROTECTOR OF CITIZENS .....	94
Protector of Citizens – Ombudsman, general remarks .....	94
Procedure before the Protector of Citizens .....	96
Advice of the Protector of Citizens .....	97
Establishment of local offices in Preševo, Bujanovac and Medveđa .....	98
Expert Services Department.....	98
Premises and means of operation .....	99
OBSTACLES IN THE OPERATION OF THE PROTECTOR OF CITIZENS .....	100
COOPERATION WITH OTHER INDEPENDENT STATE AUTHORITIES, INSTITUTIONS AND BODIES TASKED WITH THE PROTECTION OF THE RIGHTS OF CITIZENS AND COMBATTING ORGANIZED CRIME .....	102
Cooperation with provincial Ombudsmen and local Ombudsmen .....	103
ACTIONS OF THE PROTECTOR OF CITIZENS UPON COMPLAINTS .....	103
NUMBER AND CLASSIFICATION OF COMPLAINTS .....	105
RESULTS OF ACTIONS UPON RECEIVED COMPLAINTS .....	111
RECOMMENDATIONS OF THE PROTECTOR OF CITIZENS .....	116
AUTHORITIES WHICH HAVE NOT ACTED ON RECOMMENDATIONS OF THE PROTECTOR OF CITIZENS .....	118
OPINIONS OF THE PROTECTOR OF CITIZENS .....	120
Advisory and legal aid .....	122
PROMOTING THE EXERCISE OF HUMAN RIGHTS AND LIBERTIES – NORMATIVE ACTIVITIES OF THE PROTECTOR OF CITIZENS.....	124
OTHER ACTIVITIES OF THE PROTECTOR OF CITIZENS .....	134
FINANCIAL STATEMENT .....	146

PROPOSALS TO THE NATIONAL ASSEMBLY AIMED AT PROMOTING THE STATUS OF CITIZENS IN RELETION TO THE STATE ADMINISTRATION..... 150

Pursuant to Article 33 paragraphs 1 and 2 of the Law on the Protector of Citizens (“Official Gazette of the Republic of Serbia”, Nos. 79/2005 and 54/2007), the Protector of Citizens hereby submits to the National Assembly of the Republic of Serbia the following

## **2009 ANNUAL REPORT OF THE PROTECTOR OF CITIZENS**

### **INTRODUCTORY REMARKS AND GENERAL ASSESSMENT**

The Annual Report of the Protector of Citizens<sup>1</sup>, the third such report since this public institution was introduced into the legal and social order of the Republic of Serbia, is hereby presented. This document aims to achieve several objectives:

- to inform the National Assembly, other state authorities, institutions and bodies as well as the public about the state of human and minority rights in the Republic of Serbia and about the quality of implementation of citizens’ rights before institutions and organizations performing public authority and enforcing the regulations of the Republic of Serbia;
- to indicate the necessary changes which need to be made in the functioning of the public sector pertaining to the area of human and minority liberties and rights thus improving the quality of relations between the citizens and the state administration;
- to present to the National Assembly and the general public the most important aspects of operation of the Protector of Citizens as a state authority in accordance with universally applicable principle of accountability in performing public service.

A considerable proportion of state authorities, other bodies and organizations have recognized the cooperation with the Protector of Citizens not merely as its obligation

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<sup>1</sup> The term “citizens” is used in this Report in a neutral form, and marks both female and male citizens.

but rather as being in their own best interest, the course and outcomes of procedures in 2009 being the best proof thereof. This enabled the achievement of concrete results aimed at eliminating the shortcomings which resulted in encroachment of guaranteed rights of citizens and assisted in promoting their liberties and rights.

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**GENERAL ASSESSMENT: Despite the (increasing) contribution of the Protector of Citizens as well as of other players through the control of the operation of state administration bodies and through preemptive activities, the respect of citizens' rights by the state administration and its relations towards citizens and their rights in general, cannot be assessed as satisfactory.**

The state administration in the Republic of Serbia is highly self-centered instead of being focused on the citizens, their rights and their law-based interests; in respect of rights the necessary balance has been shifted in favor of the administration whereas in respect of obligations this balance has been shifted in favor of citizens.

The structure of the complaints filed and the course of the control procedures, clearly indicate that the state administration violates the rights of citizens not out of sheer desire to prevent them from exercising their human rights or liberties, but rather due to the lack of accountability and awareness that the administration work and activities cannot be performed just anyhow (usually the easiest way for the administration to do things is selected), but by strictly adhering to the good governance rules, in particular bearing in mind the dignity of the client, protection of client's rights and public interest, effectiveness, efficiency, cost-effectiveness, functionality, etc.

It often happens that a civil servants working in the administration, apart from being unaware what the term "good governance" implies, are neither familiar with the basic elements of the legal system, nor with the general regulations governing the operation of the administration authorities and its employees, not even with the regulations governing the course of the procedure they are implementing. An even greater problem is the fact that such employees are neither sanctioned nor removed from public administration, thus the consequences of their inactivity are felt not only by the citizens dealing with them in the process of pursuing their rights but also by conscientious and knowledgeable civil servants which nevertheless constitute the majority of employees working in the administration but are unjustly publicly stigmatized.

*Example: In the course of the proceedings before the Protector of Citizens following a complaint by a citizen regarding arrogant behavior of a Serbia Revenue Agency tax inspector including inspector's drinking directly from a beer bottle while taking a written statement from the manager of the facility (kiosk), it has been ascertained that the inspector was fined with 5% deduction from one month's salary with extenuating circumstances in his favor stating that "he was refreshing his organism" and that he had been drinking beer "after working hours"?! The party who filed the complaint against the inspector was however subjected to very rigorous procedure and ordered to pay substantial fine for the revenue rules violation of not issuing a fiscal slip for the bag of chips he had sold to the customer.*

The citizens' rights violations are not only the result of weak staff capacities of the state administration. A closer look at the matter reveals that the state administration reform process in 2009, hailed last year as a "reform of historical significance", was reduced only to cutting the number of employees and their salaries while the work and activities of state administration and its manner of operation remained the same. This practically means that it is expected that fewer number of people (than those who have previously worked in the administration) would be able to do the same amount of work faster, better while at the same time being less paid than a larger number of better paid civil servants. Should the expected results fail to materialize, there is a real danger that the effects of such reforms would turn out to be an even slower operation of the state administration ergo greater violations of the rights of citizens. The Protector of Citizens feels that until a change occurs in what and how civil servants work, their numbers and salaries cannot be decreased without citizens ending up with state administration which has gone from poor to worse.

Citizens complain to the Ombudsman of slow and inefficient administration often blaming it on lack of organization, laziness and corruption. There are well trained and knowledgeable civil servants working in the state administration who obey the law and are guided by professional ethics. The challenge remains to retain these people despite relatively low salaries, poor working conditions and climate of insecurity resulting from political turbulences at the management level. From the economic point of view the greatest savings in the budget could be achieved if from the very beginning the state administration would help the citizens exercise their rights and determine their obligations in a regulated, professional and efficient manner. This would do away with the practice of spending valuable working hours to deal with objections, applications, appeals, petitions, complaints only to reach a conclusion which was obvious from the

very start, and then begin everything all over again – an uphill battle to implement the decision of the competent authority and rectify the irregularities.

Apart from the irregularities detected in the work and activities of the state administration in 2009 and the number of complaints and their nature, the significant number of **complaints referred to the violation of employment rights and rights resulting from employment**, primarily retirement insurance rights.

In 2009 both workers as individuals and workers' trade unions filed complaints with the Protector of Citizens.

Typically, workers would appeal to the Protector of Citizens after losing their job. Then they would claim that for years they have been employed on temporary basis (despite the fact that the applicable law limits such type of employment to one year at the most), that during the time they were employed their guaranteed rights to daily lunch break, weekends and annual vacation were violated, their right to paid overtime and other rights were also violated, that in their setting in order to get a job people needed to be "well connected" or be a member of a political party or be able to offer counter service, but that they could not seek protection because employment on temporary basis keeps workers highly dependant on their employer. Upon review of the documentation submitted by the citizens and through cooperation with the Labor Inspection of the Ministry of Labor and Social Policy it has been established that there were cases of workers working for three or more years on temporary basis (in one case it was seven years), women mainly. However, labor inspectors think that they cannot impose measures within their scope of competence because employers circumvent legal provisions referring to the maximum duration of temporary employment by fictitiously interruption employment and altering the employment contract, and for this reason courts reject the applications. Such interpretation of the application of the law by those entrusted with its protection encourages the violation of workers' rights.

*Example: In the procedure upon a complaint filed by a doctor who has been employed on temporary basis for three years, the managing director of the health community center said in a statement to the Protector of Citizens that "it was common knowledge how one can get employed in the health sector" and that "she herself went through the same thing".*

*At the request of the Protector of Citizens, the Ministry of Labor and Social Policy undertook inspection of that particular health community center and found that some*

*employees have been employed for seven years on temporary basis while others were employed on permanent basis immediately. They have also found that the legal document governing the systematization of job descriptions did not have a specified number of employees for certain job positions. The legal obligation arising from the pertaining law to announce a job opening publicly for permanent employment, does not formally apply to the health care sector, but unequal treatment of citizens regarding employment is contrary to the constitutional right of every person to receive equal treatment when applying for positions in public services.*

*The doctor who filed the complaint has not been reinstated to her old job position.*

A large number of citizens complain of having been pushed below the poverty line since for years their employers failed to pay them their salaries and the retirement benefits. The Protector of Citizens, other independent authorities and the general public have been successful in preempting a proposal coming from the Ministry of Economy and Regional Development to have the courts suspend all proceedings launched by workers in respect of payments of arrears and payments for the years of service. Months later, following wide spread strikes of workers, the line ministries have begun working on linking years of service for workers of certain enterprises. It remains unclear, however, what are the criteria applied in determining which employers are eligible for state's assistance in linking the years of service for their workers while others are not. The mystery also lingers in respect of the tolerance criteria for some employers who have failed to pay mandatory contributions.

In the Republic of Serbia there is an obligation to contribute to the compulsory retirement insurance fund and the employer is bound by the law to do so. The compulsory fund is public not private, meaning that the employer is making the payments to the community not the worker. However, it is the worker who bears the burden of employer's violation on the law. The Protector of Citizens feels that each and every person should be entitled to exercise his/her right to full retirement benefits from the public fund regardless of whether his/her employer had followed the law or not. It is up to the state administration and not the citizen to ensure that the employer respects the legal obligations regarding contributions to public funds. The current legal solutions make the worker responsible for employer's noncompliance with the law.

Certain legal solutions that were adopted in 2009 open possibly new problems. Article 50 of the Law on Culture provides possibility for discrimination of workers working in cultural institutions, by enabling such interpretations of the text of the law which

suggest that permanent employment in cultural institutions is an exception to which women with over 17.5 years of service and men with over 20 years of service are entitled to. Despite the fact that both the Protector of Citizens and the Ministry of Culture agree that the law should not be applied in such a way, this contentious provision remains as a Sword of Damocles suspended over the heads of employees working in an important area of our society.

The trade unions most frequently indicated to the Protector of Citizens to the lack of the necessary social dialogue when passing measures pertaining to the rights of workers.

On one part of the territory of the Republic of Serbia, namely in Kosovo and Metohija, where the international community has assumed responsibility (UNMIK in civil aspect and NATO in military aspect) in keeping with the 1244 UN Security Council Resolution, the issue of the respect of human and in particular minority rights and liberties is much more serious.

The exercise and protection of rights of Serbs and other non-Albanians in Kosovo and Metohija are a far cry from international standards especially in the field of security, freedom of movement, protection of private property, religious and other rights. According to the reports of organizations operating on the territory of Kosovo and Metohija, the most threatened rights are the rights to life and security as well as the right to the freedom of movement. Stoning and other forms of intimidation continue to threaten the Serbs from Kosovo and Metohija when traveling outside those areas where they constitute the majority population. There are reports of attacks on the members of the clergy and the faithful of the Serbian Orthodox Church as well as of acts of vandalism targeting the Church and its property. Bearing in mind the fact that the rights and liberties of citizens in Kosovo and Metohija are not exercised before the authorities of the Republic of Serbia (except in one small part), hence there are no realistic conditions for the Protector of Citizens to exercise its authority on the territory of Kosovo and Metohija therefore the situation on that territory shall not be subject to further elaboration in this report.

## **GENERAL OVERVIEW OF HUMAN AND MINORITY LIBERTIES AND RIGHTS IN THE REPUBLIC OF SERBIA**

**In general, with aberrations which are inevitable when generalizing, human and minority rights and liberties in the Republic of Serbia are protected and**

**respected, with regulations guaranteeing a higher level of protection than the level achieved in real life.**

Human and minority liberties and rights which the Protector of Citizens is under the obligation to particularly protect and promote, pursuant to Article 1 paragraph 2 of the Law on the Protector of Citizens, are a much more narrow term than citizens' rights. This review has been put together based on the catalogue of human and minority rights and liberties contained in the Constitution of the Republic of Serbia, at the same time attaching particular attention to the area of protection of rights envisaged by Article 6 paragraph 2 of the Law on the Protector of Citizens (the rights of persons deprived of liberty, gender equality, child rights, national minority rights and rights of people with disabilities).

## **PROHIBITION OF DISCRIMINATION, RIGHTS OF VULNERABLE GROUPS AND RELATED RIGHTS AND LIBERTIES**

In proceeding during 2009 as well as from other information sources, the Protector of Citizens has noted cases of discrimination in the work and activities of state administration bodies when dealing with persons with disabilities, cases of gender discrimination, cases of discrimination of persons belonging to a minority sexual orientation, cases of discrimination against members of national minorities, elderly and minority groups.

On the one hand in 2009 the field of discrimination was marked by the adoption of the Law on Prohibition of Discrimination as well as of other significant regulations in this area, thus strengthening the legal framework for the implementation of the prohibition of discrimination guaranteed by the Constitution, while on the other hand it was also marked by the fact that the public gathering of persons of minority sexual orientation (The Pride Parade) and other citizens committed to non-discrimination of LGBT individuals which has previously been scheduled was not held due to inability of the state authorities to ensure peace and security for such a gathering.

### **Rights of Persons with Disabilities**

It is estimated that in 2009 there were approximately 800,000 persons with disabilities living in Serbia. The main characteristics of the social position of persons with disabilities are insufficient social visibility and participation. Particularly pronounced problems are those referring to (non)inclusive education, high unemployment rate,

poverty, discrimination, political non-representation and wide spread violence. This is the result of actions undertaken upon complaints that were filed by citizens and those which the Protector of Citizens filed on its own initiative, as well as from contacts with disabled persons' associations and organizations. The Protector of Citizens went not only to the social protection institution for disabled adults but also to institutions for elderly people whose clients by default suffer from some form of disability (who are either visually impaired, persons with limited mobility or bed ridden persons, etc.).

**New laws.** 2009 was characterized by the adoption of a string of laws governing the status of disabled persons. The Law on the Prohibition of Discrimination, the Law on the Ratification of the Convention on the Rights of Persons with Disabilities and the Law on the Ratification of the Optional Protocol to the Convention on the Rights of Persons with Disabilities have been adopted. In addition, a Law on Planning and Construction has been adopted, which contains accessibility standards, mandatory technical measures, plan, design and construction standards and conditions ensuring unhindered movement and access of disabled persons, children and seniors. Furthermore, the Law on Professional Rehabilitation and Employment of Persons with Disabilities envisages incentives for employers who hire persons with disabilities as well as measures and activities for professional rehabilitation. This law should be conducive to the increase of employment, improvement of the standard of living, living conditions and social integration of this category of population. Following the adoption of the law it was estimated that employment opportunities should become available to at least 7000 persons with disabilities, taking into consideration the prescribed quota which would force large corporations to employ persons with disabilities. The implementation of this quota, namely an employer employing 20 workers is obliged to hire one person with disability, while companies with 50 employees are obliged to hire two persons with disabilities, is expected to commence in the course of 2010.

The adoption of the mentioned laws regulates the area of disabled persons' rights well and problems arising in real life are the result of insufficient implementation of the regulations.

**Employment rate.** According to the data of the Ministry of Labor and Social Policy, approximately 70% of disabled persons were living in poverty in 2009, while their employment rate remains low. Over 80% of disabled persons are unemployed and the majority survives on disability welfare payments and on monthly attendance allowance.

The National Employment Agency has 22,758 persons with disabilities in Serbia registered and only a small number of them actually ever find employment (in the first half of 2009 only 68 disabled persons found employment). The education structure of the persons with disabilities is as follows: 51 persons have completed primary education, 87 persons have completed third grade of secondary education, 80 persons have completed secondary education while only 7 persons have completed tertiary education.

The education of blind and visually impaired persons receives insufficient support and support to the persons attending regular schools, the so called inclusive education is also poor. The National Employment Agency attempts to help them find employment in their profession but also to motivate them to start earning income through a hobby they pursue. However, according to the data of specialized placement agencies, the number of job openings available to persons with disabilities keeps dropping ever since the beginning of 2009.

**Political participation.** Inclusion of any marginalized group devoid of political dimension is virtually nonexistent. Humanitarian approach in the form of assistance to disabled persons is not sufficient, rather it is necessary for them to be involved in the political life and to promote their interests within institutions and political parties and participate in the decision making process on issues of most interest to them. Political parties mainly welcome persons with disabilities as their members, but these persons are insufficiently motivated to get involved in their work because they find it hard to reach a position where they would actually have impact on political decisions within a political party and they often find themselves exposed to political party marketing driven abuse. The research on discrimination of persons with disabilities indicates that they tend to be rather inactive resulting in the so called “ghetto activism” and that they exhibit propensity to self-isolation, prevailing sense of helplessness and uselessness. The research indicates the minimum level of their activism in other organizations such as political parties, trade unions and non-governmental organizations. Approximately 20% of persons with disabilities are happy with the opportunities to exercise their political rights, be it electoral rights or political activism, while 87% of people with disabilities are involved with associations dealing with the improvement of their position, out of which two thirds of them are active members of these organizations.

**Accessibility.** Although lately visible progress has been made in respect of physical accessibility for persons with disabilities (couple of lowered pavements in the downtown area, ramps and sound signals at traffic light crossings), the minimum of

physical accessibility for persons with disabilities has not yet been achieved. Accessibility implies everything which enables persons with disabilities to live independently and to participate equally with other people in all aspects of life. Accessibility does not only imply the construction-related modifications aimed at wheelchair users (who are often regarded as a symbol of persons with disabilities), but also at people with other types and categories of disabilities for example: blind persons, visually impaired, deaf and deaf-and-mute, people using different aids and prosthetic devices, persons who are insufficiently mentally developed, etc. Accessibility implies having access to physical environment, public places or facilities intended for public use (schools, hospitals, postal offices, banks, cultural institutions), access to roads, access to transportation and means of transportation, information and communication access. It is necessary to promote and respect the so called principle of universal design and design for all - equal, flexible and simple use, high information visibility, utilization requiring insignificant physical effort, size adequacy and space sufficiency for accessing, reaching, handling and using.

## **Actions of the Protector of Citizens upon Complaints in the Area of Rights of the Persons with Disabilities**

### **Complaints**

In 2009 the Protector of Citizens has received 75 complaints pertaining to the violation of rights of persons with disabilities while in three other cases the procedure was launched at Protector of Citizens' own initiative based on its own assessment that action needed to be taken. Apart from the actions undertaken regarding the abovementioned 78 cases, the Protector of Citizens continued to pursue activities in 10 complaints from 2007 and 2008. Hence, in 2009 the Protector of Citizens has launched actions upon a total of 88 complaints pertaining to the area of rights of the disabled persons.

In 44 cases the applicants were male while in 27 cases applicants were female, while 4 complaints were filed by associations of citizens.

### **Typical Rights Violations**

The typical complaints that the Protector of Citizens receives from persons with disabilities are mainly related to the problem of determining attendance allowance, problems pertaining to retirement benefits and disability pensions, inability to find

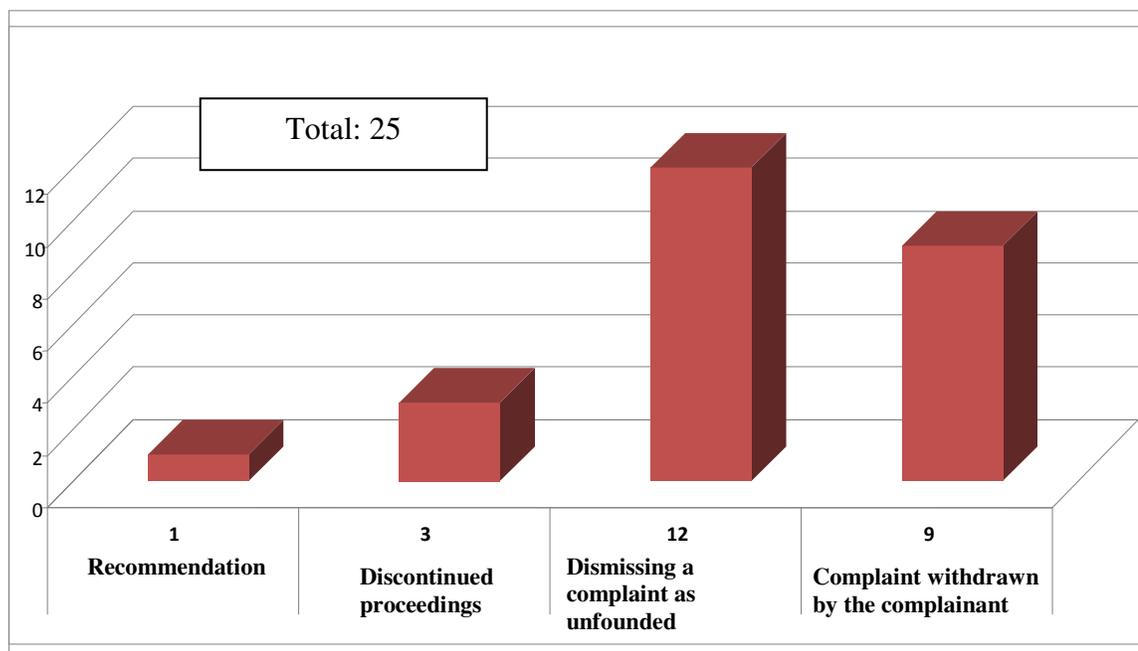
employment, difficult financial situation, tenancy relations, taxation, relations within and with the associations, residential living in a social welfare institution, medical treatments in thermal spas, family relations, registering and acquiring the status of a person with disability, rights resulting from employment as well as problems related to accessibility. The Protector of Citizens has noticed that the persons with disabilities are often the ones seeking advisory help.

The structure of complaints received by the Protector of Citizens from persons with disabilities in 2009 indicates that 11 of those complaints referred to the violation of rights in the area of social welfare protection, 11 complaints referred to retirement and disability insurance, 6 complaints were related to employment rights violations and 6 complaints referred to different cases of discrimination. The remaining complaints referred to different rights violations, namely: health care, medical rehabilitation, referral for medical treatment in a thermal spa, work and activities of employees working in associations of persons with disabilities, city and municipal administration authorities, revenue agency, employment agency, etc.

### **Finalized Actions of the Protector of Citizens upon Complaints in Respect of Persons with Disabilities**

In 2009 out of 88 actions undertaken upon complaints related to persons with disabilities, the Protector of Citizens has finalized 59 such actions, namely 10 cases from 2008 and 49 from 2009. Out of the 49 finalized cases 24 were rejected as unfounded while 25 remaining cases were finalized with a recommendation (1), discontinued proceedings (3), dismissed as unfounded (12) and withdrawn by the complainants (9). (See Chart 1). The Protector of Citizens is currently working on the remaining cases.

### **Chart 1. - Finalized Activities of the Protector of Citizens upon Complaints in Respect of Persons with Disabilities**



In respect of the rights of persons with disabilities the Protector of Citizens has initiated a total of three proceedings at its own initiative, out of which two were initiated for the purpose of establishing the Republic of Serbia Retirement and Disability Insurance Fund operation regularity and legality, while one was aimed at reviewing the operation of the Ministry of Health (in this case the opinion of the Ministry of Labor and Social Policy was sought). The proceedings pertaining to the Retirement and Disability Fund has been discontinued since this authority has eliminated shortcomings in its work and activities, while the remaining two cases are still underway.

### **Detected Shortcomings in the Operation of State Administration Bodies in Respect of Persons with Disabilities**

Disabled adults residence facility “Dr Dragiša Vitošević” in Bežanijska kosa. Following a complaint by a client of this facility a visit was organized. The subject of the control visit were the conditions in the facility, health care extended to facility residents, the structure of employees, staff treatment of residents and the respect of clients’ rights. During this and the following visits a string of individual interviews was conducted with clients. The conclusion was that the conditions were generally satisfactory but that there were some interpersonal conflicts. It was decided that the

operation of this institution would be subject to regular monitoring and the facility management has been informed thereof.

Disabled adults residence facility in Doljevac near Niš. A visit was organized following indications by a disabled persons' association and by a member of the National Assembly stating that the residence conditions in the facility were poor, that there was no running water as well as that other bare necessities were lacking. The conclusion was that these indications were correct and that there were shortcomings in the treatment of clients. The food and diet is still supplied from humanitarian aid donations. The overall conclusion was that the increasingly difficult financial situation all the social institutions are faced with impacts the standard of living in the disabled adults residence facility in Doljevac and that the employees are exerting great efforts geared to overcoming that situation. The lack of professional health workers working on full time basis was identified as one of the major problems, while at the same time the residents identified the lack of opportunities to earn additional income and remoteness of the facility from cultural and other urban events as the biggest problem.

A visit to the retirement home in Mladenovac was organized following an anonymous complaint regarding house rules and the existence of violence. No irregularities in operation were detected. Despite the fact that the employee to client ratio in the retirement home complies with the prescribed standards, it was necessary to strengthen the structure of those employees working directly with clients (nursing attendants, nurses, doctors). The programs for social and cultural involvement of these people are scarce. The clients long for their home, their previous environment and surrounding but the greatest source of suffering for them is the sense of being abandoned by their children and close relatives.

The control visit to the Gerontology Center in Pančevo was undertaken at the Protector of Citizens' own initiative. This institution could serve as an excellent example with its highly developed residence facilities and good work organization.

A control visit to the "Zbrinjavanje", a home for the blind and visually impaired in Pančevo was organized following the visits to associations of the blind and visually impaired persons who claimed that residence facilities were poor and treatment of clients was unsatisfactory. The general impression following the visit was that the living conditions in this facility indeed were very poor, the facility itself was not built for that purpose, that it was overcrowded with insufficient sanitary facilities, there was

a lack of computers and programs adapted to the blind and visually impaired persons, with few recreational and therapy activities.

A visit to the disabled adults residence facility “Dr Dragiša Vitošević” in Bežanijska kosa was organized on the occasion of the Human Rights Day. As compared to the previous visit it was noted that this facility was enhancing living conditions of its clients to the best of its abilities, that there were no conflict situations neither between the clients nor between the clients and employees, but that there still remains a certain degree of passivity and depressiveness in clients’ behavior.

The Protector of Citizens feels that the social protection institutions for disabled adults and those for seniors should not be dissolved for practical reasons (unlike similar institutions for children). The reason being the fact that often these institutions are the only option for disabled adults and seniors. A considerable number of such persons, in particular those placed on “waiting” lists who are waiting for a place in the institution to become available, justifies not only the existence of such institutions but also the expansion of their capacities.

### **Overview of Typical Actions Taken by the State Administration Authorities in Respect of Persons with Disabilities**

When filing complaints to the Protector of Citizens, persons with disabilities state that their rights are violated in particular regarding to attendance allowance, labor related and tenancy rights, as well as regarding health care, accommodation in social care institutions, etc.

Persons with disabilities usually file a complaint with the Protector of Citizens because they are dissatisfied with the attendance allowance. Persons with disabilities and their associations point to different criteria applied by local or municipal commission deciding on applications for granting attendance allowance. The problem lies in the fact that a person who has 100% disability on one account is entitled to attendance allowance but a person who is disabled on different accounts, but is not granted 100% disability on one single account, is not entitled to attendance allowance since different disabilities cannot be “added up”. The Protector of Citizens is not entitled to question the decisions of the commission, hence complaints requesting this could not be accepted.

In respect of complaints against the Republic of Serbia Retirement and Disability Insurance Fund regarding untimely activities granting the right to attendance allowance, a procedure for establishing the authority's operations regularity and legality has been initiated. The Fund duly submitted a response stating that there was an omission in the operation of a branch office. Following the intervention of the Protector of Citizens, the Fund apologized to the beneficiary, conducted the appeals procedure allowing for the applicant's complaint. The repeated procedure was conducted immediately and the applicant was able to exercise his/her right.

A complainant with a serious medical condition complained of a problem she faced when the building she was living in experienced additional construction activities which caused damage to her condominium. She stated that she had contacted the developer who refused to fix the problem. Next, she contacted the Inspection Department – Building and Construction Inspection Agency of the metropolitan municipality administration which limited itself to coming to the construction site but failed to send her the damage report and undertake any further activities. In view of the claims made in the complaint, the health condition and social situation of the complainant, the Protector of Citizens requested information from the competent department of the municipality administration. Following the receipt of the reply it was noted that the competent municipality authority has acted in accordance with its scope of competence, but that the developer should indemnify the complainant thus the complainant was instructed to launch the proceedings before a court.

A complainant filed a complaint against the Republic of Serbia Retirement and Disability Insurance Fund regarding untimely activities granting the right to payment of difference between income earned while working on a previous job and the income earned while working on another job to which he had been assigned following his disability. A control procedure to determine the Retirement and Disability Insurance Fund operations regularity and legality was initiated. In its reply the Retirement and Disability Insurance Fund stated that some omissions have been detected in its work and activities because appropriate first instance decisions and decisions on appeals have not been taken in a timely manner. In the meantime injury to the complainant has been eliminated by implementing the procedure upon application/appeal and by partially accepting his application. The complainant launched administrative lawsuit regarding the part of his request which has not been accepted, thus the Protector of Citizens rejected that portion of his complaint as premature.

Persons with disability and other interested citizens file complaints against lack of accessibility for disabled persons to public and apartment buildings as well as against the lack of such facilities within those buildings. In this respect the progress was noted only in larger cities. The new Law on Planning and Construction stipulates that the developer is obliged to ensure the accessibility for persons with disabilities to these facilities, something the Protector of Citizens has been advocating.

The Protector of Citizens has been cooperating with the Protector of Citizens of the City of Belgrade stressing the insufficient number of the so called “sounding” traffic lights which are essential for safe movement of blind and visually impaired persons in areas with high volume of traffic in the Belgrade down town. Following the intervention of the Protector of Citizens of the City of Belgrade, the Belgrade Traffic Secretariat informed the Protector of Citizens that a specialized institution has been tasked with developing a new plan and design of traffic light and that the first ten traffic lights will be installed in the areas with the highest volume of traffic in Belgrade.

Complaints referring to the availability of accommodation in social care institutions and health care and treatment in thermal spas are related to the problems in providing accommodation and procrastination with the procedure for providing accommodation in a social care institution, giving referral for health care treatment in thermal spas, declining to accept patients for treatment in in-patient clinics etc. One complainant alleged irregularities in the work and activities of physiatrist working in a Rehabilitation Center in a thermal spa treatment facility. He stated that the orthopedic surgeon recommended medical rehabilitation in a in-patient clinic due to problems resulting from the operation of the left ankle. However, the physiatrist in the thermal spa Rehabilitation Center declined to admit him to the in-patient clinic for treatment but rather offered private accommodation as an option. Since he had failed to apply to the managing director of the thermal spa Rehabilitation Center in order to protect his rights, he was instructed to submit a written request to the managing director of the Rehabilitation Center and should he fail to receive an appropriate response within a period of 30 days, that he should again apply to the Protector of Citizens which did not materialize.

Professor Dr Zorica Mršević was in charge of the Protector of Citizens’ activities in the area of persons with disabilities rights protection.

## **Gender Equality**

The violation of rights regarding gender equality refer to different areas of gender equality (mobbing, discrimination, labor rights) as well as to domestic violence.

After years of waiting, Serbia finally has system-related documents of significance for institutional regulation of gender equality, namely National Strategy for the Improvement of the Position of Women and Promotion of Gender Equality and the Law on Gender Equality. However, despite the fact that in the recent years a normative framework has been put in place, in 2009 the Protector of Citizens has detected the lack of capacities for the implementation of regulations and necessary measures.

During 2009 the Protector of the Citizens has detected that the position of women was characterized by poor social and economic status as well as by continuous presence of gender-based violence with numerous tragic outcomes. Expert reports, data provided by non-governmental organizations and the media point to the fact that during 2009 there was an increase in the number of unemployed women, that a significant number of women were laid off without being paid their earnings and severance pays, that their years of service have not been linked and that they had no possibility of finding employment again thus continuing the negative trend from previous years. For example, the records of the National Employment Agency in Belgrade indicate that in August 2009 there were 55,462 (56.2%) women who were unemployed. The unemployment rate for women in Serbia is 24% and for men it is 16%. There are almost no women in management positions in the private sector, while the average salary for a women is by approximately ten thousand dinars lower than the salary of a man working on the same job position. While today older men tend to be more educated, the trend is different with the new generation – more women go for post-secondary non-tertiary and tertiary education while men predominantly have secondary education. The structure of employees according to the education level indicates that 25% of employed women have primary school education (same as men), 53% women have secondary education (for men it is 60%), while 22% have tertiary education (for men it is 15%). The structure of employees by profession reveals that women constitute 53% of experts while men constitute 47% of experts.

Unfavorable position of women is also reflected in the fact that Serbia is at the last place of all European countries when it comes to the use of contraceptive pills and hormonal spiral. According to the estimates of health workers, between 150,000 and 200,000 abortions are performed in Serbia each year in women who mostly do not use

modern methods of contraception while in the countries of West Europe the abortion rate is significantly lower because women there use those methods of contraception.

The singularity of the area of gender equality lies in the so called third type of discrimination which is of structural nature and is more frequent than the discrimination of individual and institutional nature. At the heart of this discrimination are prejudices which are deeply rooted in the foundations of our society and are related to the roles of sexes and “natural” order of such roles which have evolved in a traditional social context. Therefore, gender equality violation cases are often viewed not as violation of rights of a certain individual, but rather as a longstanding gender discrimination practice in certain institutions which affects many people in similar situations. Oftentimes such cases are dismissed as a “natural” state of affairs, tradition-based “normal” situation or at least a situation which is hard to change. This refers in particular to cases of domestic violence which is reported neither by other participants nor by the victim herself and is tucked away as an “embarrassment” while institutions are unwilling to intervene in “private affairs”. For this reason, complaints regarding domestic violence are more often launched at the initiative of the Protector of Citizens than other cases.

The effects of the crisis affect differently women and men. Poverty, unemployment, discrimination in labor relations are gender sensitive and although in the time of crisis poverty, unemployment and discrimination increases both in women and men, all this has more impact on women due to the existing gender inequality mechanisms.

Discrimination of women is present when they seek employment but also when exercising rights arising from employment, promotion, professional development and when they are being laid off. An increasing number of women work in lowest paid jobs, in the weakest segments of economy and services, while the gap in incomes of women and men keeps growing.

Domestic violence is a typical case of women’s rights violations. It is a gender-based violence to which institutions way too often have no adequate and timely response, which in turn spells the violation of women’s right to life, physical integrity, mental health, freedom of movement and personal dignity.

In the last eighteen years number of marriages in Serbia is continuing to decrease. During the period between 1991 and 2008 the number of unions by marriage has dropped by over 6,800. One out of five married couples in Serbia end their marriage in

divorce proceeding. Violence (psychological, physical or economic violence), alcoholism and different types of addictions (gambling, workaholism, having mistresses) are the main reasons why women opt for divorce. Men most frequently decide to file for divorce once they see that a woman refuses to accept the traditional gender role and that the family is not her center of universe i.e. when she has social life and is economically independent.

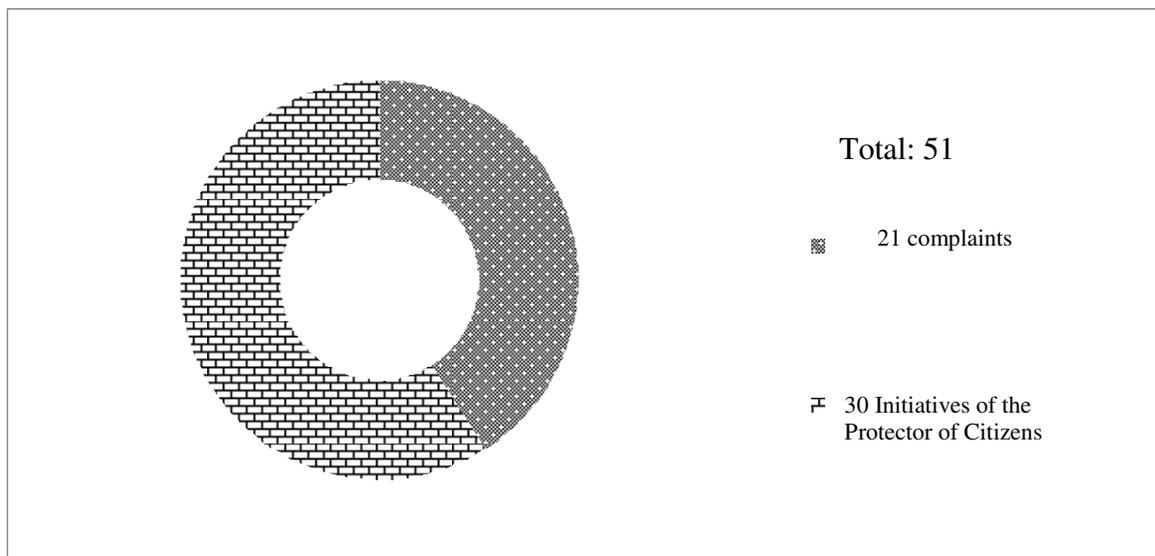
The reduction of the overall level of public violence, namely violence that occurs on the streets, in hospitality facilities, at sports stadiums, arenas, etc. starts with the suppression of domestic violence. The prevention of domestic violence, apart from protecting its direct victims, has a long-term positive effect on the prevention of overall violence in the society i.e. the phenomenon known as the “brutalization of society”.

## **Actions of the Protector of Citizens upon Complaints in Respect of Gender Equality**

### **Complaints**

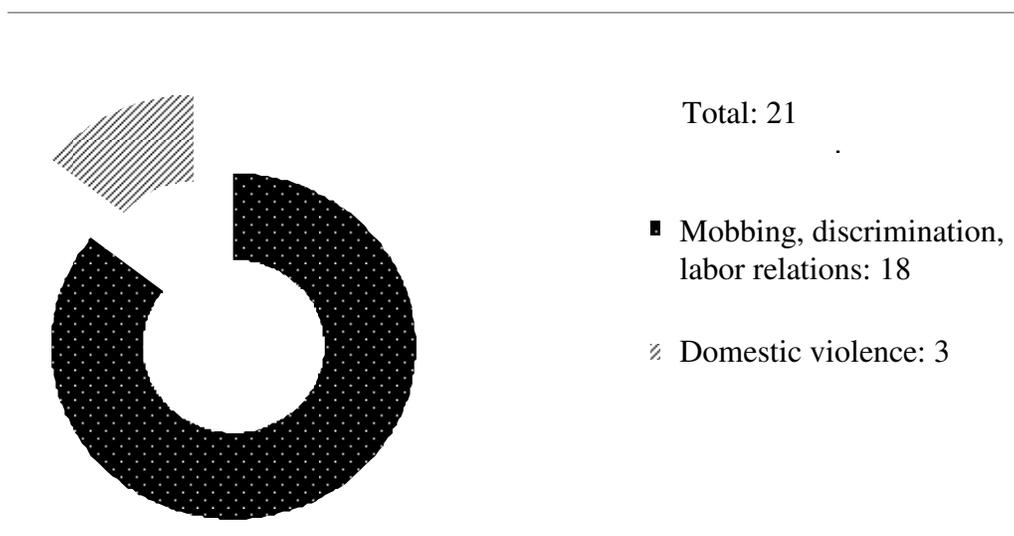
In 2009 the Protector of Citizens has received 21 complaints pertaining to the area of gender equality. After careful review proceedings were launched at the initiative of the Protector of Citizens in 30 cases. (See Chart 2). Apart from action undertaken in the abovementioned 51 cases, the Protector of Citizens has continued to pursue another 5 complaints from 2007 and 2008. Hence, in 2009 the Protector of Citizens has taken actions upon complaints in the total of 56 gender equality-related cases.

### **Chart 2. – Received Complaints and Cases Initiated at the Initiative of the Protector of Citizens Pertaining to the Area of Gender Equality**



Eighteen out of 21 complaints regarding violation of rights in the area of gender equality pertain to different segments of gender equality (mobbing, discrimination, labor relations) and three are related to domestic violence. (See Chart 3).

### Chart 3. – Complaints in the Area of Gender Equality, According to the Segment of Gender Equality



All complaints were filed by citizens out of which 16 were women and 5 were men.

Twenty nine out of thirty proceedings launched at the initiative of the Protector of Citizens were initiated for domestic violence in situations when there was a murder attempt, homicide and/or suicide resulting from domestic violence.

### **Authorities against Which the Proceedings Were Launched**

The Protector of Citizens has launched procedures for the control of work and activities of social welfare centers and police, primarily based on its own information for the purpose of proposing measures for more efficient activities and operation of these authorities. The proceedings were launched in those cases where violence resulted in the murder of a partner and/or aggravated bodily injury while perpetrator has committed or attempted to commit suicide. Complaints regarding mobbing, other labor-related rights and rights arising from employment and discrimination are the most frequent violations for which the court is competent. The complaints mainly indicated possible omissions in the operation of private employers, social welfare centers, radio and broadcasting agencies, schools and cultural institutions.

### **Finalized Actions of the Protector of Citizens upon Complaints in Respect of Gender Equality**

In actions undertaken upon complaints pertaining to the area of gender equality during 2009, the Protector of Citizens has finalized its activities in 23 such cases, namely 12 complaints were rejected as unfounded while 11 initiated proceedings were finalized with a recommendation (1), discontinued proceedings (7), dismissed as unfounded (1) and withdrawn by the complainants (2). The Protector of Citizens is currently working on the remaining cases.

The control activities were mainly limited to the exchange of written submissions and not to performing control activities in person, because the authorities were candid and willing to provide answers to questions that were posed and account for their activities in detail.

### **Detected Shortcomings in the Work and Activities of the State Administration Authorities in the Area of Gender Equality**

The Protector of Citizens has detected certain flaws in the information exchange process between institutions, namely between the police on the one hand and the social

welfare centers, health services and other institutions on the other hand, which is mainly the result of the lack of cooperation protocols.

In their organizational structures and manner of operation state administration authorities, in respect of gender equality, often apply gender relations stereotypes which persist due to previously established practice, and they continue to treat domestic violence as private matter between a man and a woman which leads to an untimely use of legal authority which exists for each and every form of violence, regardless of the place where it took place and its participants.

The Protector of Citizens has discovered that there are no precisely defined measures and activities that each individual within professional services of a competent authority would be obliged to undertake in particular case. Due to legal understatements, those who implement these regulations have too wide of a margin of appreciation when taking actions in a particular case. In addition, it is necessary to dislocate those activities from the “comfort of the office” into the field.

It is unacceptable how easygoing the authorities are in local and smaller communities. The police department should convey to the social welfare centers the information they receive from their police officers on occurrences of domestic violence and vice versa. Their mutual cooperation should be clearly and concretely defined so as to achieve efficient prevention.

## **Overview of Typical Actions upon Complaints in the Area of Gender Equality**

**Discrimination of women at work and related to work** occurs both when they seek employment and when they attempt to exercise their rights resulting from employment, promotion, professional development as well as in cases of lay-offs.

*Example: Despite the fact that in our country there are women who are professional pilots but also women who have as reserve armed forces officers undergone training for military pilots in the 1980s, not a single woman to date has yet been able to fly a commercial plane, crop-dusting plane nor military aircraft. Serbia has women pilots but alas, has no jobs for them, said the members of the Serbia Association of Women Pilots at the meeting with the Protector of Citizens. The members of the Association of Women Flyers of Serbia have been trying to get a job in their profession, but “JAT Airways” still has no job openings for them.*

*Example: Non-governmental organizations have informed the Protector of Citizens that during the privatization process of the “Trikotaža” factory in Novi Pazar, severance payments were made only to some workers. Desperate and unable to exercise their rights, some fifteen women workers who have not received severance pay have gone on a long and exhausting hunger strike. Women representatives of the Protector of Citizens have gone to visit them.*

*Example: In “Prvi partizan”, a factory in Užice, women have for years worked without a service contract, namely they worked for 12 hours per day in unsanitary conditions and without protection in high risk places. Thus the explosion which occurred in the factory served to shed light on the gender aspect of this tragedy since the majority of those killed were women.*

Discrimination of women is also obvious **in the documents of the Republic of Serbia Statistical Office**, something both the media and non-governmental organizations pointed to.

*Example: At the recommendation of the Protector of Citizens the Republic of Serbia Statistical Office has improved certain phrasing in the Household and Residence Questionnaire while carrying out the 2011 Population, Household and Residence Census, namely:*

- 1. Question “Legal marital situation” was altered to “marital status” because the word “legal” is redundant since the Constitution states that marriage and marital and family relations are governed by the law while the common-law marriage is equal to traditional marriage before the law, thus both marriage and common-law marriage are always “legal”. In addition, bearing in mind the fact that both unions come into being by mutual consent of the parties and that their rights and duties are prescribed by the law, term “situation” has been altered to “status”, and*
- 2. In the section “List of household members” of the Household and Residence Questionnaire “father’s name or husband’s name for married or widowed women” is not entered any more but rather the name of one parent, while for persons living or who have lived in a marital or common-law union – name of their marital or common-law partner.*

The Protector of Citizens has detected irregularities in the operation of state institutions which have not undertaken all the necessary and available measures in order to prevent **domestic violence**.

*Example: In an attempt to murder his spouse and two adult children, the violator committed assault and battery and tried to commit suicide. The competent social welfare center and the police had known of the threats. Specifically, one of the children as well as the spouse contacted the competent social welfare center stating that the father i.e. the husband is trying to throw them out of their home, while the police were aware of the fact that he possessed firearms. The act of violence occurred one week following the meeting and interview with the family members at the social welfare center, while the staff of the center learned of the incident from the media reports. The competent police department which too failed to act in a timely manner, has informed the Protector of the Citizens that a disciplinary proceeding was initiated duly against three employees who were involved in the procedure launched at the complaint of the child i.e. the spouse, and that one employee was declared responsible of a minor breach of duty and that she was fined with 10% of one month salary deduction, while other two police employees were pronounced responsible of an aggravated breach of duty and they were both fined with a disciplinary measure of 30% of one month salary deduction.*

*Example: A woman was murdered by her common-law partner and having learned of the incident from the media reports, the Protector of Citizens launched the operations legality and regularity control procedure of the competent social welfare center and police department at its own initiative. The fact that the victim was a pregnant mother of a two-year old child gives additional weight to this tragic incident. According to the current information of the Protector of Citizens the victim had been a subject of violence and death threats for many years. The social welfare center and the police had knowledge of the violence but have taken no preemptive measures whatsoever.*

### **The Lack of Communication and Information Exchange between Competent Authorities**

The Protector of Citizens has noted that there are considerable oversights in information exchange between competent authorities in the area of domestic violence, in particular between social welfare centers, police and health services.

*Example: A man had murdered his spouse. Following the collection of the necessary information, the Protector of Citizens launched at its own initiative the operations legality and regularity control procedure of the competent police department and the competent social welfare center. The collected information indicated that the*

*competent social welfare center had no previous knowledge of the violence but that the police had knowledge of the violence because the neighbor confirmed that they had reported violent incidents to the police before. However, the police failed to notify the social welfare center hence an employee of the competent police department was suspended. Criminal charges were brought for domestic violence.*

*Example: A woman was murdered by her former husband who committed suicide after the killing. At its own initiative the Protector of Citizens has launched the operations legality and regularity control procedure of the competent social welfare center and police department. On numerous occasions the victim appealed to the police for protection, but apart from one petty offence charge and two warnings nothing concrete has been done. The records of the social welfare center show neither the existence of complaints nor any kind of documents indicative of domestic violence which had been going on for years.*

*Example: A man had murdered his spouse. The Protector of Citizens has launched at its own initiative the operations legality and regularity control procedure of the competent police department and the competent social welfare center. In its response the social welfare center states that the victim was partially incapacitated for work due to illness and that they were aware of the problems in the past two years. Unlike the social welfare center, the police department states in its reply that they had no previous knowledge of the poor relations within the family or of domestic violence.*

Obviously there is a need to establish effective coordination between the social welfare centers and the local police stations. Likewise, it is necessary to develop the domestic violence response protocol for employees working in competent state administration bodies. Something similar exists in Kragujevac where a project “Support of Cross-sector Cooperation and Good Practices in Protecting Victims of Domestic Violence” is being implemented. The signatories of the protocol include the City of Kragujevac, social welfare center, police department, community health center, Emergency Health Care Institute, Kragujevac General Hospital and a non-governmental organization “Oaza sigurnosti” (“Safety Oasis”). This protocol represents a first step in achieving a well coordinated cooperation between non-governmental organizations, state-run institutions and local self-government units which all participate in the prevention of domestic violence and the protection of its victims. The Kragujevac protocol is the only such protocol in Serbia and may live to become a role model of cooperation for other cities as well.

## **Denying the Right to Unemployment Benefits**

The Protector of Citizens received complaints from five citizens stating that following the adoption of the Law on Employment and Unemployment Insurance, the National Employment Agency had denied them the right to unemployment benefits. Complainants stress that at the moment they were denied payment of benefits four of them were unable to work due to pregnancy while one complainant was unable to work due to illness.

One of the complainants stated in her complaint that based on the administrative decision of the National Employment Service she was granted unemployment benefits for a period of three months. She filed a complaint against this decision which was overturned and she was granted the right to unemployment benefits for a period of six months. However, in the meantime she became pregnant and went on a sick leave thus she acquiring the right to the extension of benefits payments and an administrative decision had been passed to that effect. She continued to submit to the Branch office regular reports of the medical panel confirming temporary inability for work. The Branch office informed the citizen that the new Law on Employment and Unemployment Insurance has come into force and that she was no longer entitled to benefits payments. She filed an appeal against this notification which was rejected.

In order to get a full picture of the situation the Protector of Citizens monitored the National Employment Agency work and activities. During that time a review of documents with the National Employment Agency regarding complaints was carried out and interviews with employees of this administration authority on the implementation of the new Law on Employment and Unemployment Insurance were organized. The conclusion was that when this law come into effect the complainant ceased to be eligible for the extension of benefits payments since the legal time limit since the temporary inability for work came into effect, had expired.

## **Rights of Sexual Minorities**

In the area of sexual minorities rights in 2009 the most significant problems detected were the ones regarding the violation of the right to freedom of assembly, hate speech in the public and the media, as well as in respect of security of LGBT rights activists. The position of the LGBT population and events which marked the exercise of their rights have determined main activities of the Protector of Citizens.

## **Right to Freedom of Assembly**

The main event in respect of the exercise of right to freedom of assembly was the Pride Parade which was scheduled for the end of September 2009 but was cancelled. Following this event the Protector of Citizens has extended on numerous public occasions its full support to the LGBT community and the Pride Parade, stressing that homophobia and discrimination are neither permitted nor legitimate in Serbia.

In addition, on the occasion of the International Pride Day, the Protector of Citizens has condemned the stigmatization of the LGBT community members in Serbia.

The Protector of Citizens whose particular duty is to the specially vulnerable social groups, has pointed out in many public media appearances that the exercise of guaranteed rights by the LGBT population is not an encroachment on anybody else's rights and called on individual and group efforts to be exerted towards resolving accumulated essential human and social problems instead of finding escape in homophobia.

## **Hate Speech in Public and in the Media**

During April 2009 there were events of homophobic graffiti writing which appeared on the streets of Belgrade sending death threats. The spike in these threatening graffiti which have become a part of the Belgrade streets in spring, came during the summer when the wider down town area of Belgrade was literally covered with calls for lynching and threatening Pride Parade participants. Few months later the city utility services began with paining over such graffiti. The real institutionalized reaction embodied in sanctions for the perpetrators and condemnations at all levels of government failed, and certain graffiti are still visible on the Belgrade streets and squares.

The Protector of Citizens is currently working on a complaint filed by a non-governmental organization dealing with lesbian human rights for overt calls to violence and issuing death threats to a guest of a TV show who is a transvestite and a bisexual. During the mentioned TV show a guest of the show (a young man) threatened another TV guest with death because the other man stated during the TV show that he was a cross-dresser and a bisexual.

## **Security of LGBT Rights Activists, Attacks on Individuals and on Office Premises**

Representatives of non-governmental organizations have informed the Protector of Citizens about the increasing problems they are facing as LGBT rights activists (threats over the Internet, insulting posters, threats via SMS or cell phone, etc.). There was no institutional reaction to this since the public prosecutor for high-tech crime refused to process threats to LGBT activists which were sent via Internet stating that there were no elements of a criminal offence to this and that he was not competent in this matter, at the same time stating the wide spread homophobia in the society as an “excuse” and that it cannot be “cured” by launching criminal proceedings.

Deputy Protector of Citizens Professor Dr Zorica Mršević was in charge of the Protector of Citizens’ activities in the area of gender equality rights protection.

## **DIGNITY AND FREE DEVELOPMENT OF A PERSON, RIGHT TO LIFE AND RELATED RIGHTS**

Actions contrary to the “good governance” principles which expose citizens to senseless, useless, unconscientious and degrading treatment on behalf of state administration authorities or civil servants and other employees working in the state administration, other bodies and organizations with public authority, bear, among other things, an element of the violation of citizen’s right to human dignity.

Apart from what has already been said in the introduction, the following were the main traits of the field of good governance in 2009:

### **“Good Governance”**

Complaints received by the Protector of Citizens were mainly filed for the violation of “good governance” principles or failing to act – silence of the administration, failure to implement court decisions and official decisions of the administration authorities, not exercising the right to legal protection before administration authorities, and generally speaking, for failure to respect the principles of good governance, such as: independence in their work and activities and abiding by the law; professionalism, impartiality and political neutrality: efficiency, pace of work and activities and their efficiency, taking into consideration client’s interests and protecting public interest, proportionality in their work, in undertaking activities being guided by the purpose for which the regulations have been adopted; absence of arbitrariness and autocracy,

openness and easy accessibility to citizens; treating citizens with respect and care; individualized relation towards citizens, accepting and rectifying one's own mistakes; undertaking activities which do not cause injury to citizens; equal legal treatment of citizens (treating all citizens who are in the same legal situation in the same way and treating differently those citizens who are in different legal situations); non-discrimination of citizens on any basis; use of authority (prohibition of indifference) for the purpose it was granted; independence in their work and activities; protection of citizens' privacy; undertaking activities upon complaints by citizens in a timely manner, etc.

The act of poor governance resulting in citizens' non-exercising of rights and/or liberties, at the same time represents the violation of that right or liberty.

During the actions undertaken upon complaints, the state administration operations control was performed regarding the respect of the "good governance" principles, in particular the administrative procedure principles (legality, protection of the rights of citizens and public interest, efficiency, truth, evidence evaluation, independence in dealing with complaints, existence of two levels of the decision making process, extending assistance to the client, efficiency of the proceedings, etc.). It has been noted that regulations which are oftentimes not harmonized, sometimes redundant and frequently understated, create an atmosphere of poor transparency and arbitrariness.

A large percentage of state administration authorities have demonstrated their readiness to cooperate with the Protector of Citizens in the implementation of the monitoring and corrective function of this institution.

## **Actions of the Protector of Citizens upon Complaints in Respect of "Good and Poor" Governance**

### **Complaints**

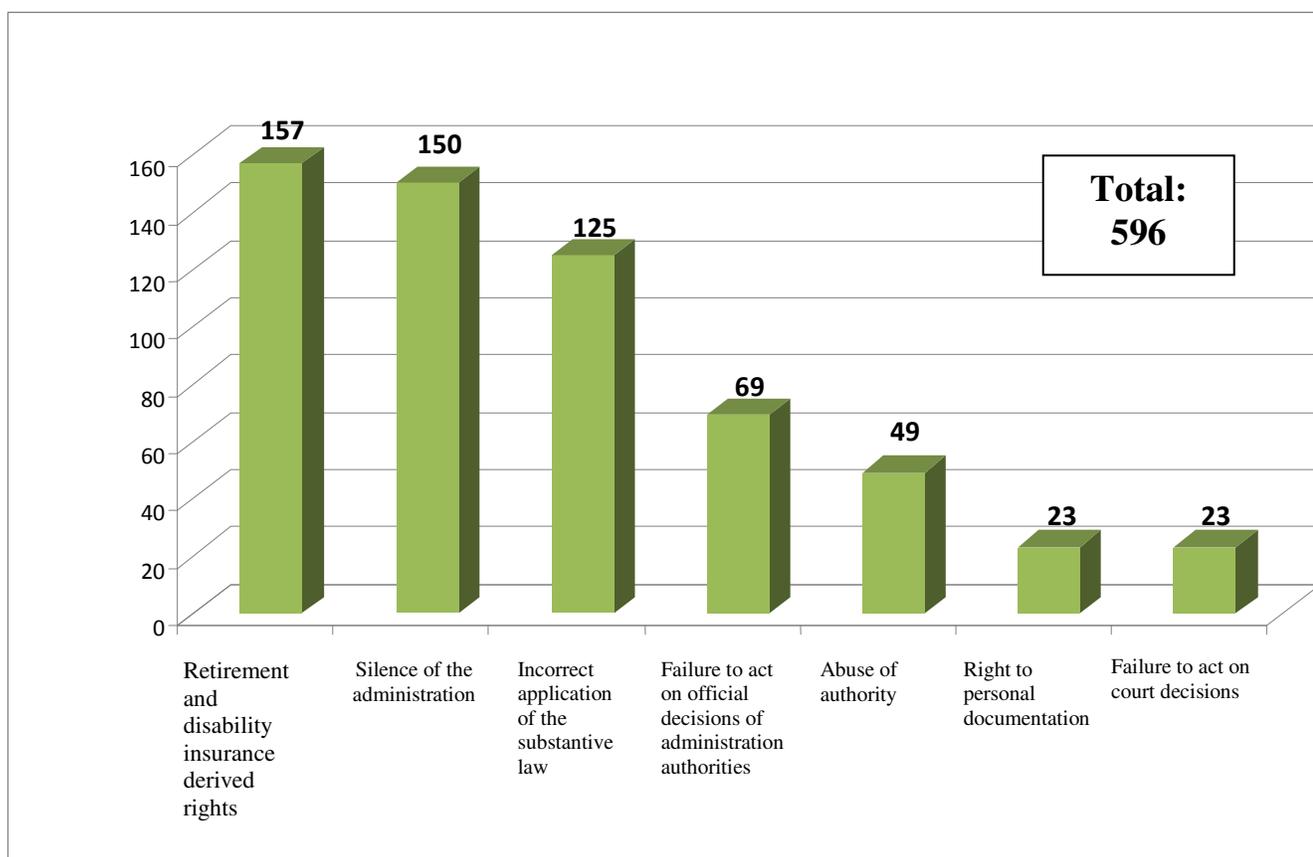
In 2009 the Protector of Citizens has received 766 complaints for the violation of "good governance" principles. Based on careful review in two cases proceedings were launched at the initiative of the Protector of Citizens. Apart from actions in the stated 768 cases, the Protector of Citizens has continued to pursue and has finalized proceedings in 99 cases from 2008. In 2009 the Protector of Citizens has undertaken actions upon complaints in the total of 867 cases in the area of "good and poor" governance.

The largest number of complaints was lodged by citizens, while a smaller number of complaints were filed by legal persons: institutions, non-governmental organizations, political parties, associations of citizens, and the media. Some complaints were forwarded to the Protector of Citizens by other state administration bodies or independent bodies, especially by the Commissioner for Information of Public Importance and Personal Data Protection, Provincial Ombudsman, Municipality or City Protector of Citizens as well as other Ombudsmen.

### **Violation of Rights in Complaints**

Complaints filed by citizens or legal persons mostly pertain to the violation of the following rights and liberties: the right resulting from retirement and disability insurance (157), silence of administration (150), erroneous implementation of substantive law (125), failing to act upon decisions taken by the state administration authorities (69), abuse of authority (49), right to personal documents (23), failing to act on court decisions (23), etc. (See Chart 4).

### **Chart 4. – Typical Rights Violations in the Area of “Good and Poor” Governance**



### **Authorities against Which the Proceedings Were Launched**

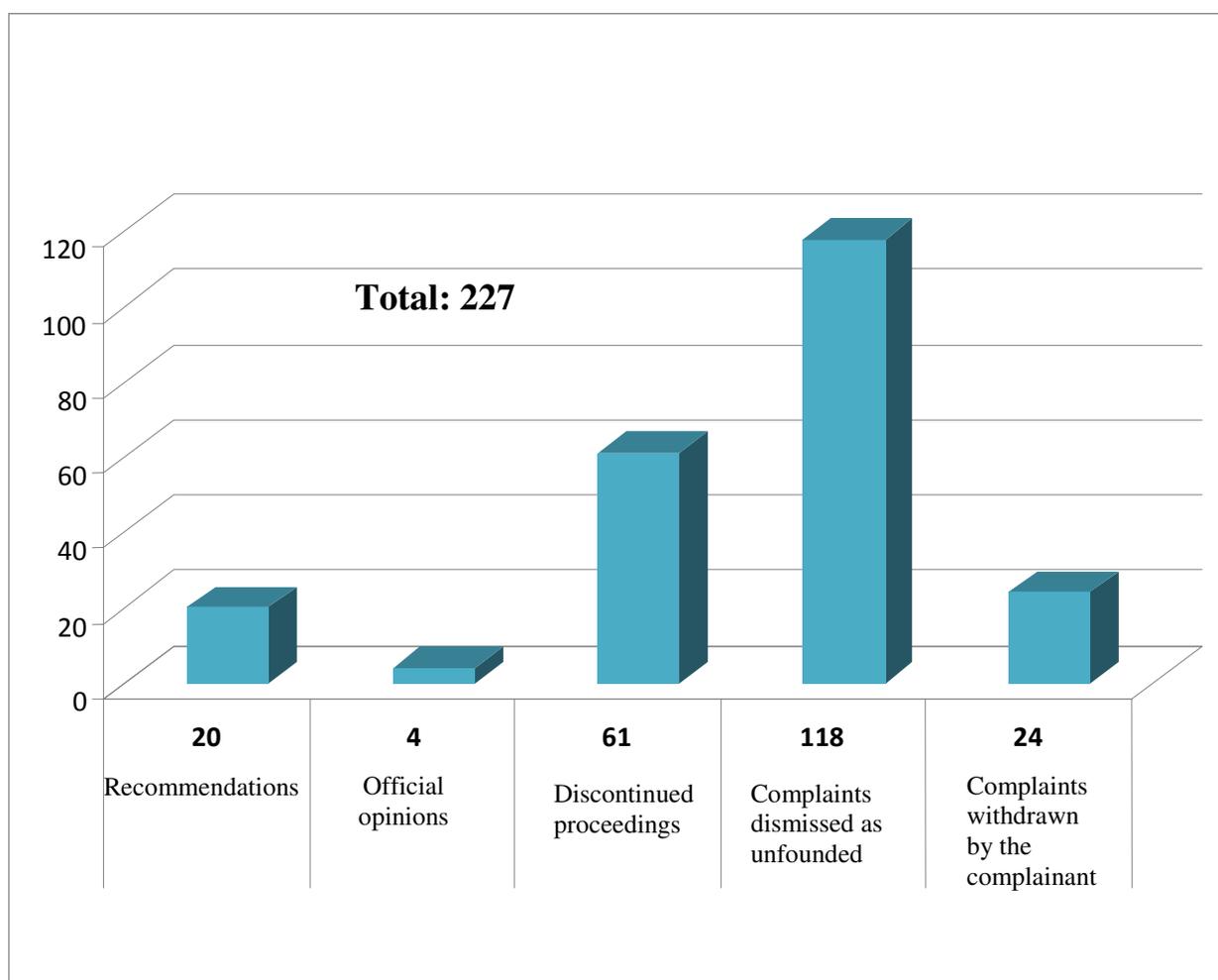
The majority of complaints were launched against the following authorities: Republic of Serbia Retirement and Disability Insurance Fund, Ministry of Internal Affairs, Ministry of Economy and Regional Development, Privatization Agency, Serbia Revenue Agency, local self-government units.

### **Finalized Actions of the Protector of Citizens upon Complaints in Respect of “Good and Poor” Governance**

Acting upon 867 complaints pertaining to the area of “good and poor” governance during 2009, the Protector of Citizens has finalized its activities in 392 such cases, namely 293 complaints were launched in 2009 while 99 were launched in 2008. The activities in the abovementioned 392 cases have been finalized with 146 complaints being rejected as unfounded, while in remaining 246 proceedings were finalized with a recommendation (20) (out of which 5 collective recommendations are related to 24

complainants), an opinion (4), discontinued proceedings (61), complaints dismissed as unfounded (118) and withdrawal by the complainant (24). (See Chart 5). The Protector of Citizens is currently working on the remaining cases.

**Chart 5. - Actions of the Protector of Citizens upon Complaints in Respect of “Good and Poor” Governance**



### **Detected Shortcomings in the Operation of State Administration Authorities in Respect of “Good and Poor” Governance**

**When deciding on a complaint of a citizen, the administration authorities, both of the state administration and of the local self-government unit, often and without**

**justification, either fail take a decision on a certain matter or drag their feet in doing so.** The Law on General Administrative Procedure stipulates that a decision must be reached and communicated within a period of 30 or 60 days. However, proceedings following the complaint regarding retirement and disability insurance fund rights last for a very long time, several months or even several years. The majority of complaints related to the operation of the Republic of Serbia Retirement and Disability Insurance Fund pertain to the procedure's unjustified time of duration.

*Example: a citizen filed a complaint against the operation of the Republic of Serbia Retirement and Disability Insurance Fund, Belgrade Branch Office since a decision on her eligibility request for old-age security pension has not been reached even after five months. The complainant stated that she had orally contacted this authority so as to obtain information on the course of the proceeding but was not given any information. Following the lodging of the operations regularity control procedure of this administration authority by the Protector of Citizens, the complainant sent a notification that her complaint has been dealt with and that she has been issued an official decision granting her the right to old-age security pension (the procedure has been discontinued since the complainant withdrew the complaint, in keeping with the law).*

Following the complaint of another citizen, the Protector of Citizens has ascertained that the Municipal Administration for the Economy of the City of Leskovac has not even after four years reached a decision on her complaint appealing against an act deciding on her rights and obligations. The Protector of Citizens has detected irregularities and issued recommendations for the complaint to be dealt with without delay. The authority has acted within the envisaged time period.

Citizens have filed complaints against administration authorities which have failed to implement the effective and final decisions, either their own or those of other administration bodies. **Failure to act in cases in which a competent authority has taken a decision to demolish facilities constructed without a building permit or facilities with a building permit but during construction of which unpermitted development modifications were made to the facility, is especially wide spread among authorities of local self-government units. The implementation of these official decisions has not been carried out even after many years, i.e. the decisions were carried out but in a sporadic and selective manner lacking clearly established criteria for (non)implementation of demolition orders for illegally constructed buildings.** As for the non-implementation of decisions by the

administration authorities, a considerable number of citizens encounter an absurd situation where administration authorities **fail to implement court decisions**.

*Example: in acting upon a filed complaint the Protector of Citizens has ascertained that the Ministry of Finance – Property and Legal Affairs Department has for months failed to pass a decision in the capacity of a second instance authority in an administrative procedure on property rights of citizens (land dispossession, expropriation, termination of the land utilization right, etc.) because there was no one to sign the official decisions. The Protector of Citizens has detected omissions and recommended that the minister himself sign the decisions or have the power of attorney to sign those decisions transferred from the absent assistant minister to another person working in the ministry. Following the receipt of the recommendation, the minister has transferred the power of attorney to the head of the Administration Affairs Department and administrative procedures were continued with.*

In its actions upon complaints filed by citizens, the Protector of Citizens has ascertained that in a large number of municipalities the commissions in charge of implementing procedures and deciding on the applications for the restitution of land, pursuant to the Law on the Manner and Conditions for Recognizing the Right and Restitution of Land Which Has Been Converted into Social Property on the Basis of Agricultural Land Fund and on the Basis of Confiscation Resulting from Non-compliance with the Mandatory Purchase of Agricultural Products, were not operational. The reason why the commissions were not functioning thus creating hiatus in reaching decisions on complaints filed by citizens eight or nine years ago was the fact that the judges appointed as chairmen of these commissions did not accept this function bearing in mind the irreconcilability between the function of a judge and the function in authorities creating regulations and executive power authorities, public services and provincial autonomy authorities and local self-government units, prescribed both by the previous and the effective Law on Judges. The lack of harmonization of regulations has directly resulted in the prevention of citizens from exercising their rights to the restitution of land. The Protector of Citizens has initiated a meeting between line ministries aimed at overcoming the problem.

The **lack of cooperation** between different authorities in the process of exercising or protecting the rights of citizens is obvious. In many cases only after the intervention of the Protector of Citizens did the administration authorities establish cooperation thus directly contributing to the efficiency and quality of dealing with citizens' problems and to the elimination of omissions in their work and activities.

**The reception departments of administration bodies and institutions occasionally refuse to accept complaints filed by citizens** and the employees working at the reception desk, although not authorized, justify the rejection of the complaint by legal omissions in citizens' application.

There is a lack of internal control of the administration authorities. Procedures aimed at ascertaining the responsibility of an employee and sanctioning him/her are rarely implemented and even then only for an aggravated violation of work obligations and duties. In the majority of cases, the managers in the administration authority or institutions fail to launch such procedures in a timely manner thus the statute of limitation is applied to disciplinary proceedings or similar procedures while malpractice on behalf of an employee remains unsanctioned. The level of communication between the internal control of the administration authorities and the citizens is often negligible and is in most cases reduced to accepting the complaint, application or similar document, or issuing a response of the internal control to a citizen following the implementation of the control procedure. Therefore, in cases when a complaint/application is rejected, the responses offered to citizens are drab and lacking content-related explanation due to which the complaint/application was considered unfounded and what led the internal control to draw such a conclusion.

### **Overview of Typical Activities Taken by the State Administration Authorities in Respect of “Good and Poor” Governance**

**Implemented recommendation to the Ministry of Education** – A group of students of the Faculty of Architecture in Belgrade requested from the Protector of Citizens to protect their rights, stating irregularities in the enrollment into the first year of master studies, which are the result of the lack of determined quotas for students eligible for state scholarships in the Republic of Serbia.

In their complaint the students stated that the conditions for the enrollment into degree studies (master studies) have not been established (according to the law they must be established and publicly announced five months prior to the program inception) and that those conditions are unknown, insufficiently elaborated or “have been altered on numerous occasions”.

The Protector of Citizens has ascertained that the University of Belgrade has announced a public competition for the enrollment of students into the first year of

degree academic studies for 2009/2010 academic year without the Government of the Republic of Serbia having previously approved proposed quotas for students studying at tertiary education institutions established by the Republic of Serbia as prescribed by the Law on Tertiary Education. The Protector of Citizens has also found that due to the lack of necessary parameters, the Ministry of Education had failed to submit the necessary proposal to the Government.

The Protector of Citizens has requested the Ministry of Education to undertake all the measures necessary for submitting the proposal to the Government without delay. This was done immediately (within three days) and the Government has accepted the proposal at its next session. A recommendation was also given that the Ministry of Education should reach an agreement with the Faculty of Architecture and all other faculties which have dealt with the situation resulting from lack of prescribed quota by shifting the burden over to the students, on accepting applications of all students without the obligation to pay tuition fees in whole or in part until the decision on quotas is reached and candidates are ranked accordingly.

### **Violation of Basic Principles of Good Governance Resulting in Injury of Citizens and Lack of Cooperation with the Protector of Citizens**

A citizen of Sopot had informed the Protector of Citizens that the administration authorities of that municipality refused to perform administrative activities at the request of citizens until they have presented proof of payment for the utilization of the construction land. The registrar refused to schedule a wedding unless the groom (but not the bride?!) produced a proof of payment for the utilization of construction land.

It has been established that the complaints were true and that an (illegal) rule in the operation of the municipality authorities was applicable to all citizens. In the meantime the Protector of Citizens has been informed about cases when verification of a worker's employment record card was denied until proof of payment for the utilization of construction land has been submitted and similar cases. Direct control of the operation was carried out and representatives of the municipality administration authority were given an oral recommendation in keeping with the efficiency principle, to terminate this illegal practice of presenting citizens with an ultimatum in exchange for the performance of administrative activities. Although they have stated that they accept the recommendations (the citizen informed the Protector of Citizens that he was indeed able to schedule his wedding), the Ombudsman was informed about new, subsequent cases of imposing conditions on citizens. A written recommendation was issued to the

manager of the municipality authority requesting him to identify employees responsible for not cooperating with the Protector of Citizens.

### **The Lack of Cooperation on Behalf of Different Administration Authorities during the Operation Legality and Regularity Control Procedure and Failure to Act on Recommendations Issued by the Protector of Citizens**

The Protector of Citizens has received rather a larger number of complaints filed by citizens regarding the operation and activities of the Ministry of Economy and Regional Development and the National Employment Agency when reviewing the right to special severance payments of the currently and previously employed workers in the “Robne kuće Beograd” department store. Complainants stated that they were denied special severance payment in the adequate amount, that they have not received a written decision confirming they were entitled to severance pay or the decision on the complaint or appeal.

Despite the statutory obligation to reply to the Protector of Citizens regarding all requests and to submit all the required information and documents within a prescribed time period, the Ministry of Economy and Regional Development chose to ignore the request of the Protector of Citizens to enable free and full access to the necessary documentation on the premises of the Ministry and unhindered interview with employees of the Ministry who could provide all the information related to the particular proceeding and complaints.

In the meantime, the Protector of Citizens was informed that the citizens who have filed complaints began receiving the missed payments of their special severance pay to their accounts, tacitly, without an explanation or legal document. At the same time, they were exposed to verbal abuse in Branch Offices of the National Employment Agency in some cities when filing complaints with the Protector of Citizens.

Bearing in mind the obstruction of cooperation, the Protector of Citizens has on the basis of available information and circumstances, ascertained certain omissions in the operation of the Ministry of Economy and Regional Development and the National Employment Agency. Seven months following the receipt of the recommendation (two months is the time period prescribed by the law) the Ministry of Economy and Regional Development has submitted certain, as it were explanations in respect of the Protector of Citizens’ recommendation. This document indicates that the Ministry has only partially acted on the recommendation.

## **Legalization of Buildings Which Were Constructed Without a Building Permit**

Many citizens have turned to the Protector of Citizens with complaints regarding the work and activities of the municipal and city administration authorities which were tasked, pursuant to the Law on Planning and Construction, with **dealing with requests of citizens in respect of legalization and demolition of facilities which were built without a building permit.**

The Protector of Citizens has carried out the administrative authorities' operations regularity and legality control procedure and ascertained certain omissions in the work and activities of municipal administration authorities resulting in failure to act on their own decisions on the demolition of buildings and other facilities. For this reason the Protector of Citizens has issued a recommendation on the ways to eliminate the detected shortcomings.

Following the adoption of the new Law on Planning and Construction, the Protector of Citizens had initiated a meeting with the representatives of the Ministry of Environment and Spatial Planning wishing to standardize the practice. Ombudsmen of the local self-government units were also present at this meeting in those local self-government units where they had been elected.

It was noted that a significant number of buildings had been built i.e. reconstructed or added-on without a building permit or permission for construction. In much the same way, many buildings were constructed having a valid building permit or permission for construction and a certified main plan and design for the building, but in the course of construction certain deviations from the issued building permit were made.

Due to often unjustified reasons the procedures dragged on and the administrative authorities shifted responsibility over to citizens for poor performance by requiring them to submit additional documentation which had already been submitted with the initial request.

For the purpose of correctly implementing the provisions of the new law and establishing a standardized practice in the operation of the competent authorities of the local self-government unit, the Protector of Citizens has prepared recommendations which will be sent out in 2010 to all municipal and city administration authorities so as to prevent irregularities detected in the implementation of the old law.

## **Stepping up the Pace of Issuing Personal Documents by the Ministry of Internal Affairs**

Following the detection of certain omissions and irregularities in the operation of the Ministry of Internal Affairs when accepting and processing applications of citizens for issuance of personal documents, the Protector of Citizens, in keeping with its statutory authority, sent a recommendation to the Ministry of Internal Affairs recommending that a string of measures be taken immediately (the recommendation contains a list of concrete measures) so as to step up the pace of issuing personal documents and enhance conditions for citizens while waiting. The Ministry of Internal Affairs has notified the Protector of Citizens that it has implemented the recommendation.

The Protector of Citizens has subsequently carried out the control of work and activities of 92 police stations in a number of cities, towns and municipalities finding that the Ministry of Internal Affairs has not fully implemented all the measures which could provide for adequate conditions for accepting citizens' applications. It is important to point out that such control has been carried out extensively by the Provincial Ombudsman and local self-government unit Ombudsmen in places where they have been elected. They have been granted written power of attorney by the Protector of Citizens to carry out the control in keeping with the previously established methodology and procedures.

An additional recommendation of the Protector of Citizens to the Ministry of Internal Affairs followed, aimed at enhancing the efficiency of receipt and processing of citizens' applications for the issuance of personal documents, which the Ministry has acted on. Regardless of the cooperation on behalf of the Ministry of Internal Affairs in this case, many citizens have been facing difficulties during the year (waiting in long lines outside the building) when attempting to replace their personal documents.

*An example of work deficiency elimination following the receipt of Protector of Citizens' notification on the inception of the control procedure: A citizen filed a complaint to the Protector of Citizens against operation of the Ministry of Internal Affairs for an inappropriately lengthy procedure for establishing Republic of Serbia citizenship.*

*Following the receipt of the notification about the allegations and initiation of the proceedings, the Ministry of Internal Affairs responded stating that following the*

*review of the application, it has been ascertained that the complainant's application was incomplete which resulted in a overly long procedure. The view of the Protector of Citizens that a procedure must be carried out in an efficient manner according to the rules governing such situations has been conveyed in direct communication. The Ministry of Internal Affairs notified the citizen on the deficiencies detected in her application and she immediately provided additional documents. The official decision on entry into citizenship records has been taken, an order instructing entry into citizenship records was issued and forwarded to the competent municipality registrar's office, which all took place within a period of less than one month. The Protector of Citizens has discontinued the control procedure concluding that the administrative authority itself has rectified the detected deficiencies in its work and activities.*

### **Privatization Agency Operation Regularity and Legality Control Procedure – A Procedure Launched at the Initiative of the Protector of Citizens**

The Protector of Citizens has learned that by means of an official decision, the Privatization Agency has rejected applications of citizens for registration into the register of holders of rights to free-of-charge shares, the reason being that on 3 January 2008 they were not citizens of the Republic of Serbia although they in fact were.

Following the control procedure, it has been ascertained that based on the Law on the Right to Free-of-charge Shares and Money Consideration Exercised by Citizens in the Process of Privatization, the Privatization Agency has received 5,2 million applications by citizens for free-of-charge shares. The Ministry of Internal Affairs carried out the procedure of verifying the existence of necessary preconditions. Following the procedure for verifying the existence of necessary preconditions, it has been ascertained that 186,699 registered citizens have not been entered into the citizenship electronic data base of the Ministry of Internal Affairs and that there is no supporting data of their citizenship. The Agency has extended the deadline for submission of citizenship certificates and the citizens were informed through media outlets thereof.

The prescribed procedure and manner of registering citizens entitled to monetary consideration and to the transfer of shares free-of-charge required the Privatization Agency to undertake rather comprehensive activities. The Privatization Agency had to undertake special activities when verifying the existence of necessary preconditions for each and every person submitting the application. The fact that a unified citizenship records data base for all the citizens of the Republic of Serbia does not exist, presented an additional problem. The Protector of Citizens assessed that in this case the

Privatization Agency has not been unconscientious and unfair towards citizens, and that it had undertaken all the measures and activities which could be reasonably expected so as to ascertain the applicants' citizenship status, thus the procedure was terminated. The competent ministries have been informed of the Republic of Serbia citizenship records issues.

## **INVIOLABILITY OF PSYCHOLOGICAL AND PHYSICAL INTEGRITY, RIGHT TO FREEDOM, PROHIBITION OF SLAVERY AND RELATED RIGHTS AND LIBERTIES**

### **The Rights of Persons Deprived of Liberty**

**Over crowdedness** is the main problem in the prison system in Serbia which directly results in problems regarding accommodation, hygiene, health care, security, nutrition, as well as other segments of life of persons serving a prison sentence and of those awaiting trial.

The Protector of Citizens feels that **torture as an institutional or systemic phenomenon does not exist** in Serbia, however certain confinement conditions for persons deprived of liberty, mainly resulting from over crowdedness of prisons, may be labeled as inhuman and degrading.

**The total prison capacity** in Serbia is estimated at approximately 7,000 individuals at the most, yet at the end of December 2009 over 11,000 individuals were confined in prison facilities. The result of such situation is that for example, over ten individuals sleep in a dormitory of twenty square meters, that bunk beds have "three levels" and that in many dormitories prisoners sleep on the floor.

A trend of a **continuous increase of persons serving a prison sentence** and those in detention, which has been at the level of 10% annually in the previous period, is not accompanied by an adequate increase in accommodation capacities.

The Protector of Citizens indicates that the **proclaimed harsher penal policy**, increased criminalization of acts and growth of the number of offences resulting in prison sentences, **will cause a spike in the number of imprisoned individuals**. Additional problem is the fact that the existing accommodation capacities are reduced due to alterations which are made so as to bring the conditions of accommodation in confinement in line with the current international standards.

It is necessary to expand the existing capacities immediately and **intensively commence with the construction of new prison facilities**. The construction of new prisons is necessary so as to provide much needed space for the accommodation of the current number of confined individuals in keeping with national regulations and international standards.

Quality-wise, the capacities of institutions in which persons deprived of liberty are confined are not satisfactory. Namely, facilities housing prisons are mainly building which were constructed for other purposes, some were even built over hundred years ago, many of them are located in city's down town area and cannot be expanded through construction. In many dormitories there is a lack of fresh air and natural light. For years insufficient investments were made towards maintenance thus premises are often damp, in need of whitewashing and badly damaged.

Apart from the construction of new and refurbishment of the existing accommodation capacities, improvement of accommodation conditions for persons deprived of liberty can be expected with the introduction of **alternative sanctions system**. However, the Protector of Citizens doubts its implementation would alleviate the prisons overcrowdedness problem.

**The absurdness of the situation must be noted in which on the one hand alternative sanctions are introduced for perpetrators of criminal offences claiming that this would partially help decrease over crowdedness in prisons, while on the other hand a law was adopted which envisages prison sentences for 115 different traffic safety related offences.**

The prison system has an obvious **lack of qualified personnel**, primarily doctors and other health care workers, pedagogical experts, psychologists, cooks and in some prisons even security guards. There are **prisons with 1300 inmates with only one doctor** and he/she cannot even partially do the job. In addition, the Protector of Citizens feels that the **financial status of employees in those institutions is inadequate** since their salaries are not proportional to the type of job they perform.

The fact that inmates are not occupied but **are idle**, is yet another problem in the enforcement of criminal sanctions. In the upcoming period it would be necessary to create a system which would engage inmates in work activities as much as possible, enable their skills capacity building and training. Likewise, treatment activities are not

systematic, inmates are not adequately prepared for discharge from prison, while the cooperation with social welfare centers is unsatisfactory.

**Prison managers point out to the insufficient and irregular inflow of material assets, but are also critical of poor food quality which is procured through centralized procurement procedure and the inability of prisons to buy seasonal produce directly.**

The positive aspects include **intensifying internal control over the operation of prisons**, which revealed and led to processing of certain cases of illegal treatment of persons deprived of liberty.

### **Preventive Mechanisms**

Guided by the decision it had previously taken, the Protector of Citizens has established a monitoring mechanism of institutions housing persons deprived of liberty. The objective of this Preventive Mechanism is to promote the protection and the exercise of rights of persons deprived of liberty, as well as to prevent torture and other cruel, inhuman or degrading treatments or punishments.

For the purpose of this decision, a person deprived of liberty implies all persons to whom liberty has been denied or limited by a decision or through explicit or implicit consent of a state authority; the institution housing persons deprived of liberty shall imply prisons, police stations, social welfare and health care institutions, as well as all other places with persons deprived of liberty, while monitoring of institutions housing persons deprived of liberty shall imply a continuous and systemic data collection, verification and processing related to the protection of rights of persons deprived of liberty.

With the authorization of the Protector of Citizens, the Preventive Mechanism may freely and without prior notice undertake visits to institutions housing persons deprived of liberty, obtain access to all the facilities of an institution, review relevant documentation regardless of its confidentiality level and carry out unsupervised and confidential interviews with persons deprived of liberty and staff members of the institution.

When performing institution monitoring activities, the Preventive Mechanism attaches particular attention to the position of children, older juveniles, younger persons of age,

persons with disabilities, persons with special needs, the sick, the elderly, persons of LGBT orientation, women, members of national minorities, members of religious communities and foreigners.

The Protector of Citizens has adopted the Methodology of Work and Activities of the Preventive Mechanism which is applied during visits to the abovementioned institutions.

Although by ratifying the Optional Protocol to the United Nations Convention against Torture back in 2005, Serbia accepted obligations to establish one or more torture prevention mechanisms but this has not materialized as of yet.

## **Actions of the Protector of Citizens upon Complaints by Persons Deprived of Liberty**

### **Complaints**

In 2009 the Protector of Citizens received 83 complaints related to the violation of rights of persons deprived of liberty and following careful review, it has launched proceedings in ten additional cases at its own initiative. Apart from actions upon mentioned 93 complaints, the Protector of Citizens continued to pursue proceedings in 5 other cases filed in 2008. Hence, in 2009 the Protector of Citizens has undertaken actions upon a total of 98 complaints pertaining to rights of persons deprived of liberty.

The highest number of complaints were filed by persons serving prison sentences, detained persons and withheld persons, either directly or through an authorized person. Some complaints were filed or submitted by non-governmental organizations, other state authorities and independent bodies, primarily certain ministries, Commissioner for Information of Public Importance and Personal Data Protection, Provincial Ombudsman, Municipality or City Protector of Citizens.

Proceedings launched at the initiative of the Protector of Citizens indicate that there is a danger of multiple violations of rights of persons deprived of liberty and of potential shortcomings in the operation of prison authorities and the police. The largest number of proceedings which were launched at the initiative of the Protector of Citizens are related to prisons (9), while only one (1) procedure has been launched regarding police stations.

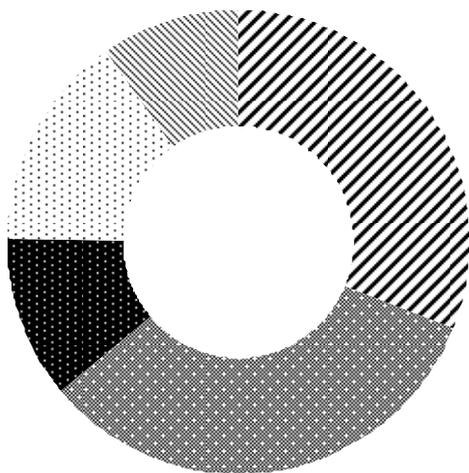
## **Violation of Rights in Complaints**

Based on information provided in complaints and those obtained from other sources, the Protector of Citizens noted that the majority of rights violations of persons deprived of liberty were multiple rights violations of persons deprived of liberty (19), violation of right to health care (20), accommodation conditions (7), violation of the right to communication (9) while a smaller number of complaint were related to torture and inhumane treatment (6). Other complaints pertained to irregularities in carrying out the procedure, violation of the right to work and labor related rights, right to communications and legal aid, unfounded deprivation of liberty, conditions of stay and other rights. (See Chart 6).

Classification of these complaints has been done according to the number of violated rights criterion. The group of complaints containing multiple violations of rights of persons deprived of liberty (19) includes complaints stating multiple rights violations, among which right to health care and/or accommodation conditions were always one of the violated rights.

### **Chart 6. – Violation of Rights in Complaints Pertaining to the Rights of Persons Deprived of Liberty**

**Total : 61**



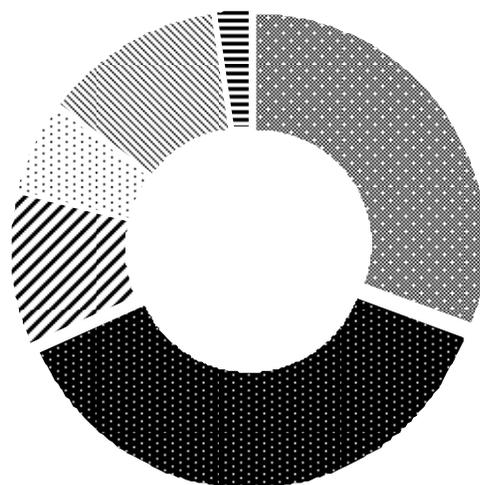
- Multiple violations of rights of persons deprived of liberty: 19
- Right to health care: 20
- Accommodation conditions: 7
- Violation of the right to communication: 9
- Torture and inhuman treatment: 6

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### **Authorities against Which the Complaints Were Filed**

The majority of complaints pertain to the operation of and treatment by prisons (29), penitentiary and correctional institutions (36), courts (10), Ministry of Internal Affairs (6) and Ministry of Justice (12), in particular Administration for Enforcement of Penal Sanctions (2). In several cases complaints pertained to the operation of and treatment by more than one authority. (See Chart 7).

### **Chart 7. - Authorities against Which the Complaints Were Filed in the Area of Rights of Persons Deprived of Liberty**



### Total: 95

- Prisons: 29
- Penitentiary and correctional institutions: 36
- ✓ Courts: 10
- ∴ Ministry of Internal Affairs: 6
- ⊘ Ministry of Justice: 12
- ▬ Administration for Enforcement of Penal Sanctions: 2

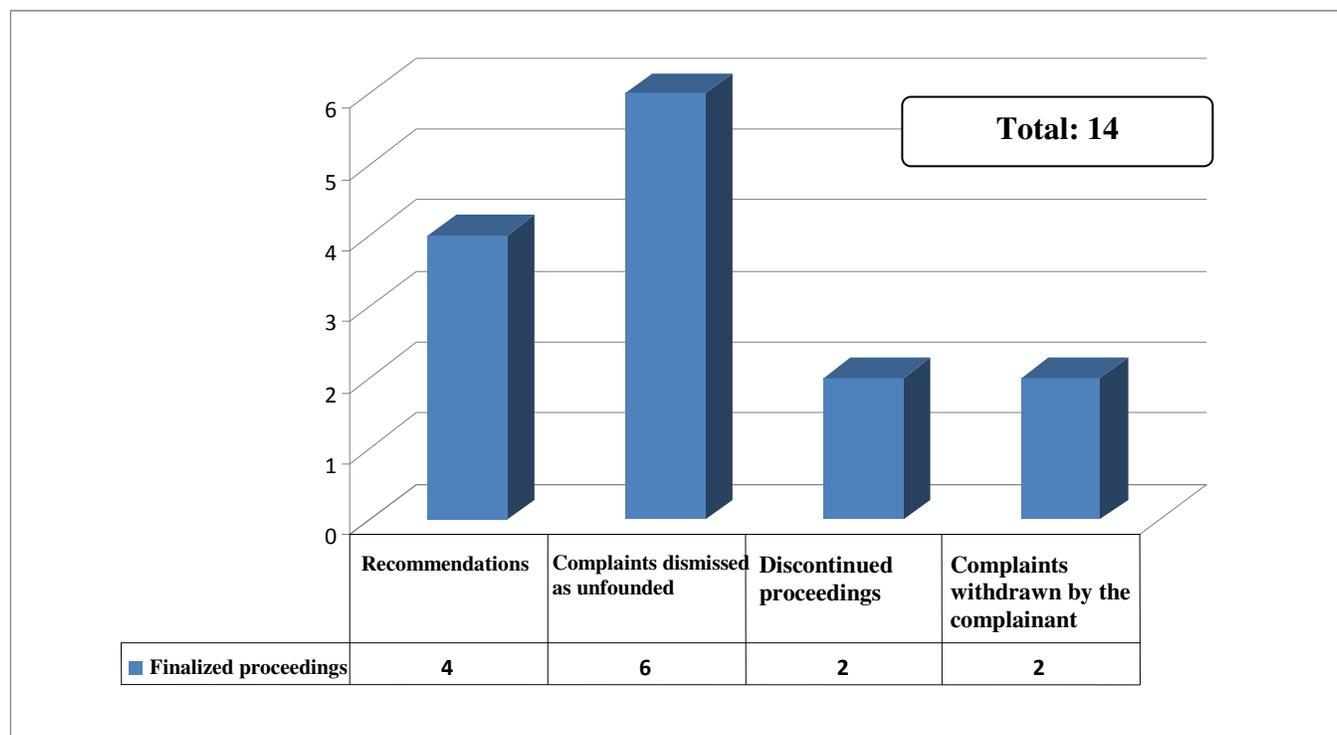
## Finalized Actions of the Protector of Citizens Pertaining to the Rights of Persons Deprived of Liberty

In the activities undertaken upon 98 complaints pertaining to the area of rights of persons deprived of liberty during 2009, the Protector of Citizens has finalized its activities in 59 such cases, namely 54 complaints were launched in 2009 while 5 were launched in 2008. The activities in the abovementioned 59 cases have been finalized with 45 complaints being rejected as unfounded, while 14 launched proceedings were finalized with a recommendation (4), complaints dismissed as unfounded (6), discontinued proceedings (2) and withdrawn by the complainant (2). The Protector of Citizens is currently working on the remaining cases. (See Chart 8).

The Protector of Citizens finalized proceedings in most cases after having established that there were no grounds for launching the procedure i.e. by rejecting the complaint. The main reason for rejecting complaints was the lack of competent jurisdiction (mostly complaints against the operation of courts), for being filed prematurely (the complainants have not exhausted all the existing legal remedies before applying to the Protector of Citizens) and for being incomplete (following the instructions of the

Protector of Citizens, complainants failed to submit the documentation necessary for undertaking proceedings). When notifying citizens of the rejection of their complaint due to the lack of competent jurisdiction or for being filed prematurely, the Protector of Citizens has always provided a precept as to the manner in which a citizen can seek protection of his/her rights and before which authority or institution.

**Chart 8. - Finalized Actions of the Protector of Citizens Pertaining to the Rights of Persons Deprived of Liberty**



In the course of 2009 the Protector of Citizens has established irregularities in the operation of an administrative authority in four cases regarding the violation of rights of persons deprived of liberty and has forwarded recommendations to the Administration for Enforcement of Penal Sanctions as part of the Ministry of Justice, to the Ministry of Internal Affairs (2) and to the Penal-correctional Institution in Niš.

### Direct Supervision

During 2009 the Protector of Citizens has organized **19 visits to prisons, police stations and social welfare institutions**. Some of these visits were previously

arranged while others were unannounced, in keeping with the authority of the Protector of Citizens. During visits to these institutions the Protector of Citizens was given free access to all facilities; interviews with all individuals including those in confinement and in detention were unsupervised; interviews with all employees were also unsupervised; access to, insight into and copying of the requested documents regardless of their confidentiality level as well as free photograph-taking was permitted.

Visits were organized to the following: District Prison in Belgrade (in January – 2), Penal-correctional Institution for Women in Požarevac (March), Penal-correctional Institution in Požarevac, Zabela (in March), Home for Children and Persons with Developmental Disabilities “Dr Nikola Šumenković” Stamnica (in April), Home for Disabled Adults “Dr Dragiša Vitošević” Bežanijska kosa (in May), Pena-correctional Institution Zabela (in May), Penal-correctional Institution for Women in Požarevac (in May), District Prison in Vranje (in May), Police station in Preševo (in May), Police station in Bujanovac (in May), Police station in Medvedja (in May), Special Prison Hospital in Belgrade (in June), Penal-correctional Institution in Sremska Mitrovica (in July), Penal-correctional Institution in Niš (in July), Penal-correctional Institution in Niš (in October), Police station in Belgrade municipality of Palilula (in October), Penal-correctional Institution Zabela (in December) and District Prison in Pančevo (in December).

### **Detected Shortcomings in the Operation of Administration Authorities Regarding the Rights of Persons Deprived of Liberty**

In the area of rights of persons deprived of liberty the Protector of Citizens has in several institutions, in prisons in particular, established the following:

- prisons are overcrowded;
- prison furniture is typically inappropriate, old and worn-out;
- sanitary facilities in the institutions generally do not comply with hygiene standards and do not provide for privacy of prisoners;
- nutrition is unsatisfactory, primarily in respect of food quality and diversity since fruit, vegetables, dairy products and meat are rarely or never served;
- the prison canteen is usually poorly supplied, lacking the same items as the regular prison menu;
- health care is frequently both insufficient and untimely or medical therapy with drugs of older generation is administered which has inhibitive effect;

- occupational engagement of prisoners is virtually non-existent;
- free time is not structured in such a way as to enable prisoners to engage in cultural, entertainment, sports and recreational activities.

Although these shortcomings have been detected in all institutions in the area of rights of persons deprived of liberty, in prisons in particular, the Protector of Citizens notes that the majority of the mentioned deficiencies is a direct result of concrete circumstances primarily the lack of personnel and funds.

These deficiencies have been established and recommendations were sent by the Protector of Citizens to the competent authorities accompanied by proposed measures.

### **Overview of Typical Procedures in the Area of Rights of Persons Deprived of Liberty**

**When acting upon complaints** by persons deprived of liberty the Protector of Citizens has established the violation of the right to health care and issues a recommendation to the Administration for Enforcement of Penal Sanctions requesting that the non-smokers serving prison sentences and those in detention not be placed with smokers.

**The recommendation** to ensure that inmates and remand prisoners be issued, upon their request, written confirmation certifying that they have handed over registered mail to prison officials, **has been given to the Administration for Enforcement of Penal Sanctions.**

**The recommendation given to the Penal-correctional Institution in Niš** refers to the right to human treatment and respect of person's dignity and the right to health care due to untimely repair of a prisoner's wheelchair, absence of medical examination at the time when that particular inmate went on a hunger strike and for not preventing that particular inmate from procuring and taking narcotics in the Institute. In the operation legality and regularity control procedure of the Penal-correctional Institution in Niš, the Protector of Citizens, undertaking the procedure at its own initiative, established omissions in the work and activities with the prisoner, a disabled person who had announced that he was on a hunger strike as of 15 June 2009 because of the breakdown of his wheelchair but died on 30 June 2009 due to drug overdose. The detected deficiency in work and activities pertains to untimely repair of his wheelchair, absence of medical examination when he announced he was going on a hunger strike and that he was not prevented from procuring and taking narcotic drugs.

**The recommendation given to the Ministry of Internal Affairs, the Police Directorate – Criminal Investigation Administration.** In the operation legality and regularity control procedure of the Ministry of Internal Affairs, **the Police Directorate – Criminal Investigation Administration**, which the Protector of Citizens has launched at its own initiative, certain omissions and irregularities have been detected when nine citizens of Albanian nationality were taken into custody, transferred, offered medical care and brought before a judge in Preševo. The omissions i.e. the irregularities pertain to the violation of a constitutional guarantee to human treatment of persons deprived of liberty and the respect of their personal dignity, as well as the prohibition of any form of violence against them. In addition, those who were injured and those who complained of injuries were not granted medical attention in a timely manner and the obligation stating that all persons deprived of liberty must be brought before a competent court within 48 hours or freed has also been violated.

The Protector of Citizens requested that when a citizen suffers bodily injury in the course of being taken into custody or during detention by the police, a procedure be carried out for establishing circumstances under which these injuries were inflicted. This also refers to establishing deficiencies in work and activities aimed at preventing bodily injuries or other health conditions of the person deprived of liberty; a disciplinary or other kind of procedure shall be launched against police officers who have incorrectly applied physical force or in some other way caused injuries or certain medical condition to the person deprived of liberty, or who have failed to take necessary measures to preempt injury or health hazard; in cases when bodily injuries or signs of other medical condition are visible on a citizen who has been deprived of liberty or if he/she complains of being injured while being taken into custody or during police detention, the citizen shall always and especially if he/she requests so, be seen by a doctor as soon as possible and a written report thereof shall be made; in cases when a citizen has been detained by the police for more than 48 hours from the time he/she has been deprived of liberty or if he/she has not been transferred to the competent court or has not been set free until the expiry of that time period, a procedure for establishing accountability of staff members for omissions pertaining to overstepping the allowed prescribed time of detention of persons deprived of liberty shall be carried out; when organizing actions aimed at depriving persons of liberty, their transfer and interrogation, care shall be taken not to entrust those officers who are specially emotionally and personally negatively inclined towards apprehended citizens or alleged crimes, with carrying out the procedure.

## **Hunger Strike of One Hundred Inmates in the Penal-correctional Institution in Niš**

At the end of September 2009 approximately one hundred inmates in the “C” Pavilion of the Penal-correctional Institution in Niš have gone on a hunger strike, thus expressing their dissatisfaction with overall living conditions in the prison, primarily with accommodation facilities, hygiene conditions, health care services and food.

The Protector of Citizens was granted the following: unobstructed access to all accommodation facilities where inmates sleep, work and live, interviews with inmates of choice, interviews with employees of the institution, access to, insight into and copying of the requested documentation regardless of its confidentiality level as well as free photograph-taking.

During the visit the Protector of Citizens has established certain deficiencies in the operation of the Institution in respect of accommodation, hygiene conditions, health care and nutrition of inmates as well as regarding supplies for the prison canteen. The Protector of Citizens has written a report containing proposed measures and sent it to the Administration for Enforcement of Penal Sanctions which is within the Ministry of Justice, for the purpose of eliminating the detected deficiencies. The key points in this report and main proposed measures are as follows: decrease over crowdedness which poses major threat to internal security and causes increase in violence among inmates; decrease the number of inmates and provide at least four square meters of space per inmate; discontinue the utilization of basement space for the accommodation of inmates; renovate the existing sanitary facilities, provide adequate and functional sanitary equipment and install shower screens; improve the quality and diversity of nutrition for inmates by having more fruit, vegetables, dairy products and meat on the menu; improve and maintain supply of prison canteens with products which correspond to justified requests from prisoners, in particular with fruit, vegetables, dairy products and smoked and cured meats; medical examination must be performed immediately following the admission of a prisoner into the institution; ensure regular dental care services; inmates who were subjected to means of coercion must be examined immediately following the use of means of coercion; reestablish “Drug-free Units” and introduce prevention and drug treatment programs for inmates; organize and carry out continuous cultural, entertainment, sports and recreational activities for inmates; provide a separate room devoid of religious insignia and symbols which can be utilized for religious rites by different religious denominations; appoint the managing director of the institution and provide for more employees in the job systematization, in

particular those working in security, treatment and health care units; organize additional professional development training programs for employees in all sections; improve material and technical means of protection; procure new vehicle for the transportation of prisoners.

### **Detention**

The Protector of Citizens has noted that the detention measure in the Republic of Serbia is unusually long in view of the constitutional provisions and its purpose, hence at one point it becomes a punishment without trial.

### **Deprivation of Liberty**

In 2009 the Protector of Citizens has ascertained in one case irregularities pertaining to the deprivation of liberty of a citizen. The irregularity was caused by an erroneous interpretation of legal provisions on cooperation between military and civilian services when depriving citizens of liberty and performing policing authorities. A recommendation was given to the competent authority which was accepted and implemented.

### **Filing Criminal Charges**

The Protector of Citizens has filed criminal charges against several persons from the “Crna Reka Orthodox Missionary Spiritual and Rehabilitation Center” for illegal deprivation of liberty, infliction of aggravated bodily injuries, quackery and quack-pharmacy.

Following this event the Protector of Citizens stated that “no one in the Republic of Serbia is entitled to deprive any person of his/her liberty and hold a person in detention outside of the legally prescribed procedure and decision of a competent authority, nor is anyone entitled to commit an act of violence against another person irrespective of whether he/she thinks that by doing so he/she is performing a good deed. Neither does a possible previous consent of the person exposed to violence which has deeply shocked and disturbed the citizens of Serbia, nor the consent of the parents of these individuals, constitute the permission for such brutality. In particular, there can be no mention of treatment - something brutal beatings have nothing in common with.”

Deputy Protector of Citizens Miloš Janković was in charge of the Protector of Citizens' activities in the area of rights protection of persons deprived of liberty.

## THE RIGHT TO FAIR TRIAL AND RIGHT TO LEGAL AID

In 2009 a large number of citizens complained to the Protector of Citizens of slow and unfair trials, even when they knew that the Constitution excludes any possible control of the Ombudsman over the courts, perhaps wishing to voice their concerns and problems to an institution.

Citizens mostly complained of the length of court proceedings, frequently postponed hearings, failure of judges to appear at the trial, irregular serving of summons and documents, untimely decisions writing and not taking decisions on legal remedies. Proceedings, as is often the case, last for ten or more years and justice too late

is no justice at all. Weaknesses in exercising these rights lead to deterioration of almost all other rights of citizens which cannot receive effective protection in court any more. In many cases the citizen's decision to turn to court so as to the protect or exercise his/her right paradoxically becomes a reason or rather a prelude to a new violation of rights – even in cases when a citizen is able to reach the stage at which a final ruling is passed, there is a high probability that there and then he/she would have to embark on yet another long and lugubrious voyage to have that verdict effectuated, i.e. to exercise his/her rights that have been confirmed by the court.

One of the problems is insufficient access to legal aid, since many citizens cannot afford an attorney and the municipality legal aid services pose rigorous eligibility criteria for their services.

In complaints regarding the operation of courts, the Protector of Citizens advises complainants to appeal to the President of the competent court and to the Ministry of Justice in accordance with regulations governing the system of courts. In cases of violation of right to trial within reasonable time, the citizens were informed of an option to appeal to the Constitutional Court by filing a constitutional appeal which can be filed, in cases of the violation of this right, even though not all legal remedies have been exhausted.

*Example: Complainant was dissatisfied with actions taken by the Commercial Court where court proceedings were not finalized even after 17 years.*

*It is expected that the reform, which peaked in 2009 including the discharge and appointment of judges and prosecutors, will result in tackling accumulated problems. The process of discharging and appointing judges and prosecutors did not go down without disputing appointments and claiming the violation of rights of candidates who were not elected. The outcome of those complaints, out of which some were filed with the Protector of Citizens, remained unknown until the end of the reporting period.*

## **Rehabilitation and Compensation of Damages**

In 2009 the difficulties regarding practical restitution of property and other rights following court rulings on rehabilitation were not eliminated. No progress has been made in numerous proceedings the Protector of Citizens was pursuing during 2008 upon complaints filed by rehabilitated persons or their heirs.

The right of a citizen to compensation of material and non-material damages caused by a state authority, entity with public authority, autonomous province authority or local self-government authority either through illegal or irregular operation, is not widely spread in practice. This right is exercised in practice only through court proceedings. The Protector of Citizens feels that the administration authorities should, even without court proceedings, once they have ascertained that through incorrect actions they have caused injury to a citizen or when this is established by a competent authority – among others by the Protector of Citizens, attempt to reach an agreement with the injured party on the amount of payable damages and effectuate the payment thereof. The damages should be paid by one or more employees who have disguised the omission unless in those cases where there is no subjective responsibility on their behalf. Instructing the injured citizens to seek, pursuant to the law, compensation for damages directly from the employee of the administration authority who caused the damages should be more of an exception than a rule, since it fails to foster accountability for law-abiding and regular work and activities of the administration authorities. The “revival” of this right would contribute considerably to the necessary yet lacking accountability of the administration authorities when dealing with the citizens.

### **The Right to Citizenship**

Problems with the exercise of right to citizenship have been noted, primarily in respect of the duration of proceedings (more on this topic can be found in the “good governance” section) and with citizens “with an element of foreignness” in former Yugoslav republics.

### **Privacy of Letters and Other Means of Communication**

The Protector of Citizens feels that there is a discrepancy between a constitutional provision governing the privacy of letters and other means of communication i.e. the manner in which the Constitution prescribes abrogation thereof (based on a court decision) and provisions of the law governing the operation of security services and the police.

Namely, some elements of the communication process between people are not considered by these laws as parts of communication thus decision of the court is not required when gaining insight into these elements of communication. The Protector of Citizens’ view, based on the practice of the European Court of Human Rights, is that

the information on with whom, when and where a citizen communicates is indeed protected by the rules on communication privacy hence in order to gain insight into this information it would be necessary to previously obtain, pursuant to the Constitution, the decision of the court.

### **Personal Data Protection**

In 2009 the new Law on Personal Data Protection came into force regulating the area of personal data protection. The Protector of Citizens was successful in having its amendments to the text of the law accepted. The previous law was not implemented. The implementation of the new law will largely depend on whether the envisaged by-laws necessary for the implementation of this law will be passed (the time period envisaged by the law had expired at the time when this report was written) and whether the state authority primarily tasked with monitoring the implementation of personal data protection, namely the Commissioner for Information of Public Importance and Personal Data Protection, will be provided with sufficient personnel and financial resources enabling its discharge of duties, obligations and activities in this neglected, but currently increasingly significant area of individual human rights.

### **FREEDOM OF THOUGHT, CONSCIENCE AND RELIGIOUS DENOMINATION, CHURCH AND RELIGIOUS COMMUNITY, CONSCIENTIOUS OBJECTION, FREEDOM OF THOUGHT AND EXPRESSION, PROHIBITION OF INSTIGATION OF RACIAL, NATIONAL AND RELIGIOUS HATERED**

Insufficient level of transparency and consistency in the registration process of churches and religious communities with the Ministry of Religions, is the main obstacle for certain minority religious groups in the Republic of Serbia in exercising their rights.

Following an international expert meeting on exercising religious freedoms and rights coupled with a comprehensive analysis of international and national regulations and practice, and prompted by information from several complaints regarding the registration process with the Ministry of Religion, the Protector of Citizens has sent an official opinion with a list of recommendations to the Ministry of Religion aimed at improving the exercise of religious rights and freedoms in the Republic of Serbia. The recommendations include amendments to the Law on Churches and Religious Communities aimed at bringing it in line with the Constitutional formulations, avoiding

difficulties and disputes caused by its implementation to date; contributing to a more efficient and correct exercise of religious rights, strengthening the legal standing of churches and religious communities and promoting legal security. This is in particular true of Articles 6 (autonomy of churches and religious communities); 7 (autonomous regulations of churches and religious communities); 8 paragraph 5 (the rights of priests to participate in public life); 16 (denominational community); 18 (religious organizations registration procedure); 19 (names of religious organizations); 20 paragraphs 3 and 4 (dealing with applications for entry into the Registry); 22 (striking off the Register).

Amendments to the Rulebook on Churches and Religious Communities Register Content and Maintenance (“Official Gazette of the Republic of Serbia”, No. 43/2006) whose certain provisions present an obstacle to a legal and efficient exercise of rights by churches and religious communities in the process of registration and are not conducive to strengthening the legal position of churches and religious communities as enshrined in the Constitution of the Republic of Serbia and the Law on Churches and Religious Communities, have been recommended.

Recommendations also refer to the improvement of actions in sense of consistency and equal treatment of everyone in the same legal situation; interpretation of regulations in such a way as for them to have stimulating rather than restrictive effect to the exercise of freedom of religion and adherence to administrative procedure principles. Posting information about churches and religious communities on the web site of the Ministry of Religion has been requested (including their organizational branches and institutions with the status of a legal person) which have been registered with the Register of Churches and Religious Communities for the purpose of a more efficient rights exercise and protection of all interested churches, religious communities and citizens.

Out of everything that was proposed and suggested, until the end of the reporting period the Ministry has only posted on its website the information about registered churches and religious communities.

**The right to conscientious objection** is respected in practice. The Law on Civilian Service has been adopted. The provisions of this law introduce conditions for recognizing the right to conscientious objection despite the fact that the constitutional provision on the right to conscientious objection is unconditional. The provision of this law which excludes the possibility of granting approval for civilian military service to a citizen who has been irrevocably convicted of (any kind) crime prosecuted ex officio is

questionable, even more so is the provision prohibiting a citizen under criminal proceeding for a crime prosecuted ex officio, from being granted approval for civilian military service.

A citizen has filed a complaint against the operation of a state authority where he was serving civilian military service, stating that it was humiliating for him to run private errands for employees, something that was required of him. In his complaint the complainant identified those employees who gave him unfair and degrading orders and with it he submitted copies of documents clearly indicating that he had been engaged in running private errands for certain individuals.

The Protector of Citizens established that there had been a violation of the citizen's rights and sent an appropriate recommendation to the managing director of the state authority. Acting on the recommendation, the managing director warned in writing all organizational units in which persons serving civilian military service were engaged, of the responsibility of consistent implementation of regulations governing civilian service as well as of the prohibition of violation of respect of the dignity and personal integrity of a person serving civilian military service in any way, including giving orders to perform activities which are not in keeping with the purpose of civilian military service.

An apology to the complainant could not be issued, which is common practice when giving recommendations following the establishment of violation of the right to respect of the person's dignity, since the Protector of Citizens has protected the complainant's identity from the state authority.

**Freedom of thought and expression was respected.** The Protector of Citizens feels and has publicly said so that certain formal and informal groups and organizations have abused the freedom of thought and expression at the expense of the rights of others and the morale of a democratic society (Constitutional formulations) in such a way which requires limitations.

The overall impression and assessment of the Protector of Citizens is that **occasional violations of the prohibition to instigate racial, national and religious hatred** in certain cases have not been suppressed and processed sufficiently and decisively enough.

## FREEDOM OF PRESS, RIGHT TO INFORMATION

The media in the Republic of Serbia operate freely but with certain risks. Journalists were occasionally targeted and threatened especially by ultra nationalistic and aggressive groups of sports fans. The reaction of the police and the prosecutor's office is becoming increasingly efficient.

The amendments to the Law on Information have been widely assessed as being potentially dangerous to the freedom of media and contentious in respect of their constitutionality. At the initiative of journalists' associations, the Protector of Citizens launched before the Constitutional Court the constitutionality assessment procedure of certain provisions of the Law on the Amendments of the Law on Information. The Constitutional Court has not ruled on this matter until the end of the reporting period. Before launching the constitutionality assessment procedure, the Protector of Citizens had asked for and received the opinion of prominent national experts on this particular matter.

A positive effect of the amendments to the Law on Information is that the presumption of innocence is respected more in the media than before, the interests of minors are protected, the right to corrections and other rights of persons being reported on are respected. In certain media outlets hate speech and inciting discrimination still prevail.

The inconsistency of the law halted the media privatization process resulting in a privileged status of some media outlets.

**The right to access to data in possession of state authorities and organizations entrusted with public authority** is still difficult to exercise in certain situations, despite efforts exerted by the Commissioner for Information of Public Importance and Personal Data Protection and the outputs achieved by this authority which surpass objective institutional resources many times over. In seven cases citizens and Commissioner have contacted the Protector of Citizens asking the Ombudsman to exert influence on the administration authorities to effectuate the final and binding decision of the Commissioner. The amendments to the law have enabled the shifting of authority for the initiation of proceedings for the violation of the Law on Accessibility of Information of Public Importance from the Ministry of Culture, which was utterly inactive in this respect in the previous period, to the Ministry of State Administration and Local Self-government.

Out of the total number of seven cases (6 launched upon complaints and 1 launched upon its own initiative) related to the violation of right to access to information of public importance, in three cases recommendations were sent to the administration authorities or institutions. In these cases the administration authorities which failed to act both upon the request of the complainant and the official decision of the Commissioner, have neither notified the complainant nor the Commissioner during the first instance and the second instance proceedings on the reasons for failing to act, while at the same time they have not utilized law prescribed option to invoke the reasons for exclusion and limitation of right to free access to information of public importance, but rather chose to state their reasons for failure to act during the proceedings before the Protector of Citizens.

*Example: Association of Journalists has filed a complaint against the operation of the Ministry of Internal Affairs – Police Department, for failure to act on a request for free access to information of public importance and on the official decision of the Commissioner for Information of Public Importance and Personal Data Protection.*

*The Protector of Citizens launched a control procedure and following the explanation of the Police Department concluded that the Police Department indeed had not acted on the request for free access to information of public importance nor on the official decision of the Commissioner regarding that matter. The Protector of Citizens has established the violation of the right to free access to information of public importance and issued a recommendation to the Ministry of Internal Affairs – Police Department, to act immediately on the instruction contained in the official decision of the Commissioner. The Police Department informed the Protector of Citizens in the due time that it had acted on the recommendation.*

## ELECTION RIGHT, RIGHT TO PARTICIPATION IN THE PUBLIC AFFAIRS ADMINISTRATION

The Protector of Citizens received no complaints regarding the violation of election rights. In some areas (health care, local self-government) the right of citizens to be treated equally when joining the public service is difficult to exercise, since these areas are, for whatever reason, completely exempt from the general rule applicable to the entire public sector that permanent employment can be obtained only through publicly announced competition for a job vacancy.

## THE FREEDOM OF ASSEMBLY, FREEDOM OF ASSOCIATION

**The freedom of assembly** is generally speaking respected and provided for. The most notable failure in this respect is the inability of state authorities to enable a safe “Pride Parade” – more on this can be found in the section on rights of sexual minorities.

At the same time, the internal affairs bodies have begun and correctly so, to prohibit and prevent the assembly of persons who violate the rights of other persons through violence and support of violence.

**The freedom of association** is respected. Finally, a stimulative Law on Association has been passed. In Protector of Citizens’ view certain organizations and groups have abused the freedom of association for the purpose of violating guaranteed human or minority rights and instigating hatred. The public prosecutor submitted an official proposal to the Constitutional Court to ban such groups. In public and at an expert meeting organized by the Constitutional Court, the Protector of Citizens supported the ban on such organizations and groups.

Trade-union related association has not been obstructed by the state. Following the adoption of new regulations in the area of defense and the intervention of the Protector of Citizens, the professional members of the military have been allowed to engage in trade-union related associations and trade unions in this area are beginning to blossom.

## **RIGHT TO PETITION / INITIATIVE BY THE PEOPLE**

**The right to petition** has not been denied to citizens but in certain cases they failed to receive a response although they had asked for it. In such cases citizens applied to the Protector of Citizens and following its intervention the competent authorities proceeded to respond to the petition.

The Protector of Citizens acted upon a complaint in one case when 72,000 citizens signed a petition on 7 December 2007 thus supporting the adoption of two laws – the Law on Information Classification and the Law on Amendments to the Law on Free Access to Information of Public Importance. After that however, the **people’s initiative** dropped off the radar.

In cooperation with the expert services of the National Assembly and the Ministry of Internal Affairs, the Protector of Citizens has established that the initiative was lost in the meanderings of administrative procedure between the Ministry and the National Assembly. On 10 December 2007 the National Assembly forwarded the list with

signatures to the Information Service of the Ministry of Internal Affairs for verification and the Ministry from its side requested that the National Assembly translate the unique personal identification numbers of signatories into electronic form. This initiative was not pursued any further and the new management of the authority was unaware that 72,000 signatures of citizens were awaiting clearance report.

Following the intervention of the Protector of Citizens, the Ministry informed the Ombudsman that regardless of the fact that unique personal identification numbers have not been digitalized, they have started with the authenticity verification procedure which will create conditions for the procedure before the National Assembly to commence.

In view of the fact that in the meantime the Law on Personal Data Protection has become effective and that it requires strict legal basis in order for the personal data to be processed, the Protector of Citizens has instructed the Ministry to cooperate with the Commissioner for Information of Public Importance and Personal Data Protection so as to ensure full protection of rights of citizens signatories of the initiative. At the same time this is an example of the lack of effective cooperation between the administrations of two state authorities to the detriment of the rights of citizens, which was established owing to the intervention of the Protector of Citizens.

## **RIGHT TO ASYLUM**

The Protector of Citizens had no basis to take action for the protection of this right, neither upon complaints nor on its own initiative.

## **RIGHT TO PROPERTY, RIGHT TO INHERITANCE**

The Law on Restitution has not yet been adopted. At the same time, the Law on Restitution of Property to Churches and Religious Communities continues to be enforced, which presents an additional discrimination towards citizens as compared to churches and religious communities in respect of protection and exercise of property rights. Property has been restituted to some families for utilization.

The implementation of the new Law on Planning and Construction could additionally complicate property restitution in-kind to previous owners.

The Protector of Citizens has noted from received complaints that in a significant number of municipalities throughout Serbia the **commissions tasked with pursuing activities and ruling on requests for the restitution of land** which has been converted into socially owned property on the basis of agricultural land fund and on the basis of confiscation resulting from non-compliance with the mandatory purchase of agricultural products, were not operational.

For the purpose of overcoming problems many citizens face, eliminating regulations inconsistencies and enabling legal and orderly work and activities of the commissions, the Protector of Citizens has initiated a meeting between representatives of Ministry for State Administration and Local Self-government, Ministry of Justice, Ministry of Agriculture, Forestry and Water Management, Ministry of Finance and Protector of Citizens. It was agreed that the Ministry of Finance and the Ministry of Justice would establish an expert team which would, with the support from the Ministry of Agriculture, Forestry and Water Management, propose adequate amendments to the Law on the Manner and Conditions for Recognizing the Right and Restitution of Land Which Has Been Converted into Social Property on the Basis of Agricultural Land Fund and on the Basis of Confiscation Resulting from Non-compliance with the Mandatory Purchase of Agricultural Products.

There were no basis for the engagement and involvement of the Protector of Citizens in the protection of rights to inheritance.

## RIGHT TO WORK, RIGHT TO STRIKE

The problems related to the exercise of rights in the area of labor relations and actions of the Protector of Citizens have been elaborated in the introduction of the Report as issues of particular importance.

Complaints stating **violations of right resulting from employment** in most cases deal with actions of private employers whose operation is not subject to control of the Protector of Citizens. Whereas the regulations governing employment envisage protection procedures which must be finalized prior to filing a complaint to the Protector of Citizens, most of these complaints are rejected and complainant is instructed to contact the Ministry of Labor and Social Policy – Labor Inspection or the Ministry for State Administration and Local Self-government or Administrative Inspection when dealing with the violation of rights of employees working in the state administration. Frequently these complaints refer to the existence of mobbing in which

case citizens are instructed to seek protection of their rights through court proceedings pursuant to provisions of the Law on Labor and Law on Prohibition of Discrimination. Based on direct contacts with citizens and complaints received on daily basis in 2009 for illegal and irregular actions of employers towards employees and insufficiently effective mechanisms for the prevention of such conduct, the Protector of Citizens has initiated closer cooperation with the Labor Inspection of the Ministry of Labor and Social Policy.

## **Child Rights**

### **Actions of the Protector of Citizens upon Complaints in the Area of Child Rights**

#### **Complaints**

In 2009 the Protector of Citizens has received 146 complaints related to the violation of child rights while in another 12 cases it has launched proceedings at its own initiative. Apart from undertaking action in the previously mentioned 158 cases, the Protector of Citizens has continued to pursue actions in additional 58 complaints dating back to 2008. In total, during 2009 the Protector of Citizens has undertaken actions in 216 cases related to child rights violation.

The majority of submitted complaints were filed by adults on behalf of children – parents, family members, foster parents, potential adoptive parents, schools but also non-governmental organizations and sports clubs. Other state authorities have submitted to the Protector of Citizens information relevant to the protection of child rights – Commissioner for Information of Public Importance and Personal Data Protection, Provincial Ombudsman and Municipality or City Protectors of Citizens. The children themselves turned to the Protector of Citizens very rarely, only in four cases.

Procedures related to child rights which were launched at the initiative of the Protector of Citizens (12) pertain to multiple child rights violations and various irregularities and omission in the operation of many different authorities.

#### **Violation of Rights Stated in Complaints**

Complaints related to child rights violations mainly pertain to the violation of right to the respect of best interests of the child (92). During the course of procedure the

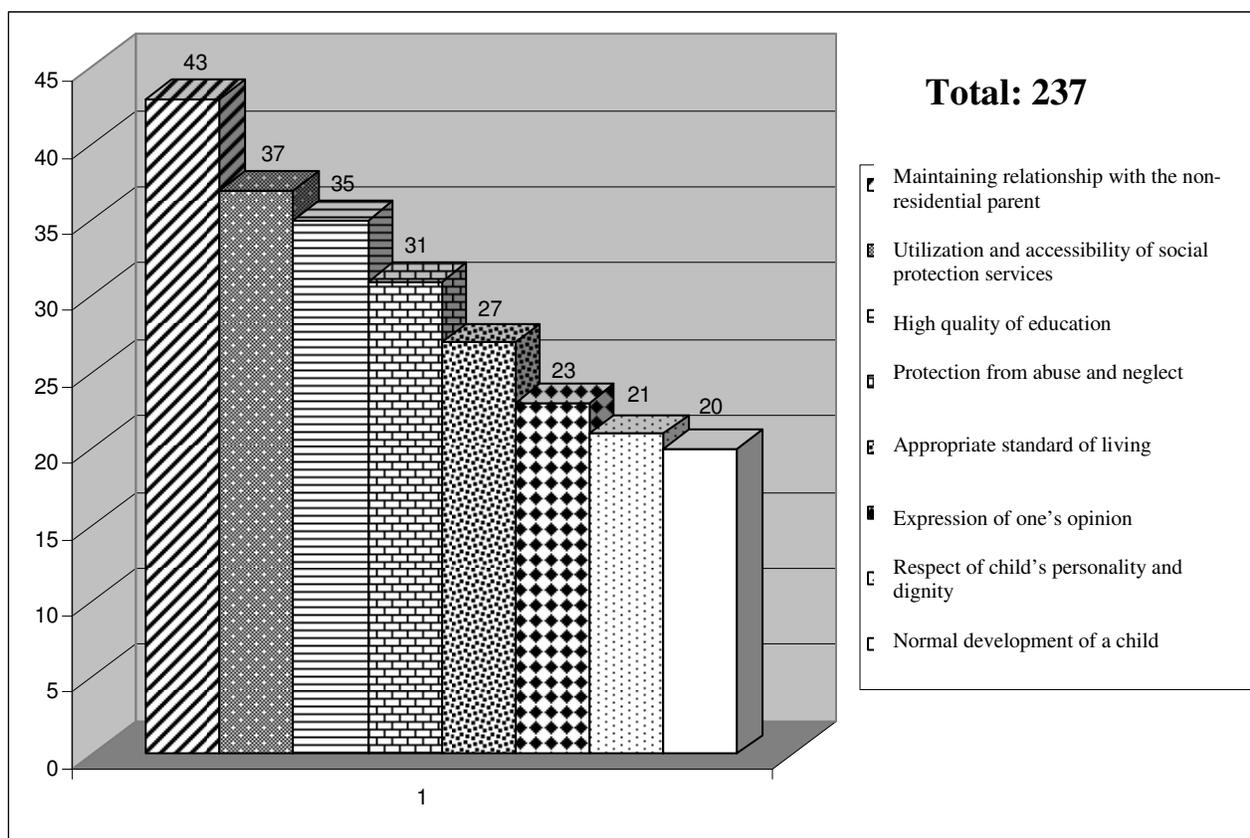
Protector of Citizens has indicated to the administration authorities that the principle of the best interests of the child should be integrated into their legal and administrative documents but also into the services they offer to children. Indirectly, through the opinion of the social welfare center, this also referred to other legal and administrative documents, for example to court decisions.

Complaints filed by citizens or legal persons mainly pertain to the violation of the following rights or freedoms: the right of a child to maintain relationship with the non-residential parent (43), the right of child to utilization and accessibility of social protection services (37), right to high quality of education (35), right of child to protection from abuse and neglect (31), right of child to an appropriate standard of living (27), the right of child to expression of opinion (23), right to the respect of child's personality and dignity (21), right of child to normal development (20). (See Chart 9).

A smaller portion of these complaints refer to the violation of following rights and freedoms: the breach of obligation of the state to extend assistance to parents in parenting (19), right of child with developmental difficulties to quality life and special protection of the state (16), right to life with parents (13), right to the protection from discrimination (8), rights of child on adoption (6), right of child to its own identity (6), right to health care and protection (6), right of a child living in foster family or social welfare institution to maintain personal relations with the family of origin and persons close to him/her (6), right of child to protection from parental abduction (6), right to healthy environment (5), right of child to information (4), right to privacy (3), right to protection from child trafficking (3), etc.

Taking into consideration the fact that certain complaints state multiple rights violations, hence the total number of violated rights is greater than the number of complaints received.

### **Chart 9. - Typical Rights Violations Claimed in Complaints Pertaining to Child Rights**

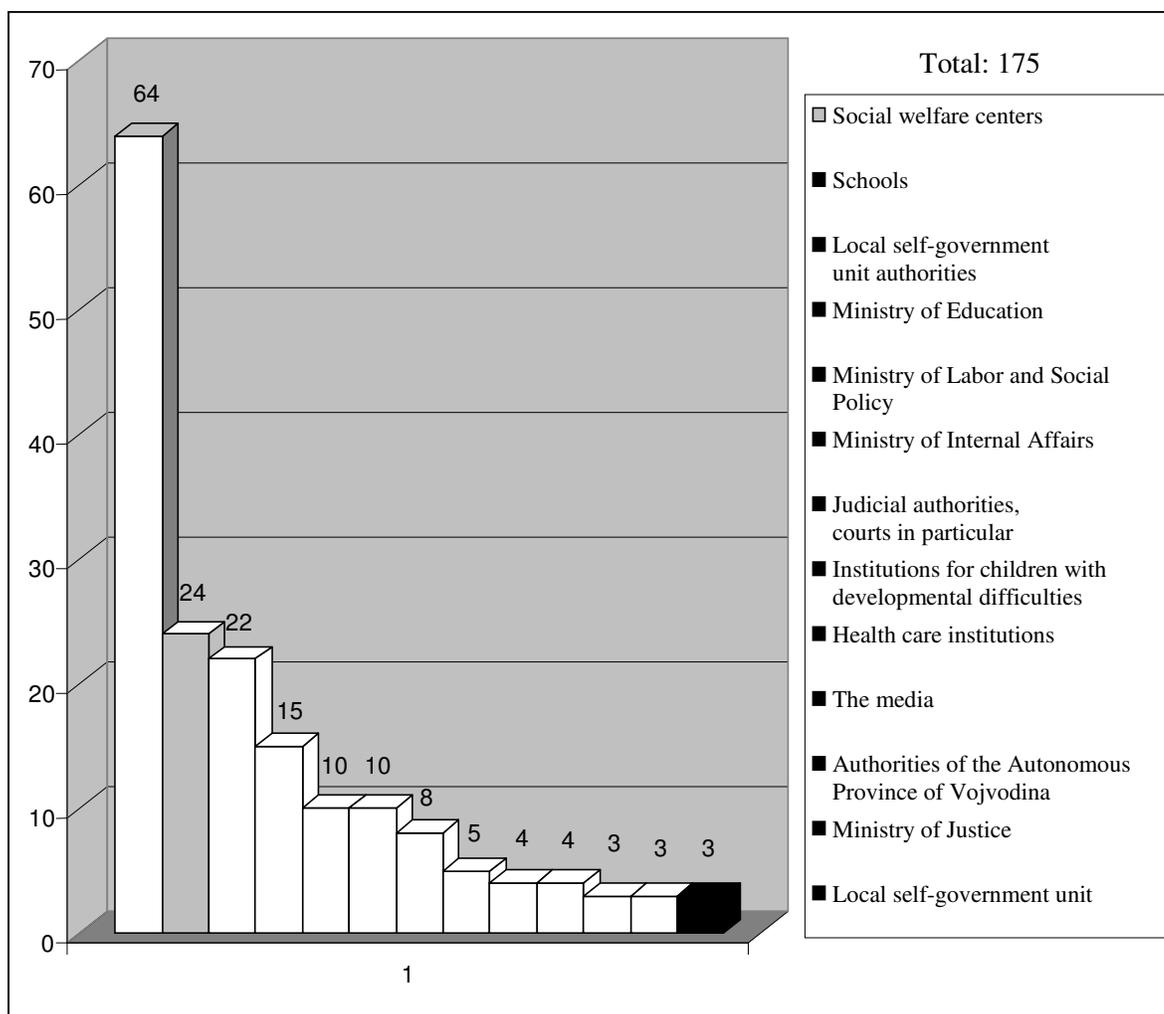


### Authorities against Which the Complaints Were Filed

The majority of complaints pertain to the following administration authorities and institutions: social welfare centers (64), schools (24), local self-government units (22), Ministry of Education (15), Ministry of Labor and Social Policy (10), Ministry of Internal Affairs (10), judicial authorities, primarily courts (8), institutions for children with developmental difficulties (5), health care institutions (4), the media (4), authorities of the Autonomous Province of Vojvodina (3), Ministry of Justice (3), public enterprises founded by the Republic of Serbia or local self-government unit (3). (See Chart 10).

Bearing in mind that certain complaints pertain to violation of rights by more than one authority, thus the total number of authorities against which complaints have been filed is higher than the number of complaints received.

**Chart 10. - Authorities against Which the Complaints Regarding Child Rights Violations Were Filed**

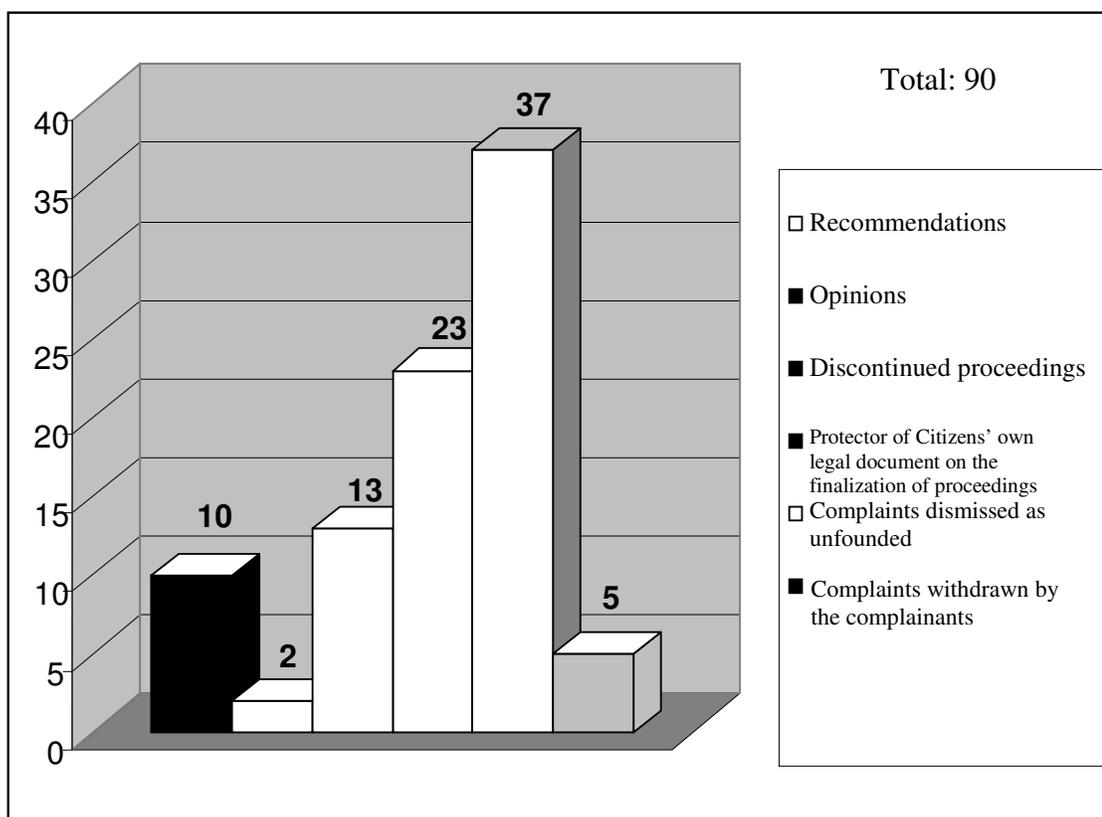


### **Finalized Activities of the Protector of Citizens upon Complaints in Respect of Child Rights**

In the activities undertaken upon 216 complaints pertaining to the area of child rights during 2009, the Protector of Citizens has finalized its activities in 74 such cases launched during 2009 and in 46 such cases launched in 2008. The activities in the abovementioned 120 cases have been finalized with 30 complaints being rejected as unfounded, while the remaining 90 proceedings were finalized with a recommendation

(10), an opinion (2), discontinued proceedings (13), its own legal document on the finalization of proceeding (23), complaints dismissed as unfounded (37) and complaints withdrawn by the complainant (5). (See Chart 11). The Protector of Citizens is currently working on the remaining cases.

**Chart 11. - Finalized Activities of the Protector of Citizens upon Complaints in Respect of Child Rights**



### Recommendations Regarding Child Rights

In 2009 the Protector of Citizens has issued 10 recommendations pertaining to child rights. Two recommendations were issued to the Ministry of Labor and Social Policy regarding the need to inform in detail institutions dealing with social protection on the scope of competence and authority of the Protector of Citizens and the necessity to make the appropriate alterations in the method of operation, extension of care and services to clients in “Stamnica” and two more recommendations were issued to the City of Belgrade Municipality Administration – Social Welfare Secretariat. Both

recommendations pertain to the exercise of the right of child to adequate standard of living specifically granting the right to child benefit and granting the right to one-time monetary assistance to unemployed parturient women. Five recommendations were issued to social welfare centers in Šabac, Belgrade (2), Niš and Bački Petrovac. Certain deficiencies were established in the operation of the social welfare centers leading to the violation of child rights. One recommendation was issued to a primary school in Pančevo for a detected operational deficiency and violation of students' right to the respect of their personality and dignity and the right to quality education.

### **Opinions in the Area of Child Rights**

In the field of child rights, the Protector of Citizens has issued two opinions (regarding the Kids Help Line and violence in "Nikola Tesla" Secondary Technical School in Sremska Mitrovica).

**Kids Help Line.** The Protector of Citizens has communicated its Official Opinion to the Ministry of Labor and Social Policy that the Kids Help Line services should receive stable funding. The Protector of Citizens has in particular been supportive of the idea to have this toll-free number (0800/123 456) sustainable in the upcoming period i.e. to have this service integrated into the social welfare and protection system and have it become a system supported service offered by the state to children. A large number of children, approximately 8,000 annually, contact specially trained experts proficient in psychology when they encounter a problem they cannot deal with on their own. The Protector of Citizens feels that this Kids Help Line needs to be accessible to children living in rural areas, those living on the street, disabled children, Roma children, children victims of domestic violence and other vulnerable groups of children.

Although the Ministry of Labor and Social Policy has not responded to this Official Opinion to date, the Protector of Citizens expects that the new Law on Social Protection will recognize this service as one which needs to be financed from the budget. At the same time, the Protector of Citizens has sent an initiative to the Serbian Broadcasting Corporation, as a public broadcasting service and as such having particular responsibility in promoting human and child rights, recommending that a video clip about the Kids Help Line should be broadcasted free-of-charge within its educational program, thus letting children in Serbia know that when they encounter a problem which may seem to them as insurmountable, they can always call the Kids Help Line telephone number and receive advice from experts. **Soon afterwards the**

## **Serbian Broadcasting Corporation reacted affirmatively to this initiative launched by the Protector of Citizens.**

Regarding the case of **violence in “Nikola Tesla” Secondary Technical School in Sremska Mitrovica** which was the media’s hobby horse for a while and which was revealed owing to the media – the Internet, the Protector of Citizens issued an Official Opinion and sent it to the Ministry of Education. The opinion stresses the need for the school to proactively work on establishing cooperation with other competent authorities and institutions at the local level. Likewise, the Protector of Citizens suggested to the Ministry to supervise the establishment of the Team for the Prevention of Violence and Protection of Children from violence, abuse and neglect in the abovementioned school.

## **Supervision**

In 2009 the Protector of Citizens performed 89 direct supervisions over the work and activities of authorities/bodies, while acting upon complaints in 49 cases, which means that in certain particularly complex cases the Protector of Citizens, has performed two or more supervisions. The supervisions were mainly arranged in advance while sometimes only time was specified without giving reasons for the visit. The Protector of Citizens used its authority to perform control visits only in exceptional situations. In majority of cases supervision visits ensued following the initiation of the operation regularity and legality control procedure. In certain number of cases the supervision itself was the beginning of the control procedure. In five cases, the information that became available to the Protector of Citizens through direct supervision, constituted the basis for issuing a recommendation. In 11 cases the supervision activities resulted in elimination of deficiencies in the operations of authorities/bodies and consequently the proceedings were discontinued.

## **Interventions**

A particular course of actions taken by the Protector of Citizens in the area of child rights are the interventions – **mediation, preemptive actions, extending good services, offering advice and opinions on a particular case**. This mode of operation which is of a less formal nature has yielded good results to date. By adopting this approach 23 cases were finalized in 2009, which is almost 20% of the total number of 120 cases which were finalized. There are different methods of work to this approach: telephone contacts with the authorities and the complainants; forwarding short and

brief documents to the administration authorities; direct contact between the representatives of the authorities and complainants, etc. In these situations certain information of importance for the operation of the Protector of Citizens were requested from the authorities or the authority was instructed to undertake certain activities or measures.

The particularity of intervention by the Protector of Citizens in the area of child rights violation is also reflected in a kind of “monitoring” of the child whose rights the Protector of Citizens was striving to protect. For example, the case of violence in the “Nikola Tesla” secondary school – once the dust had settled the Protector of Citizens “intervened” to have that particular student transferred to another school at the beginning of the new academic year guided by the principle that a child needs support of adults and the system and that a society cannot afford to just to “give up” on any of its members. Furthermore, visit organized by the Protector of Citizens to the Home for Children and Youth “Kolevka” (“*Cradle*”) in Subotica and at the same time control of the local social welfare center, have resulted in developing a protection plan for two children who were placed in “Kolevka” by the competent center, but also in considerable changes in the organization of the home for children and youth – by accommodating children in two smaller rooms instead of one large room so as to enable a closer contact between children and caretakers.

Due to the vulnerability of children, direct supervision is very effective since it quickly leads to the elimination of deficiencies and termination of child rights violation. Therefore, direct monitoring and interventions are used by the Protector of Citizens mainly in the area of child rights. This creates a stronger presence of the Protector of Citizens in all environments where there is a higher potential for child rights violations.

### **Detected Deficiencies in the Operations of Administration Authorities in the Area of Child Rights**

**Social welfare centers** (which the greatest number of complaints refer to) have in several cases organized protection of children in a haphazard way (without the necessary plans). When organizing protection, centers tend to limit themselves to the role of an “auxiliary body” to courts, neglecting their authority beyond and during the court proceedings. Families are not monitored continuously not even in those cases when the family is assessed as posing risk to the child. The measures which are available to the guardianship authority are not implemented or are implemented after a

prolonged period of time when the child has already been exposed to negative effects (which could have been either avoided or at least mitigated).

**Participation of children in procedures before social welfare centers is often sporadic** and in most cases reduced to formal actions taken (taking a statement from the child). Children rarely participate in services plan preparation and in planning activities which have impact on their life and its organization. Child participation in the procedure is not adequately regulated by an appropriate protocol.

In addition, the social welfare centers **do not maintain a sufficient level of cooperation with other authorities and institutions** in the local community which is directly a result of the lack of a multidisciplinary approach to problems children face – both at the level of the Republic (competent ministries) and at the level of local communities. Examples of good practice between social welfare centers and other institutions are quite rare but are highly effective and yield positive results and efficient and remarkable solutions. There were no examples so far of protocols developed on cooperation between social welfare centers and other institutions and authorities at municipality/city level.

**Lack of cooperation initiative** is visible not only with the social welfare centers but with other authorities and institutions dealing with children (schools, police stations, health care institutions, courts, prosecutor's office). Consequently, education institutions and administration authorities supervising their operation are not cooperating with social welfare centers nor do they notify them of relevant facts which would cause centers to become involved in the protection of children. This pertains to cases when a child ceases to attend school, when peer violence occurs and in cases when it becomes obvious that a child is a victim of abuse or neglect, etc. **Exception to this practice is the standard cooperation between the Ministry of Internal Affairs and social welfare centers when working to protect children from abuse and neglect.**

Regarding **implementation of court rulings related to handing over a child and maintaining personal relationship between a child and parent**, all authorities and institutions which are or should be involved in resolving the issue, appear to be disinterested. Typically, in those cases there is no cooperation between the police, social welfare centers, schools/preschool institutions, health institutions, courts and prosecutor's office and these authorities and institutions usually do not communicate information to each other on important facts related to the exercise of child rights. The

best interest of a child, as a guiding principle for all state authorities, is unfortunately reduced only to lip service in these cases (which, as it happens, are of the highest level of urgency).

**Internal control of operation is not conducted in authorities and institutions.** This is in particular glaring in schools and social welfare centers. Managing directors of institutions who are authorized to launch appropriate procedures against employees for violation of work duties, refrain or withdraw from initiating these procedures. By the time a complaint has reached the Protector of Citizens, the statute of limitation for initiating a disciplinary or similar procedure has come into effect while the employee who had violated a child's right through malpractice is not held responsible for acting or failing to act.

**Supervision of operations** of social welfare institutions is conducted only upon applications filed by citizens (i.e. following the notification sent by the Protector of Citizens about a certain case). Direct supervision of social welfare protection institution is not carried out. The competent Ministry of Labor and Social Policy does not monitor the implementation of the ordered measures and does not undertake activities aimed at fully implementing the measures imposed during the supervision.

The supervision of education institutions is done in such a way that it questions the impartiality and comprehensiveness of that procedure. Applicants do not participate in the procedure nor is the written protocol on the performed supervision submitted to them. The communication between the applicant and the inspection service is reduced to the exchange of two documents – application filed by an applicant and formal notification of the administration authority. Participation of a child in this procedure is virtually non-existent. The Ministry of Education is not efficient and prompt enough in its activities upon requests for the protection of student rights. The inefficiency of the Ministry is not conducive to solving the problem (which in most cases had escalated in the meantime) and in many cases the problem is “dealt with” by transferring the student from one school and enrolling him/her into another. The requests for the protection of rights sent to the Protector of Citizens mainly pertain to aggravated violations of students' rights: discrimination, violence, injury to person and dignity, hindering student's education, etc.

**Student right protection mechanisms in schools** are rarely applied. Students are reluctant to approach the school principle for the protection of their rights even though these rights are often and in many ways violated by the conduct of their peers or

members of the school staff. Parents of students are usually the ones to contact the school principal, but there is trend of rejecting these complaints or not even deciding on them. Complete and impartial fact finding procedures are not carried out thus missing out on an opportunity to rectify the deficiency and eliminate the child rights violations. Psychologists and pedagogues working in schools usually act as a “last defense” of the school principal and teachers against students instead of acting as a support network to children experiencing problems.

The existing regulations neither regulate precisely the **rights of children with developmental difficulties and those with disability** nor the responsibilities of the state. The state has no reliable statistics on children with developmental difficulties and children with disabilities, a precondition for planning activities and services at the level of the Republic and the local community, which in turn causes a lack of services offered to this vulnerable group of children. In addition, administration authorities and institutions are not sufficiently guided by the best-interest-of-the-child principle when deciding on their rights – in situations where it is possible to make a decision in favor of a child by being more flexible (more yielding) in interpreting regulations, the administration authorities and institutions refrain from using this window of opportunity. Cross-sector cooperation at the level of the Republic and the local level is marginal.

The lack of assistance and support of the state to **abused and neglected children** aimed at eliminating abuse and neglect and removing/mitigating the effects of abuse/neglect is especially glaring. Despite the General Protocol and Special Protocols for the protection of children against abuse and neglect, there is a lack of adequate reaction, mutual cooperation and reporting among all the institutions which should be involved in this process – law enforcement authorities, judicial authorities, educational institutions, social protection institutions, health care institutions.

## **Overview of Typical Activities in the Area of Child Rights**

### **Adoption of a Child from a Foster Family**

A citizen has applied to the Protector of Citizens stating that the social welfare center in a municipality had rejected his and his spouse’s request for adoption of a child who has been living with them as their foster child for the past four years. He stressed that contrary to the interest of the child, the Center has started the adoption procedure with another adoptive family from another city in Serbia and pointed out that he, his spouse

and the child were of the same ethnic background and that they have bought the child up in the spirit of that ethnic community and its religion.

At its own initiative, the Protector of Citizens has investigated further this case and discovered certain facts which the complainant had not volunteered but which give this case a completely different perspective. The operations regularity and legality control procedure of the Ministry of Labor and Social Policy, Provincial Secretariat for Social Policy and Demography as well as of the social welfare center in both cities was launched. Shortly thereafter a meeting with these institutions was organized aimed at directly monitoring their work and activities and finding a solution which would be in child's best interest.

At that meeting it surfaced that the citizen and his spouse have been trying to adopt the child but being unable to do that, they decided they would take the child in as foster parents. The foster mother became a direct caretaker.

However, as the guardianship authority, the social welfare center felt that it was in the child's best interest to be adopted. This information was communicated to the foster parents and they were invited to consider the possibility of adopting the child. It was indicated to them that as a foster family in whose care the child had been for some time, they may have advantage over other potential adoptive families.

Unexpectedly, the foster parents stated that they did not wish to adopt the child and that they opposed adoption per se due to child's poor health condition. Likewise, they stated that they wished to wait with the decision on adoption until child's eleventh birthday when the child's health prognosis would be clearer. Rightly so, the center felt that such decision of the foster parents was not in child's best interest and began with the adoption procedure ex officio. The foster mother acting in the capacity of a caretaker, gave her consent for adoption as a permanent form of child protection. The child was then entered in the Common Personal Adoption Register. During the one-year process the foster parents were told they could file a request for establishment of overall adoption eligibility and adoption application but they maintained the same position – that they wished to wait for the child to turn eleven at which point they would make a decision subject to child's health condition, because it would be only right for such a child to be in state's care!

Next, the center commenced with the selection process of an adoptive family and organized a string of meetings between the child and potential adoptive parents and after that sent the child for an adaptation period with the potential adoptive parents.

The Provincial Secretariat for Social Policy and Demography then changed its previous position (that there were sufficient conditions for a child to be sent to potential adoptive parents for a period of adaptation) and even quashed the decision of the Social Welfare Center twice and sent back the case for a new procedure accompanied by a proposal to establish the overall eligibility of the couple and instructed them to seek permission from the Minister of Labor and Social Policy to adopt the child (since the father was past the upper eligibility limit for adoption). The ethnic aspect was heavily stressed.

Having reviewed all the facts and circumstances, the Protector of Citizens had established no deficiencies in the operation of the Social Welfare Center to the detriment of the child when it decided that the child should remain in his/her new family which was treating the child with due parental love and care, that the foster parents did not have child's best interest at heart when they refused to adopt the child before his/her health condition prospects became clearer and that the ethnic factor was of far less significance than all other circumstances.

### **Exercising the Right to Education**

The Protector of Citizens had been informed about a child who, due to family problems - namely parents' messy divorce, had not passed the secondary school/gymnasium qualification exam despite having good academic record in primary school and other favorable objective characteristics, which led to the child's complete withdrawal.

By exercising mediating authority, the Protector of Citizens contacted the gymnasium principal, elaborated the problem and requested that the possibility of education of the child in the area he/she is most talented in be considered. Few days later the child contacted the Protector of Citizens saying he/she had been enrolled into the gymnasium and was overjoyed to be starting school the very next day.

### **Children with Disability**

A citizen filed several complaints on behalf of her disabled child regarding operation of the Ministry of Internal Affairs, "Putevi Srbije" ("Serbia Roads") Public Enterprise,

Serbia Mother and Child Health Care Institute and City of Belgrade Transportation Secretariat, indicating a number of problems her child faced in his/her every day life.

The heart of the complaint was the inability to obtain the official decision by the Retirement and Disability Fund on child's disability level for the purpose of exercising certain rights of a child with disability. By tackling certain red-tape problems regarding the authority of the institutions, the Protector of Citizens has made it possible for the citizen to obtain the written confirmation from the Social Welfare Center enabling the exercise of right of a child with disability, namely, parking spot within the Mother and Child Health Care Institute intended for the disabled and a reserved parking spot in front of the school the child attends on regular basis.

### **The Right to Inclusive Education**

Parents of a second grade primary school student filed a complaint for the violation of their child's right to education, stating that the child had continuously been subject to rejection and discrimination by the school administration.

At the same time, the parents were pressured to take their child from regular teaching activities, to have him/her undergo categorization and enroll the child into a special school.

When contacting the school administration, the Protector of Citizens found that the child's right to inclusive education has been violated in this particular case and requested that the child be given the right to education within regular school instruction. The school accepted the suggestions of the Protector of Citizens and soon afterwards the parents informed the Protector of Citizens that their child was successful in improving his/her grades in school.

### **Assistance to Street Children**

On the occasion of marking the 20<sup>th</sup> anniversary of the adoption of the United Nations Convention on the Rights of the Child, the Protector of Citizens had launched an initiative adopted by the Government of the Republic of Serbia, to print and sell a semi-postal stamp generating revenues which would go towards street children (an amount of approximately 6,000,000 dinars).



The Protector of Citizen feels that the concept of a shelter for street children, which appeared as an alternative model within the civil society organizations, has potential and quality to become one of the services within the social welfare protection system and make up for all the detected deficiencies of the existing system focused around shelters for street children. The concept of a shelter, based on voluntary participation of children, had proven more efficient for and more familiar to street children. In its initiative to the Republic of Serbia, the Protector of Citizens has proposed for this model to become a social protection service at the level of the Republic, by having such centers like the one in Belgrade opened in all other larger cities throughout Serbia. This would enable a large number of children who are not in the system and who are deprived of their basic rights since they do not even have any personal documents, to enter the system gradually which would pave the way for them to fully exercise all their rights, starting from the vitally important right to health care, family life, education and other rights. Being the competent authority in the area of social protection the Ministry of Labor and Social Policy was involved in the Protector of Citizens' initiative as the authority in charge of implementing the programs for street children. The revenues generated from the sale of semi-postal stamps will provide assistance not only to children in Belgrade, as it was the case until now, but also for the first time to children living in Niš and Novi Sad (big cities tend to have more of these children).

### **Reviewing the Decisions of Žitorađa Municipality Council**

Members of the Žitorađa Municipality Council have accepted the recommendation of the Protector of Citizens to amend two of its decisions by eliminating discriminatory provisions from the Official Decision on Granting the Right to One-time Monetary

Assistance to Newborns and the Official Decision on Granting the Right to One-time Monetary Assistance to Newlyweds. The first decision granted the right to one-time monetary assistance for the first newborn child and first child born in the New Year, provided that the mother was resident of the Žitorađa municipality, that she was the child's primary caretaker and that the child had been baptized in church. The second decision granted the right to one-time monetary assistance to a groom younger than 30 years of age, who is a resident of the Žitorađa municipality and is for the first time getting married.

### **Position of Children in the Home for Children and Adults with Developmental Disabilities, Staminica, near Velika Plana**

This recommendation particularly stresses the position of children because of the established deficiencies and violations of clients' rights, especially of children with developmental disabilities, pertaining to the right to high quality of life and protection by the state, right to health care, right to social protection services and the right to act in accordance with the best interests of the child. The recommendation has been issued so as to terminate as soon as possible, the current treatment of children who are primarily treated with drugs, namely strong psychotic drugs, while insufficiently implementing psycho-social rehabilitation methods. Until the end of 2009 the Protector of Citizens has not received a response from the Ministry providing information on measures that would be taken for the purpose of implementing the recommendation although the response deadline had expired at the beginning of November 2009.

Deputy Protector of Citizens, Tamara Lukšić-Orlandić was in charge of the Protector of Citizens' activities in the area of child rights protection.

### **HEALTH AND SOCIAL PROTECTION, RIGHT TO PENSION**

Most complaints to the Protector of Citizens in the area of health care insurance refer to dissatisfaction with the received health care service, among which there are some which had a fatal outcome; problems with procurement of drugs and providing therapy to chronically ill patients; inefficiency of the existing control mechanisms; obtaining health care insurance; dissatisfaction with health care administration and health care system as a whole, as well as problems resulting from employment of which health workers complain.

Bearing in mind information provided in complaints and based on initiatives launched by citizens, the Protector of Citizens has decided to survey primary health care institutions in Serbia in 2010.

**Dissatisfaction with received health care service** is the major reason for applying with the Protector of Citizens. Patients usually complain of incorrect, oftentimes even harmful health care service, long waits, failure to respect appointments and unfriendly staff.

*Example: Despite having made an appointment for an ultrasound of the abdominal cavity at an institute, the patient had waited to be served for more than two hours. During that time the staff was engaged in celebration of a private event in the office. When she finally requested to be seen the patient claims she was exposed to brutal verbal abuse. She requested that her documentation be given to her so she could have the exam performed by a private practitioner, but was denied her documents. After having waited for several hours, tired and additionally weakened, she was seen by a doctor who said that her behavior as a patient was neither appropriate nor good for her. The complainant feels that in such a way she has been prevented from obtaining further health care services in that oncology institution because she was “labeled” as being a difficult patient fighting for her rights while a large number of other patients waited and said nothing.*

**Fatal outcome:** Several more complaints state that allegedly poor medical care resulted in fatal outcome.

*Example: The complainant was dissatisfied with the findings of the Commission which implemented special control of professional work and activities at the Gynecology and Obstetrics Department of the General Hospital. The complaint contains a number of questions regarding professional work of doctors who were treating his spouse, to which the Protector of Citizens was not competent to reply.*

**Rejection procedures.** The Protector of Citizens has noted that the procedures result in discouraging citizens from exercising their right to health care protection. The problems of patients with chronic illnesses and procurement of therapy and drugs appear to be especially pronounced. Drug prescribing procedure may be organized so as to prevent abuse, but it is a burden to a sick person, especially to patients with chronic illnesses, and renders health care services inaccessible.

***Example:** A patient who had undergone a liver transplant points to the problem of regular drug supply which he faces each and every month. He is in such situation that if he fails to obtain regular treatment with certain drugs which are not listed on the Drugs List, his life could be in jeopardy. He states that only during one month he did not have problems in securing his therapy. Sometimes he was left without medications for couple of days and only after intervention through private channels was he able to get his treatment. The health care institution explained to the Protector of Citizens that couple of days of delay in the “chain of procurement” was possible, but that up to the present there were no major delays as that would have affected patients’ health!?*

**Using the existing control mechanisms.** The complainants are usually dissatisfied with the protection offered by the Protector of Patient’s Rights in health care institutions. However, in some cases following an unsuccessful appeal to the Protector of Patient’s Rights, appeal to the health care institution management did lead to the elimination of deficiencies.

***Example:** A complainant was dissatisfied with the medical service in a health community center. The Protector of Citizens instructed her to file a complaint with the Protector of Patient’s Rights and the managing director of that community health center and to keep the Protector of Citizens updated on the activities taken upon her complaint. The Protector of Citizens found no evidence of malpractice. Following the appeal against such findings, the community health care center managing director took action, established deficiencies, took adequate measures against the responsible employee and eliminated deficiencies affecting the patient.*

**Right to health care insurance.** Certain number of complaints filed with the Protector of Citizens refer to problems related to health care insurance, for example, unemployed persons not being entitled to health care insurance, the right to health care insurance of family members after the policyholder had ceased to be self-employed, etc. There is an increasing trend among employers who fail to register their employees so as to avoid paying social, retirement and health care insurance benefits.

***Example:** Following the termination of employment a citizen has contacted the National Employment Agency inquiring about the right to compulsory health care insurance for himself and his two underage children. He was referred to the Republic of Serbia Health Insurance Institute where he was told that since his spouse was employed the children must be insured through her. However, the employer of the complainant’s wife did not wish to pay contributions for family members of his*

*employees which led the Protector of Citizens to launch the regularity and legality operations control procedure. A pre-trial procedure is currently underway against the unconscientious employer of complainant's wife whose actions contain elements of criminal activity pursuant to Article 168 of the Penal Code i.e. preventing his employees in exercising their rights pertaining to health care insurance.*

**Example:** *Convinced that his wife did not receive adequate medical treatment, a citizen filed a complaint against a health care center which, despite the official decision issued by the Commissioner for Information of Public Importance, denied him a copy of his late wife's health records – patient's medical history. Bearing in mind the questions which were raised in this case, the Protector of Citizens met with the Health Minister and after that established the responsibility of the health care institution asking its managing director to act on the Commissioners decision. The citizen was issued the requested documentation immediately.*

**Interpersonal relations in health care institutions.** Certain complaints refer to interpersonal relations of staff working in health care institutions. There are elements typical of mobbing, gender based discrimination, arbitrary demotions, as well as arbitrary hiring and firing; there is a practice of keeping employees working on short term contracts whereas in reality the nature of their work would require permanent employment contract since their job description does not include seasonal work, project based activities or increased volume of work lasting only for a certain period of time.

**Example:** *A doctor was working on a short term contract which has been extended several times with total duration of over a year. Her contract was not renewed after she gave birth to her child and two other doctors were hired instead of her. The complainant felt that this happened because she pointed to some irregularities in the operation of that institution – both in respect of medical treatment patients received and in respect of violation of some provisions guaranteeing cancer patients certain services at the expense of health care insurance.*

### **The Case of “Missing Babies”**

The Protector of Citizens received complaints referring to the “Missing Babies” cases. The complainants claim that their children (born in 1969, 1978 and 1989) have been given to other people namely for adoption, after they were told that the children died at childbirth. The complainants turned to the Protector of Citizens to resolve this question and to get to the truth about their children.

Before filing the complaint, the complainants have contacted other authorities, organizations and institutions but were dissatisfied with the activities taken. On the contrary, they claimed that the state authorities were giving them useless information and documentation while refusing them access to documentation which would shed light on unclear and insufficiently elaborated facts.

The Protector of Citizens was able to get hold of the Expert Panel established for the purpose of determining facts and ascertaining the truth about newborns who went missing from the maternity wards in numerous cities throughout Serbia (this Panel was established on 20 July 2005) at the Official Decision of the National Assembly of the Republic of Serbia) and initiated the operations regularity and legality control procedure of the Ministry of Health, Ministry of Justice, Ministry of Internal Affairs and Ministry for State Administration and Local Self-government. These authorities were asked to inform the Protector of Citizens about all measures taken following the Official Conclusion of the Expert Panel.

The responses received from these authorities did not provide sufficient grounds to conclude that the “Missing Babies” cases have been thoroughly investigated and that adequate activities have been undertaken resulting in clarification of whether or not there were cases of stealing newborn or not. In addition it was unclear whether there were effective and transparent procedures in place which would eliminate or at least reduce the possibility of questioning the death of a newborn or actions of any authority/institution in such an event. Hence the Protector of Citizens has, within its scope of competence, investigated the cases of three complainants and carried out a detailed supervision of the operation of the Ministry of Internal Affairs, two maternity wards and the municipality administration i.e. its registry office.

The facts established by the Protector of Citizens during the supervision procedure did not yield sufficient grounds for concluding whether the complainants’ children really did die after or during childbirth or whether these children were illegally taken from their mothers, but they did point to a number of deficiencies in the then regulations and activities of state authorities and health care institutions.

The Protector of Citizens then requested from the Ministry of Internal Affairs, Ministry of Health and Ministry for State Administration and Local Self-government additional information on current protocols followed by authorities and institutions when recording newborns and entering them into the records of health care institutions, when

entering newborns into birth registry and assigning a unique personal identification number. All the ministries sent their responses to the Protector of Citizens.

The Protector of Citizens has established that when compared with the period to which the complaints refer, new and amended regulations have been adopted regulating in more detail health care records keeping. The implementation of these regulations has improved the manner of operation of health institutions. However, the Protector of Citizens notes that there still remain deficiencies in the operation of health care institutions and state authorities and that the existing regulations do not completely regulate the protocol to be followed by authorities and institutions in keeping records, entering newborns into birth registry and assigning a unique personal identification number.

A special report on the “Missing Babies” cases is currently under preparation and will be submitted to the National Assembly of the Republic of Serbia.

The Protector of Citizens has received citizens’ complaints which refer to difficulties in exercising or inability to exercise the **rights in the area of social protection** as follows:

- the right to social protection services provided by a social welfare center;
- the right to assistance to a person in a state of social need and to his/her family;
- the right to material assistance provided from the local self-government unit (one-time financial assistance);
- sluggishness in exercising the right to attendance allowance, assistance to single mothers in finding employment;

The citizens most frequently expressed their dissatisfaction with their financial status and living conditions as well as the inability to find appropriate employment. They mainly expected the Protector of Citizens to help them in some way to overcome these difficulties, to have the place they live in refurbished, or to urge the competent authorities to have the works done at their expense and to help them in other ways resolve housing issues. In addition, citizens also requested the Protector of Citizens to broker in their attempts to find employment in public or private sector.

In particular there were complaints pertaining to the exercise of rights derived from unemployment, however prior to filing a complaint the complainants failed to use other

available legal remedies or they chose to blame the National Employment Agency for the deficiencies exhibited by their employers upon termination of employment.

The citizens claim that they are unable to seek protection in procedures before courts due to their poor financial situation since they are unable to hire a lawyer and due to a number of other complex conditions they must comply with in order to be eligible for legal aid offered by municipalities.

Pursuant to Article 28 paragraph 2 of the Law on the Protector of Citizens the majority of such complaints had to be rejected and the complainants were instructed to use available legal remedies i.e. to apply to the competent social welfare center for the purpose of exercising their social protection rights or to register as an unemployed person with the National Employment Agency. When directing the citizens to register with the National Employment Agency the Protector of Citizens informs them of the activities of the National Employment Agency in helping them find employment as well as of their rights as unemployed persons: unemployment benefits, right to health care insurance and other rights pursuant to the law.

*Example: a complainant expressed dissatisfaction with her financial status and asked the Protector of Citizens to broker with the National Employment Agency Office in Vranje to help her find adequate employment. In its response the Protector of Citizens indicted that it had no legal authority nor possibility to influence the National Employment Agency so as to arrange preferential treatment of one person over another person registered in the unemployed register and that the role of the National Employment Agency was to enable linking between employers and a person seeking employment but that it had no influence on the employment itself as that is subject to employer's and employee's free will only. She was given telephone number and address of the Social Welfare Center in her place of residence so she could obtain the necessary information on social and family protection rights she might be eligible for and since she stated in her complaint that the child support payments she receives from her former spouse for her underage son are insufficient she was informed of a possibility to seek increase of child support payment amount before a competent court, and she has been instructed to contact the legal aid service offered by the municipality or a lawyer for any further legal advice she might need.*

*Example: A complaint was received referring to (non)exercising the right to monetary compensation in case of lay-offs which occurred due to technological changes rendering work and services of a certain number of workers redundant, pursuant to*

*Article 179 item 9 of the Labor Law. A rather large number of workers were laid off and they received one-time severance payment in accordance with the Redundant Staff Program in the Rationalization, Restructuring and Privatization Preparation Process.*

*The Redundant Staff Program of that particular employer, adopted by the Government of the Republic of Serbia, envisaged a certain manner of dealing with redundant employees and consequently interviews with employees as to their intentions and readiness to deal with the social and economic situation in case they were defined as redundant were conducted. The employees were offered a choice between four options, namely: 1) to be laid-off and receive severance pay in the amount of ten average salaries in the Republic of Serbia; 2) termination of employment and receipt of severance pay in the amount of EUR200 for each year of service for which social insurance contributions were paid. It was made clear that should an employee choose one of these two options, he/she would be entitled to register with the National Employment Agency and be eligible for unemployment benefits.*

*The National Employment Agency did not grant the right to monetary compensation while they are unemployed to a certain number of employees, i.e. it rejected the applications as unfounded explaining that the employment of former employees was not terminated for one of the reasons envisaged by Article 109 paragraphs 1 and 2 of the Law on Employment and Unemployment Insurance as the basis for compulsory insurance in case of unemployment. Following the appeal against such decision of the first instance authority, the managing director of the National Employment Agency, as an authority tasked with the decision making power in the second instance, found that the employees who had decided in favor of options one and two were not eligible for monetary compensation since they were paid a one-time monetary compensation from the budget of the Republic of Serbia and not severance pay by the employer in accordance with the Law on Labor which envisaged option number three as the only option which constitutes basis for exercising the right to unemployment benefits.*

*The stated legal provisions provide that the right to monetary compensation in case of unemployment does not depend on the type of severance pay paid to the employee, but rather on the fact whether employment was terminated at the employer's initiative, thus in the process of determining whether a person is eligible for monetary compensation it is necessary to establish this fact with high degree of certainty. The Supreme Court of Serbia took a stance that eligibility for monetary compensation due to termination of employment in accordance with the decision of the Redundant Staff Program in the Rationalization, Restructuring and Privatization Preparation Process **does not exclude***

*the right of an unemployed person to exercise the right to monetary compensation in case of unemployment pursuant to the mentioned Law on Employment and Unemployment Insurance and that the unemployed person is entitled to monetary compensation if the employment was terminated based on an agreement reached with the employer which was concluded at the initiative of the employer, regardless of whether the offer was made to one employee only or in a form of a general invitation to a certain number of employees. When the new law became effective, the implementation of legal interpretations of the Supreme Court of Serbia ceased to be necessary, but this pertains only to procedures launched after 23 May 2009, as the new law prescribes that the procedures initiated before the new law became effective, shall be finalized pursuant to the provisions of the previous law, which clearly means that the abovementioned legal interpretations must be applicable to this particular case.*

*The National Employment Agency informed the Protector of Citizens that the decisions of that authority were based on the stance that the right to monetary compensation in accordance with regulations governing employment, is envisaged only in those cases when the redundant employee decides to take severance pay pursuant to the labor Law or exceptionally, when an employer cannot provide funds for severance payment for employees who are two years away from meeting retirement criteria, in accordance with regulations governing retirement and disability insurance, the funds for these purposes may be provided from the budget of the Republic of Serbia, in the amount prescribed by the Labor Law.*

*The Supreme Court of Serbia ruled that persons who had opted for monetary compensation pursuant to the Program were not eligible for unemployment benefits with the National Employment Agency. However, starting from December 2008 the Supreme Court of Serbia ruled that the persons who have opted for monetary compensation pursuant to Program of the Government, were eligible for monetary compensation in case of unemployment, regardless of whether these persons were paid severance pay in accordance with the Law on Labor or monetary compensation.*

*Different rulings of the Supreme Court of Serbia have led to different decisions taken in administrative lawsuits upon charges filed by employees from same enterprises based on same factual and legal grounds, thus in some cases charges were rejected while in other cases official decisions of the National Employment Agency in which all complainants received same decisions, charges were acknowledged and official decisions of the National Employment Agency were quashed.*

The actions of the Republic of Serbia Retirement and Disability Insurance Fund (RS RDIF) upon requests for old age, disability or family pension as well as those upon appeals, frequently last for months.

*Example: a complainant filed a complaint against the operation of the Republic of Serbia Retirement and Disability Insurance Fund, Belgrade Branch Office, because even five months after filing the request for establishing her old age pension eligibility the decision has not been reached. The complainant stated that she had orally contacted this authority for the purpose of obtaining information on the course of the procedure but was denied adequate information. After the Protector of Citizens has launched the operations regularity control procedure of this administrative authority, the complainant notified the Protector of Citizens that her request has been dealt with and that she has been sent an official decision granting her the right to old age pension.*

**Temporary decision on granting the pension right.** A competent branch office of the Republic of Serbia Retirement and Disability Insurance Fund passes a temporary official decision for all those citizens whose years of service have not been properly regulated, either because a portion of their years of service were earned in one of the republics of the Former Yugoslavia or because their employer failed to pay contributions for a certain portion of their years of service. The temporary official decision grants them their right to pension based on their years of service for which there is proof proving that the necessary contributions have been paid in the amount proportional to the number of years of service. The right to pension is exercised based on the temporary official decision until the confirmation on the years of service earned in one of the republics of the Former Yugoslavia is obtained or until proof of years of service and earnings with a “national” employer and benefits paid are obtained. There are cases in which there were several conditions which constituted grounds for issuing a temporary official decision. Frequently these temporary official decisions remain temporary for several years this being the reason why citizens file complaints with the Protector of Citizens.

**Failing to act upon the order of a second instance authority, or upon a ruling of the court** – In cases in which the Directorate of the Republic of Serbia Retirement and Disability Insurance Fund as a second instance authority, when acting upon appeals of citizens against a first instance decision, quashes the first instance decision and orders the first instance authority carry out the procedure again, it occurs sometimes that the first instance authority fails to act upon the order of the second instance authority. In

their complaints citizens point to this problem as well as to the Directorate's failure, as a second instance authority, to act upon the ruling of the court which was passed in an administrative lawsuit.

**Unpaid contributions and inability to collect contributions** from employers who are in bankruptcy or do not exist any more and have no legal successors, are often the reason why citizens file a complaint with the Protector of Citizens since they cannot be eligible for pension until all unpaid contributions have been paid. The problem escalates when there is no way of establishing with a high degree of certainty which authority is in charge of calculating and collecting contributions. Namely, until 1 January 2003 or until the Law on Compulsory Social Insurance Contributions came into force, stipulating that the control of calculation and collection of contributions was transferred to the Tax Administration, the control of calculation and collection of contributions was performed by the Republic of Serbia Retirement and Disability Insurance Fund pursuant to the Law on Retirement and Disability Insurance. In couple of cases both authorities, the Republic of Serbia Retirement and Disability Insurance Fund and the Tax Administration, claimed that it was not within their scope of competence to control the calculation and collect contributions, while at the same time they kept referring clients to each other. Since the citizens have contacted the Protector of Citizens indicating this problem, the Protector of Citizens first requested that this conflict of competence be resolved, i.e. that a competent authority be appointed and only then can it continue with actions upon complaints filed by citizens.

## **RIGHT TO EDUCATION, THE FREEDOM OF SCIENTIFIC AND ARTISTIC CREATION**

More can be found on the situation and typical actions undertaken in the area of the right to education in the section referring to child rights and good governance.

The Protector of Citizens had no basis to take action for the protection of freedom of scientific and artistic creation.

### **The Rights of National Minorities**

The work and activities of the Protector of Citizens in the area national minorities rights protection and promotion were focused on two main tasks: a) acting upon complaints filed by citizens and b) continuous presence in multiethnic local communities. The activities undertaken were the result of complaints filed by the

citizens and of the direct insight into the situation in local communities, namely: cooperation and activities with the public administration authorities and local self-government authorities; cooperation with the non-governmental organizations, minority self-governments and other organizations working with members of national minorities; organization of expert discussions; research and study of certain problems; writing reports, opinions, recommendations and other activities.

Since the Protector of Citizens feels that the preservation of identity is the main purpose of constitutionally and legally regulating collective rights of national minorities, it has dealt in particular with the following issues: a) effective exercise of collective rights of national minorities in multiethnic local self-government units; b) encouraging employment of national minority members in the public sector and c) official use of the language and script.

Monitoring the exercise of rights of national minorities in multiethnic local self-government units represented a special and significant activity of the Protector of Citizens. During the year, the Protector of Citizens and its staff members visited 54 out of 68 multiethnic local self-government units. In cooperation with the local authorities, national councils of national minorities and local minority organizations and institutions, the exercise of individual and collective minority rights was monitored and data thereof was collected, interviews were carried out in police administration offices, social welfare centers, public enterprises, regional school administration boards, schools, with representatives of non-governmental organizations and primarily with citizens. It is obvious that there is a stunning discrepancy in the level and quality of exercising collective minority rights between the AP (Autonomous Province) of Vojvodina and Central Serbia and that the local authorities in Central Serbia are not really aware of the social significance that recognizing and exercising collective rights have.

## **Actions of the Protector of Citizens upon Complaints in Respect of the Rights of National Minorities**

### **Complaints**

In 2009 the Protector of Citizens has received 66 complaints pertaining to national minority rights or those indicating the deficiencies in the work and operation of the administration authorities in respect of exercising individual and collective national minority rights, while in 3 cases proceedings were launched at the initiative of the

Protector of Citizens after a careful review. Apart from actions undertaken in the abovementioned 69 cases, the Protector of Citizens has continued to pursue another 14 complaints from 2008. Hence, in 2009 the Protector of Citizens has undertaken actions upon complaints in the total of 83 national minority rights related cases.

The largest number of complaints in 2009 were filed by citizens (56) while national councils of national minorities filed 10 complaints. Regarding complaints filed by the national councils of national minorities, the Protector of Citizens stresses that its institutional cooperation with minority self-governments has outgrown long time ago the law-defined procedure of operation upon complaints and that it has characteristics of a close-knit partnership primarily in respect of early detection of problems, preemptive activities and its resolution.

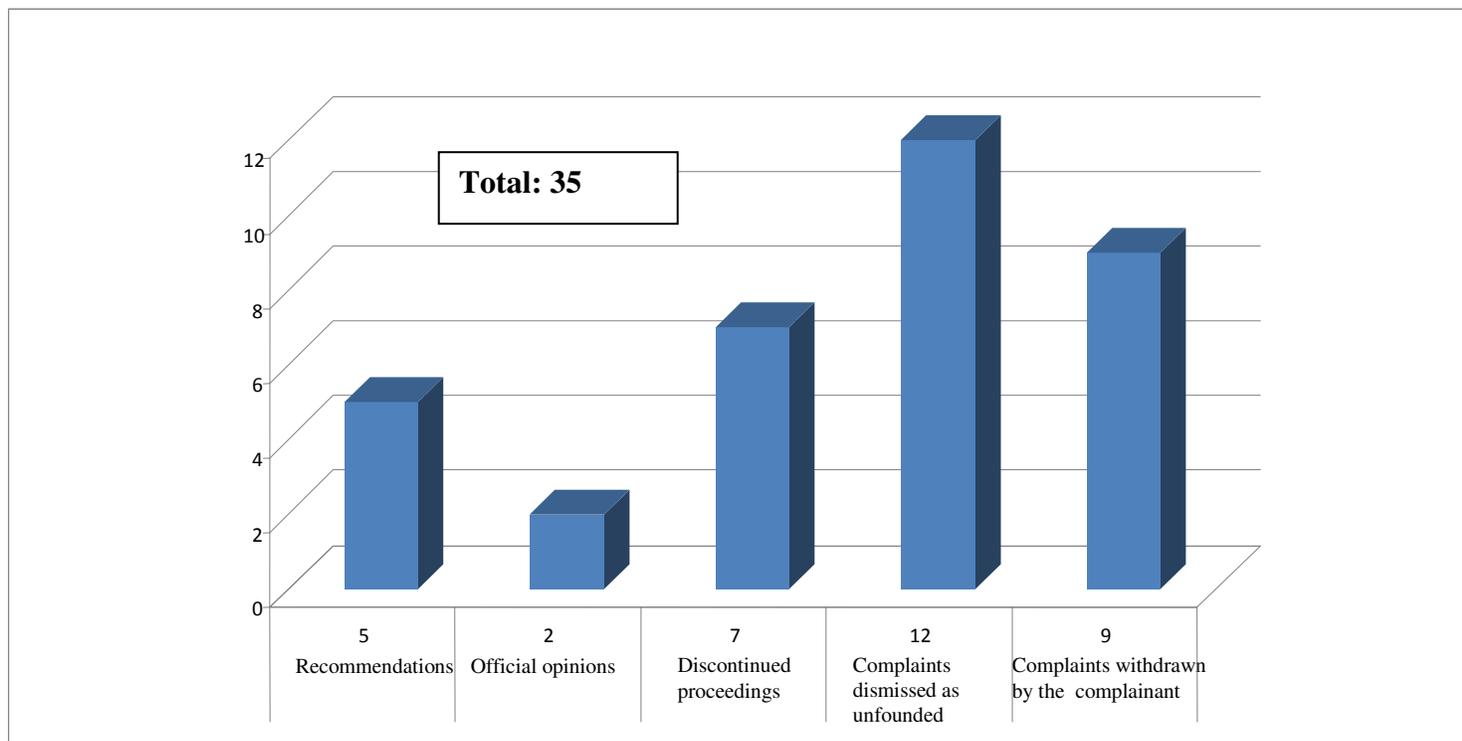
### **The most frequent rights violations**

The analysis of complaints against national minority rights violations indicates that usually more than one right was violated at the same time. The complainants complain against: discrimination and instigation of national and religious hatred and intolerance, violation of rights to information, education and cultural identity protection guaranteed by the Constitution, the right to official use of the language and script, freedom of expression of national background and other violations.

### **Finalized Actions of the Protector of Citizens upon Complaints in Respect of Rights of National Minorities**

In 2009 out of 83 actions undertaken upon complaints related to national minority rights, the Protector of Citizens has finalized 65 such actions, namely 52 cases from 2009 and 13 cases which were initiated earlier. Out of the 65 finalized cases 30 were rejected as unfounded while 35 remaining cases were finalized with a recommendation (5), official opinion (2), discontinued proceedings (7), complaints dismissed as unfounded (12) and withdrawn by the complainants (9). (See Chart 12). The Protector of Citizens is currently working on the remaining cases.

### **Chart 12. - Finalized Actions of the Protector of Citizens upon Complaints in Respect of National Minority Rights**



Following complaints pertaining to national minority rights the Protector of Citizens has issued five recommendations – to the Ministry of Culture, Ministry of Education, Ministry of Human and Minority Rights, Žagubica Municipality Council and State Administration Human Resources Service as well as to all other state administration authorities (for the purpose of measure planning and increasing the presence of national minorities when seeking employment). **Apart from the Ministry of Human and Minority Rights which was the first one to implement the decision of the Protector of Citizens within the law-prescribed time period, other administration authorities have failed to do so.**

### **Detected Deficiencies in the Operation of the Administration Authorities Pertaining to the Exercise and Protection of National Minority Rights**

The real problem is the lack of awareness about the **essence and purpose of national minorities' collective rights protection**. Although the essence of cultural autonomy of national minorities has been defined by the Constitution

and separate laws – the Law on the Protection of Rights and Freedoms of National Minorities (2002) and the Law on National Councils of National Minorities (2009) - the state administrative authorities which should ensure the exercise of these rights have not found adequate ways to implement them in every day life under different circumstances. In many areas the exercise of certain national minority rights is made either difficult or impossible by the lack of some by-laws, recommendations, rulebooks and other official documents that the administration authorities should adopt.

Based on data collected through a research carried out in March 2009 by the Protector of Citizens on the **representation of national minority members as civil servants and employees in the state administration authorities and public services** and based on the operations regularity and legality control procedure of the Ministry of Culture, it was concluded that this authority had neither provided and established mechanisms and procedures nor provided sufficient number of experts for the implementation and monitoring of exercising the rights of national minorities enshrined in the Constitution and the law. In view of the fact that these rights are significant for the preservation of the identity of national minorities, the Ministry of Culture should develop an adequate human resources and organizational infrastructure and establish an institutionalized cooperation system with other state authorities tasked with the exercise of rights of national minorities. In its 2008 Report, the Protector of Citizens had identified similar problems detected in the operation of the Ministry of Education related to the exercise of right of national minorities to education; however this Ministry has made considerable progress in its operation and eliminated the majority of deficiencies which the Protector of Citizens has pointed out previously.

**Based on the mentioned research on the representation of national minority members as civil servants and employees in the state administration authorities and public services, the Protector of Citizens stresses that apart from the Ministry of Foreign Affairs and the Ministry of Internal Affairs, no other administration authority ensures adequate representation of national minorities when hiring employees.** As for the public service and public enterprises, the situation seems to be more favorable since the data indicates that the Customs Administration, Tax Administration, Treasury Administration, Telecom and PTT take care of the ethnic structure of their employees. Attempting to protect the interests of citizens who are

members of national minorities in respect of their representation in public service, the Protector of Citizens has issued an Official Opinion which was submitted to the National Assembly of the Republic of Serbia, supporting amendments submitted by the Group of Deputies of national minorities ensuring that when rationalization of operation of local self-government units is enforced, care must be taken that national minority members are equally represented in their operation and services.

Apart from cooperation with the Ministry of Human and Minority Rights, the Protector of Citizens closely followed the operation of this authority primarily due to the duties and responsibilities Ministry has in respect of governing and monitoring the exercise of minority rights. The fact remains that this Ministry contributed considerably to the adoption of the Law on National Councils of National Minorities and the Strategy for the Promotion of the Roma by the National Assembly in 2009. Despite the reserves it has in respect of the effectiveness of certain solutions and manners of implementation of this law, the Protector of Citizens did not participate actively in the discussions about the law but rather decided to monitor meticulously its implementation. A successful implementation of the rights stipulated by the Law and the Strategy requires establishment of an effective **coordination of operation of the Ministry of Human and Minority Rights with other ministries** tasked with the implementation of the recognized rights of national minorities guaranteed by the Constitution and the law, especially in the area of education, official use of the language, information and culture. **The procedure conducted by the Protector of Citizens before state authorities and the research it carried out, clearly indicate that there are many windows of opportunity to enhance the cooperation between ministries and other administration authorities in respect of a more efficient exercise and monitoring of national minority rights, financing their operation and other.**

National minorities i.e. members of national minorities exercise their guaranteed and recognized individual and collective rights in local communities where they reside. However, there are significant differences in exercising those minority rights recognized by the Constitution and the law in local self-government units. Apart from the fact that national minority rights are exercised at a much higher level in the Autonomous Province of Vojvodina than is the case with the remaining part of Serbia, there is a clear social distrust

towards those fellow citizens who wish to exercise those rights guaranteed by the adopted concept of cultural autonomy.

**The majority of multiethnic local self-government units still do not recognize the potential the institution of the Council for Interethnic Relations has.** Namely, despite the law-envisaged obligation of local self-government units in which population is of mixed ethnic background to establish these authorities whose main task is to control the operation of the local self-government unit in respect of decisions which might hurt or disturb interethnic relations, this is either not done at all or its work and activities do not receive support. In cooperation with non-governmental organizations the Protector of Citizens has analyzed the situation pertaining to the operation of the Council for Interethnic Relations and collected data which constitutes basis for establishing a network for the support and improvement of operation of these bodies.

The municipality of Priboj is a good example of social distrust, failure to implement legal obligations and a lack of a local institution which could contribute to the overcoming of problems. This municipality has not yet introduced the Bosnian language into official use, despite a law prescribed obligation to do so. Formal reasons for not doing so is the refusal of City Council Members in different convocations to vote for the amendment to the Municipality Statute which would introduce the Bosnian language as another official language apart from the Serbian language. However, at the heart of the problem are in fact deteriorated interethnic relations and lack of understanding among the local majority for the exercise of law-envisaged right of the Bosnian national minority.

**In order for the members of national minorities to exercise their rights in local communities, but also in a wider setting, they need to know both the Serbian language but also the language of a national minority.** Unfortunately, the Protector of Citizens has noted that in many multiethnic communities the members of national minorities speak only in their first or mother tongue whereas their knowledge of the Serbian language does not meet the social integration standards. Likewise, in local communities a decreasing number of fellow citizens speak the language of the social surrounding thus limiting their opportunities to meet their personal and professional interests and engage in smooth social communication.

Regarding the improvement of the situation pertaining to the exercise of the right to official use of a language of national minorities, but also the use of the Serbian language, the Protector of Citizens has carried out, with the assistance of the OSCE Mission to Serbia, an appropriate research, the results of which will be analyzed and communicated to the public and the competent authorities during 2010.

Finally, the Protector of Citizens had a number of public activities aimed at encouraging competent authorities to be more proactive and efficient in dealing with a **backlog of numerous problems of the Roma pertaining to housing, employment, education, social and health protection and discrimination**. Regarding the relocation of an illegal settlement under the “Gazela” bridge populated mainly by the Roma, the Protector of Citizens has organized a string of meetings. At these meetings the Protector of Citizens presented its stance on this issue, stressing that the solution applied in the dislocation of this slum had weaknesses which should be avoided, but that it was the best solution yet to this problem. The experience collected through a string of unsuccessful attempts to relocate this settlement, the manner in which it has finally been done, as well as the experience of other local self-government units should be the basis for developing an action plan which should be based on the adopted Roma Integration Strategy. With reference to this, the Protector of Citizens issued its opinion stating that the relocation of the Roma and other inhabitants of slums must be implemented while respecting the established general standards, providing realistic basis for further social and economic integration and that their settlement at another location must not cause spatial segregation or interethnic tensions. If not, social and ethnic intolerance might escalate.

## **Overview of Typical Actions Taken in the Area of Rights of National Minorities**

### **Complaint of the National Council of the Vlach National Minority**

The Protector of Citizens has acted upon a complaint pertaining to the violation of the right to propose the National Council and the election of the members of the Vlach national minority to the Council for Interethnic Relations in Žagubica municipality which is an ethnically mixed local self-government unit (22.5% of population are members of the Vlach national minority).

The explanation sent to the Protector of Citizens by the President of the Žagubica municipality states that this authority has, in accordance with the law, taken a decision on establishing a council for interethnic relations and determined the manner of election and the composition of the Council which corresponds to the ethnic composition of the population, and that the candidates for council members, among members of national minorities, should be proposed by the national councils of national minorities, if they have them.

However, during the procedure of proposing the candidates, a written invitation to the National Council of the Vlach national minority has not been sent because, as the letter states, the President of the City Council had no knowledge of their existence despite the fact that the National Council of the Vlach national minority had been elected in 2006.

Following the fact finding review, the Protector of Citizens has issued a recommendation to the Žagubica municipality City Council for the purpose of rectifying the detected deficiency, namely to abolish the adopted official decision on the appointment of members of the Council for Interethnic Relations and to extend a written invitation to the National Council of the Vlach national minority in a repeated procedure, pursuant to the law, for the purpose of proposing candidates as members of the Council for Interethnic Relations belonging to the Vlach national minority.

Acting on the recommendation should provide both the respect and the actions of authorities in accordance with the law and its own legal documents, and the significant role and cooperation in activities of a multiethnic local self-government in the area of protection, exercise and promotion of human and minority rights, creating a social climate of national equality and conflict prevention at the local level.

### **Complaints Filed by the National Council of the Macedonian, Vlach and Bosnian National Minority**

Due to the changes in the phrasing of the question on ethnic traits – nationality and mother tongue, in one of the sections in the 2011 population, household and residence census questionnaire, by combining “closed” and “open” type of questions, the national councils have filed a complaint claiming violations of their right to freedom to declare themselves on their nationality and requested that the phrasing remain the same as it was in the 2002 census questionnaire.

The Protector of Citizens considered the complaint, bearing in mind the fact that there was no regulation governing the phrasing of questions in census questionnaires, nor any kind of universal comparative practice in other countries, but did review the significance of the complaints' subject matter from the standpoint of human and minority rights protection, census quality and data collected.

The Protector of Citizens feels that the issue of declaring oneself on ethnic/national background is a significant and sensitive one, among other things because of the concept of the right of national minorities to the protection of their identity. Thus, the census itself should serve the purpose of promoting the national minority rights and their members, hence a string of activities were launched for the purpose of initiating certain issues in a timely manner and finding solutions thereof.

The Protector of Citizens submitted its opinion to the Republic of Serbia Statistical Office as well as the proposal for the improvement of phrasing of the offered replies in sections in the 2011 population, household and residence census questionnaire. With reference to this, two meetings were held with the Statistical Office representatives indicating that those particular questions need to be phrased in much the same way as they have been phrased in the previous census questionnaires. While having understanding for the technical reasons for changes in questions on nationality as compared to the 2002 Census, it was stressed that suggestions and fear expressed by some national minorities are well substantiated so it was agreed that following the data processing from the Trial Census, a public discussion should be held in advance which should see the participation of national minority representatives and facilitate the exchange of opinions and presentation of arguments related to these contentious issues.

Note: More on this issue can be found in the Report, in the section *The Opinion of the Protector of Citizens about the Proposals to Laws and Other Regulations Governing Issues of Relevance for the Protection of the Rights of Citizens*.

At a conference in Vrnjačka Banja organized by the Republic of Serbia Statistical Office, the Protector of Citizens has reiterated its stance on and significance of the question pertaining to ethnic traits, both from the standpoint of the protection of freedom to declare oneself, and from the standpoint of the national minority individual and collective rights implementation guaranteed by the law, the exercise of those rights and the amount of the necessary funds from the budget for funding cultural autonomy, which are related to the results of the last population census. The view of the Protector of Citizens, that in the P-1 questionnaire form, question number 14. *Nationality* and 15.

*Mother tongue*, should be phrased in the same way as in the previous population censuses, was entered in the official conclusion of this conference.

Dr Goran Bašić, Deputy Protector of Citizens was in charge of the Protector of Citizens' activities in the area of national minority rights protection.

## **FACTS ABOUT THE PROTECTOR OF CITIZENS**

### **Protector of Citizens – Ombudsman, General Remarks**

The Protector of Citizens of the Republic of Serbia is an independent state authority, introduced into the legal system of the Republic of Serbia in 2005 by the Law on Protector of Citizens<sup>2</sup> (hereinafter referred to as the law), and subsequently regulated by the Constitution of the Republic of Serbia<sup>3</sup>.

The independence of the Protector of Citizens is one of the fundamental principles of this institution which has been taken over from international legal documents on Ombudsman which means that the Protector of Citizens is both organizationally and functionally detached from the administration authorities<sup>4</sup> whose operations it controls. The principle of independency yields the principle of autonomy of the Protector of Citizens, which implies that the Protector of Citizens is independent in performing its duties and obligations within its scope of competence i.e. that this principle prohibits anyone and anything from exerting influence on its work and activities.

By defining the Protector of Citizens in such constitutional and legal terms, the Republic of Serbia has established a concept of a parliamentary Ombudsman of general nature. The Protector of Citizens is a state authority tasked with the protection and promotion of human and minority freedoms and rights of citizens. The Protector of Citizens is elected by the national Assembly as

<sup>2</sup> The Law on the Protector of Citizens ("Official Gazette of the Republic of Serbia" No: 79/05 and 54/07)

<sup>3</sup> The Decision on the Promulgation of the Constitution of the Republic of Serbia was published in the "Official Gazette of the Republic of Serbia" No: 83/06 and 98/06 (Chapter Five – System of Authorities, Section five Protector of Citizens, Article 138).

<sup>4</sup> An abbreviation has been introduced into the Law on the Protector of Citizens (Article 1) denoting state administration authorities, authorities in charge of legal protection of property rights and interests of the Republic of Serbia, as well as other authorities and organizations, companies and institutions entrusted with public authority, which are all collectively referred to as the "administration authorities". For the purpose of avoiding cumbersome linguistic phrasings in the text of the Report, the mentioned abbreviation shall also be used in this Report.

compared with a relatively small number of countries in which general or specialized Ombudsmen are appointed by the authorities with executive power. The Protector of Citizens controls the legality and regularity of operation of administration authorities in respect of the exercise of citizens' individual and collective rights.

The Protector of Citizens acts within the framework of the Constitution, laws, other regulations and legal documents of general nature as well as within the framework of ratified international agreements and widely accepted rules of international law. At the same time the Constitution and the law prescribe that the Protector of Citizens shall be responsible for its work and activities to the National Assembly.

In a relatively brief procedure devoid of superfluous formalities, the Protector of Citizens controls the respect of the rights of citizens, establishes violations committed by virtue of legal documents, actions or failure to act by the administration authorities, in case of violation of laws of the Republic, other regulations and legal documents of general nature. The Protector of Citizens examines whether an administration authority or another organization tasked with public authority, has decided on a right or interests of citizens in legal and regular manner, and if it had not, the Protector of Citizens requires that the omission or deficiency in the operation be rectified and proposes ways to do so. The Protector of Citizens controls much more than mere formalities in the process of respecting the law, because it examines the ethics, conscientiousness, impartiality, professionalism, effectiveness, efficiency, respect of client's dignity and other characteristics which should feature in good governance and which the citizens as taxpayers rightfully expect.

The Protector of Citizens controls the operation of the state administration authorities, authorities in charge of legal protection of property rights and interests of the Republic of Serbia, as well as other authorities and organizations, companies and institutions entrusted with public authority. The Protector of Citizens has no authority to control the operation of the National Assembly, the President of the Republic of Serbia, the Government, the Constitutional Court, courts and public prosecutor's office.

In addition to the right to initiate and carry out a procedure establishing deficiencies in the operation of the administration, the Protector of Citizens is entitled to act preemptively, by extending good services, brokering between citizens and administration authorities and by offering advice and opinion on issues within its scope of competence, for the purpose of enhancing the operation of the administration authorities and strengthening the protection of human liberties and rights.

The Protector of Citizens is also entitled to legislative initiative. Thus it can propose laws within its scope of competence, submit initiatives aimed at amending the existing or adopting the new regulations if it deems that the violation of citizens' rights is a direct result of their deficiencies or if this is important for the implementation and promotion of citizens' rights. The Protector of Citizens is entitled to offer its opinion to the Government and the National Assembly on regulations under preparation. In addition, the Protector of Citizens has the authority to initiate the law constitutionality and legality assessment procedure before the Constitutional Court.

Recommendations, views and opinions of the Protector of Citizens are not legally binding. Coercion is not in the job description of the Protector of Citizens. Its job is rather to present well substantiated arguments coupled with its authority and reputation which would impress on a party the necessity of eliminating the deficiencies and altering its mode of operation.

On the other hand the Protector of Citizens is neither an institution of "voluntary" law. The administration authorities have a legal obligation to cooperate with the Protector of Citizens, grant access to its premises and all the available data regardless of the level of confidentiality in cases when this is in the interest of a procedure which is underway or for preemptive purposes. Failure to abide by these legal obligations constitutes basis for launching disciplinary and other procedures. The Protector of Citizens may recommend that an official deemed responsible for the violation of a citizen's right be relieved of his/her duty, it may initiate the launching of disciplinary procedure against employees working in the administration authorities, it may lodge a request or application for filing criminal, petty offence or other charges.

In addition to the clear role it plays in improving the operation of administration authorities, such scope of competence assign to the Protector of

Citizens an important role in the prevention, detection and sanctioning of corruption in the administration authorities.

### **Procedure before the Protector of Citizens**

The Protector of Citizens reviews cases of rights violations upon complaints of citizens or at its own initiative. Prior to filing a complaint, the complainant is obliged to seek the protection of his/her rights in an appropriate legal procedure.

During the procedure upon complaint, the Protector of Citizens obtains all the necessary proof and establishes all facts and circumstances of relevance for deciding on the justification of the complaint. All the necessary means are at its disposal for this purpose – interviews with all employees working for the authority which is subject to its control, access to all the documentation of the authority, unobstructed access to office premises, as well as to premises where persons deprived of liberty are as well as the right to unsupervised interviews with these persons and everything else which would assist in an impartial assessment on the potential deficiencies in the work and activities leading to the violation of individual or collective rights of citizens.

Should the Protector of Citizens establish deficiencies in the operation of an authority, it will make a note of that fact and recommend ways to eliminate them both in the concrete case and other or future such cases. If the need arises the Protector of Citizens will take the necessary measures against those responsible for the violation of citizens' rights. The administration authority is obliged to inform the Protector of Citizens within a time period not to exceed 60 days (or sooner, if the Protector of Citizens so requests) on whether it has acted upon the recommendation and eliminated the deficiencies or if not, why has it failed to do so. The Protector of Citizens may inform the public, the National Assembly and the Government on the authority's failure to act upon a recommendation and it may also recommend that the responsibility of the administration authority's management be established.

### **Advice of the Protector of Citizens**

By virtue of special official decisions, the Protector of Citizens has established councils for monitoring the situation in several areas. By offering their

opinions, proposals, analysis and special reports, these expert and advisory bodies of the Protector of Citizens should contribute to developing a more comprehensive understanding of complex and specific issues in certain areas of operation of the Protector of Citizens, namely: protection of rights of persons deprived of liberty, gender equality, rights of persons with disabilities, child rights and national minority rights.

The Councils and the Council members are as follows:

- 1) **Council for Rights Protection of Person Deprived of Liberty** and its members are: Dr Ivan Janković, professor Dr Goran Ilić, professor Dr Violeta Beširević, assistant professor Dr Đorđe Alempijević, Dr Vladimir Jović and Nataša Novaković.
- 2) **Council for Gender Equality and Rights of Persons with Disabilities** and its members are: professor Dr Nevena Petrušić, professor Dr Mirjana Rašević, professor Dr Marija Draškić and professor Dr Vesna Nikolić-Ristanović.
- 3) **Council for Child Rights** and its members are: assistant professor Dr Nevena Vučković-Šahović, Dr Dragica Pavlović-Babić, professor Dr Nevenka Žegarac and Dr Ivana Stevanović.
- 4) **Council for National Minority Rights** and its members are: academician Vojislav Stanovčić, academician Tibor Varadi, professor Dr Ranko Bugarski, Dr Slaven Bačić, assistant professor Dr Ljubica Đorđević and professor Dr Milan Vukomanović.

### **Establishment of Local Offices in Preševo, Bujanovac and Medveđa**

The Protector of Citizens has adopted an official decision establishing local offices in the Preševo, Bujanovac and Medveđa municipalities so as to step up the accessibility of the Protector of Citizens institution and effectuate a more efficient protection and improvement of human and minority liberties and rights of citizens in that area. By virtue of this decision the seats of local offices in all three towns have been established.

The number and content of complaints received by the Protector of Citizens in this area, more detail on this topic is available in the section of this Report "Activities of the Protector of Citizens upon Complaints", indicate that such decision was justified.

## **Expert Services Department**

For the purpose of performing expert and administrative services within the scope of competence of the Protector of Citizens an Expert Services Department has been established.

The Rulebook on Internal Organization and Job Systematization in the Expert Services Department of the Protector of Citizens prescribes a total of 63 jobs for officials, employees and civil servants. During 2009, 26 persons were hired by the Expert Service Department, 8 persons left the Department, hence on 31 December 2009 there was a total of 57 employees. This number does not include the Protector of Citizens Saša Janković and his four deputies – Tamara Lukšić-Orlandić, Miloš Janković, professor Dr Zorica Mršević and professor Dr Goran Bašić.

Bearing in mind the volume of work, the existing number of employees is below the optimum number necessary for a timely and high-quality operation of the institution. The ever growing number of contacts of the Protector of Citizens with citizens and the proceedings resulting from those contacts, lead to a significant increase in the volume of work, which is not paired with adequate changes in the Rulebook on Internal Organization and Job Systematization in the sense of envisaging a larger number of job positions in the Expert Services Department of the Protector of Citizens.

## **Premises and Means of Work and Activities**

By virtue of the Official Decision issued on November 16, 2007 by the Committee for the Allocation of Governmental Service Buildings and Office Space, the Protector of Citizens was granted the right to permanent utilization of office space in Belgrade at 42 Resavska St. However, since these premises have not become available during 2008 and 2009 and still remain unavailable, the Protector of Citizens was given office space to be used on temporary basis (in Belgrade, 106 Milutina Milankovića Boulevard). This temporary office space (as well as the temporary office space located in the “Serbia” Palace at 2 Mihaila Pupina Boulevard) are not even close to the needs of the Protector of Citizens for accommodating its employees and working with the public. At the same time, this office space does not meet the necessary requirements for

working with the public and work and activities of civil servants – enabling the protection of their right to security and privacy of clients, healthy working conditions and the dignity of the institution. Finally, the fact that the office space is located in two different locations speaks volumes on how difficult the operation and internal communication between employees are.

In the course of 2009 the number of employees gradually grew exacerbating the accommodation problem. Bearing in mind the security problem which became glaringly obvious during several incidents requiring police intervention, citizens are received only at the “Serbia” Palace at 2 Mihaila Pupina Boulevard, room no. 19. The lack of adequate premises is the single most limiting factor in the operation of the Protector of Citizens.

At the moment this Report was being written, significant efforts were exerted towards providing permanent or at least temporary office space for the Protector of Citizens, but space which would ensure good working conditions.

The Administration for Common Affairs of the state authorities has mostly provided the means necessary for operation, in particular office supplies, computers and other technical devices, while a certain portion of these means for operation were purchased from Protector of Citizens’ separate funds.

## **OBSTACLES IN THE FUNCTIONING OF THE PROTECTOR OF CITIZENS**

In 2009 there were no attempts to exert unpermitted influence and pressure on the Protector of Citizens in performing its duties.

The Protector of Citizens is an institution which performs its function of protecting the rights and freedoms of citizens by carrying out control procedures and by exerting influence on administration authorities to rectify the detected deficiencies in their operation. That is why the preconditions for exercising the Ombudsman’s function represent the capacity (resources) for carrying out the control and readiness of authorities to cooperate with the Ombudsman institution (political will).

**The capacity to perform its duties and responsibilities** is determined by human and financial resources. Until the end of 2009 the Protector of Citizens

was able to staff its Expert Services Department with a little less than 6/7 of the overall number of employees envisaged by the job position systematization approved by the National Assembly. However, this has been done by stretching to the limit the existing spatial and human resources, which has its own institutional risks. Despite the fact that the Protector of Citizens was elected in mid 2007, throughout 2009 the employees continued to work in inadequate work space both in terms of size and type of office space. Among other things, this resulted in many employees giving notice and terminating their employment stating that they were way too stressed out at work especially when compared to other state authorities. Until the end of 2009 the Protector of Citizens has remained in "temporary office space" and in one office given to the Protector of Citizens by Milan Marković, President of the Coordinating Body of the Republic of Serbia for Preševo, Bujanovac and Medveđa municipalities.

Frugal stewardship of its own budget and exemplary cooperation with the Administration for Common Affairs of the state authorities made it possible for the Protector of Citizens to be almost fully IT equipped, with operations entirely digitalized and mobility improved resulting in high presence in the field. Increasingly, procedures are conducted in such a way that the grounds for filing a complaint are verified by going straight to the field, reviewing the documentation, interviewing officials and employees, and not by receiving, writing and sending notifications which has proven to be ineffective in the past. The effects of immediate control in the field are twofold – apart from the opportunity to ascertain the accuracy of the information which is significant to the procedure, the Protector of Citizens' visits to administration authorities have a preemptive effect.

However, there is still a lot of space and need to further strengthen the capacities of the Protector of Citizens institution: primarily in respect of space as a precondition for everyday operation of the Protector of Citizens, hiring new staff members, achieving the necessary technical and procedural standards for keeping the protected data and procurement of additional vehicles needed to perform control activities in the field. It is necessary to amend the law so as to provide additional supplement to salaries of employees working in the Expert Services Department who extend professional support in carrying out the control procedures, in accordance with the already existing practice of other authorities.

**Cooperation with the administration authorities** is of paramount importance for the operations and exercising the function of the Protector of Citizens because the institution of the Ombudsman cannot rectify the detected deficiencies on its own, but rather it must try and influence the competent authorities to rectify their deficiencies. By impartially establishing deficiencies and giving constructive recommendations for their elimination, the Protector of Citizens was able to exert influence on many competent authorities in numerous general and individual cases, to rectify the detected deficiencies and provide a more regular, comprehensive and legal exercise of the guaranteed rights of citizens. This is precisely the reason why introducing the institution of the Ombudsman in the system of the Republic of Serbia was even more justified in 2009.

In 2009 the administration authorities have implemented approximately 65% of recommendations issued by the Protector of Citizens which is not satisfactory. However, even more disturbing is the fact that in 2008 and in the first half of 2009 this figure was around 90%. The main explanation the Protector of Citizens can offer is that the number complaints has increased considerably, that an increasing number of administration bodies is being subjected to the control procedure, while at the same this is not accompanied by the political support of the authorities with executive powers which is the most influential factor able to influence and correct the operation of the administration authorities, namely the Government of the Republic of Serbia.

In 2009 neither the Government of the Republic of Serbia as a state authority nor the Prime Minister have called on the state administration authorities (whose work and activities are directed, harmonized and monitored by the Government pursuant to the Constitution) to cooperate with the Protector of Citizens and implement its recommendations, by issuing an official conclusion, notification, communication or in any other way. Unlike the President of the Republic, the Speaker of the National Assembly, President of the Constitutional Court, President of the Supreme Court, the Public Prosecutor's Office, the Commissioner for Information of Public Importance and Personal Data Protection, the Governor of the National Bank of Serbia, the President of the Auditor General, Attorney General and other highest state authorities and state officials, with whom the Protector of Citizens did hold regular and occasional meetings and has cooperated with them in the best

interest for the exercise and protection of citizens' rights, such cooperation was not established with the Government of the Republic of Serbia. In one case of institutional contact between the Government and the Protector of Citizens, the Government had rejected Ombudsman's proposal to relieve a state secretary of his duties for an established omission and repeated failure to cooperate with the Protector of Citizens, which constitutes legal grounds for dismissal upon the proposal of the Ombudsman. The manner in which this was done is quite telling – the Government did not assess that the deficiency has been eliminated in the meantime and that the cooperation has been established, thus the purpose of Ombudsman's intervention has been achieved without dismissal – which would be understandable; but rather took a stand that the state secretary in fact did not commit any omissions to the detriment of the citizen which had been established by the Protector of Citizens within its scope of competence, and that the state secretary did not repeatedly fail to cooperate with the Ombudsman, none of these assessments being within the scope of competence of the Government.

The Protector of Citizens established particularly successful cooperation with certain administration authorities, in particular with the Ministry of Internal Affairs against whose work and activities citizens filed the most complaints, but that Ministry generally send timely responses and reacted towards eliminating irregularities pointed out by the Protector of Citizens.

The Protector of Citizens is noting progress in its cooperation with the Ministry of Labor and Social Policy. After initial difficulties, cooperation was established in dealing with certain complaints in the area of child rights and domestic violence. In addition, cooperation with this Ministry in respect of the initiative of the Protector of Citizens to amend the Law on Financial Assistance to Families with Children, the Family Law (to ban corporal punishment of children in the family setting) proposed by this Ministry as well as to print and issue semi-postal stamp the revenues of which are intended for street children, thrived.

## **COOPERATION WITH OTHER INDEPENDENT STATE AUTHORITIES, INSTITUTIONS AND BODIES TASKED WITH THE PROTECTION OF THE RIGHTS OF CITIZENS AND COMBATTING ORGANIZED CRIME**

The Protector of Citizens has established cooperation with independent state authorities with whom numerous meetings were held and the issue of the position of these authorities and their relation with the National Assembly and the Government was reviewed. The Protector of Citizens has established a particularly fruitful cooperation with the Commissioner for Information of Public Importance and Personal Data Protection on the adoption of the Law on Data Confidentiality and preparation of amendments to the Draft Law on Amendments to the Law on Free Access to Information of Public Importance, as well as on other issues.

### **Cooperation with Provincial Ombudsman and Local Ombudsmen**

For the purpose of providing as comprehensive and as accessible protection of citizens' rights as possible, the Protector of Citizens continued to actively communicate and cooperate with the Provincial Ombudsman as well as with local Ombudsmen. Local Ombudsmen exist in fourteen cities and municipalities throughout Serbia: Belgrade, Subotica, Bečej, Zrenjanin, Kragujevac, Šabac, Niš, Bačka Topola, Kraljevo, Smederevska Palanka, Grocka, Voždovac, Vračar and Rakovica.

## **ACTIONS OF THE PROTECTOR OF CITIZENS UPON COMPLAINTS**

### **Introductory Remarks**

Protector of Citizens implements its function of reviewing and examining citizens' complaints by carrying out administrative authorities' operations regularity and legality control procedure. In addition, the Protector of Citizens has the authority to decide on citizens' complaints, when the necessary conditions have emerged, and act preemptively by extending good services, mediating between citizens and administrative authorities and by offering advice and opinions on issues within its scope of competence.

One of the main tasks of the Protector of Citizens is to examine whether an administrative authority or another organization entrusted with public authority has legally and correctly decided on a right or interest of citizens. The Protector of Citizens does this upon complaints of citizens or at its own initiative.

In order to be acquainted with the stated violation of rights, **the Protector of Citizens establishes and maintains different contacts with citizens.** In 2009 the Protector of Citizens had 8,774 contacts with citizens (Table 1) which constitutes an **increase of 45.6% as compared to 2008** when it had 4771 contacts with citizens.

The increase in the number of contacts of the Protector of Citizens with the citizens shows that the citizens have recognized the Protector of Citizens as a state administration authority with considerable powers in the legal system of the Republic of Serbia pertaining to the protection of their rights but also in respect of the promotion of regulations in the area of human rights and liberties.

Table 1.

<b>Ordinal number</b>	<b>Contacts of the Protector of Citizens with citizens – Increase 2008-2009</b>	<b>In 2008</b>	<b>In 2009</b>	<b>Increase in percentages</b>
1.	Complaints received	1,030	1,774	41.9%
2.	Received law-related initiatives	25	55	54.5%
3.	Interviews with citizens	1,395	1,741	18.9%
4.	Telephone interviews with citizens	2,232	5,044	55.7%
5.	Different applications submitted by citizens	89	160	44.4%
	<b>Total</b>	<b>4,771</b>	<b>8,774</b>	<b>45.6%</b>

The number of contacts established between the Protector of Citizens and citizens in 2009 (Chart 13) has increased as compared to 2008, with the number of **contacts via telephone** experiencing the sharpest increase. The citizens have an option to contact the Protector of Citizens by dialing several

telephone numbers both through the hotline and by speaking directly to the person in charge of their complaint. In addition, the Protector of Citizens has introduced a SOS cell phone helpline available to citizens in emergency cases outside the working hours.

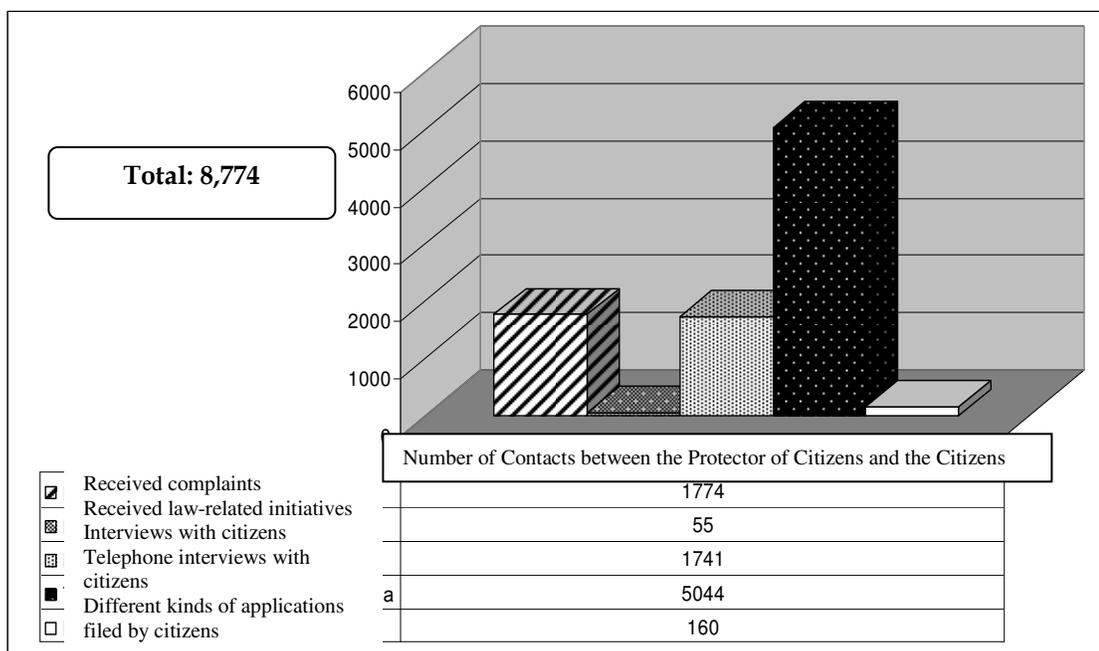
In 2009 the **number of law-related initiatives** has more than doubled and they are submitted to the Protector of Citizens by citizens but also by legal persons. More detail on this issue is available in the section of this Report "Proposals and Actions of the Protector of Citizens Regarding Improvement of Regulations from the Viewpoint of the Protection of Human Rights and Liberties".

Each and every private or legal person, either local or foreign, who feels that his/her rights have been violated either by a legal document, action or failure to act by an administration authority, **may file a complaint with the Protector of Citizens**. The Protector of Citizens has the obligation to act upon each complaint unless one of the basis for taking actions upon complaints defined by the law is missing, in which case the Protector of Citizens shall reject the complaint and inform the complainant thereof and state the reasons for doing so. More detail on this issue is available in the section of this Report "Actions of the Protector of Citizens upon Complaints".

During 2009 the Protector of Citizens has had interviews with a large number of citizens. The employees working in the Expert Services Department of the Protector of Citizens conduct 7 to 8 interviews with citizens per day on average. When the need arises, they help citizens put together a complaint and/or they give them expert advice i.e. direct them to authorities they should contact indicating actions they should take for the purpose of dealing with their problem.

In addition, citizens contact the Protector of Citizens in writing by submitting different kinds of applications, indicating not only problems they face when dealing with administration authorities but also problems with other legal and private persons as well as other issues. They often give their proposals on how they think the Protector of Citizens should act in certain situations, etc.

### **Chart 13. – Number of Contacts between the Protector of Citizens and the Citizens in 2009**



## Number and Classification of Complaints

Anyone can contact the Protector of Citizens (citizens of Serbia, foreigners, legal persons, persons lacking citizenship, refugees, displaced persons, adults and children alike, different associations...) who feels that the administration authorities are implementing incorrectly and/or unfairly or failing to implement the regulations of the Republic of Serbia. A complaint filed with the Protector of Citizens is free-of-charge and is filed in written form or in oral form and recorded in the minutes with the Protector of Citizens.

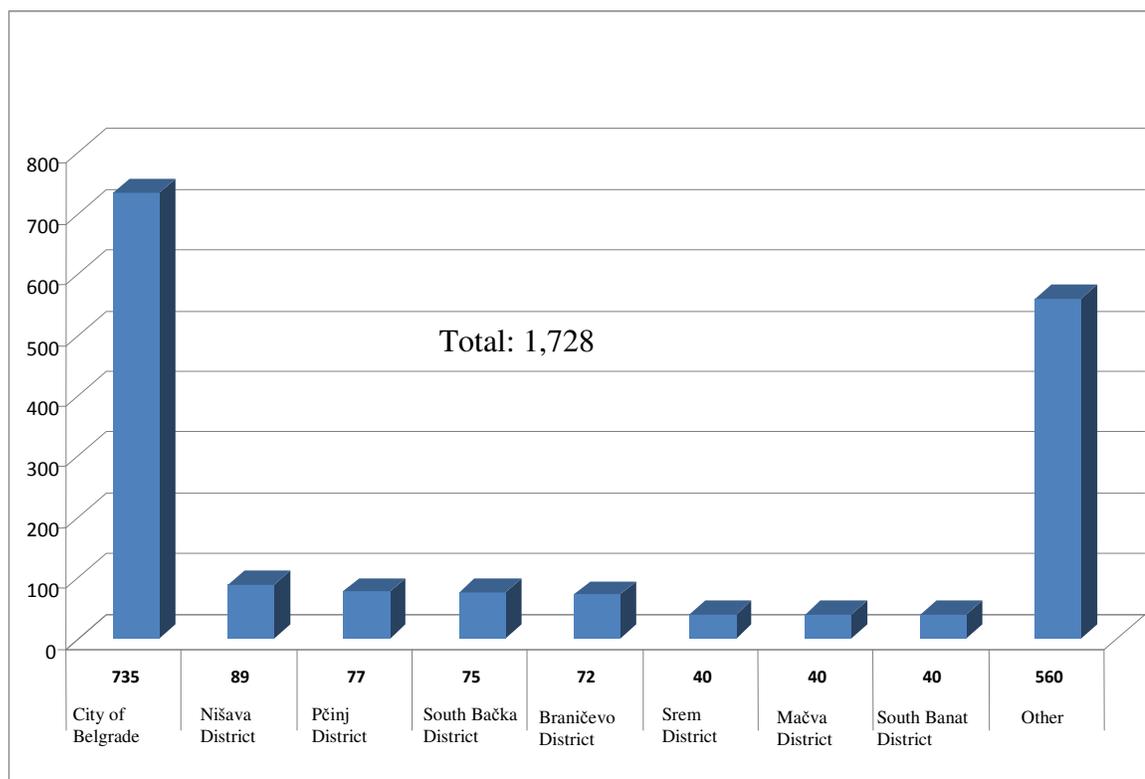
In 2009 the Protector of Citizens has acted upon 1,774 complaints

## Number and Classification of Complaints in Respect of Administrative District of the Complainant

**The largest number of complainants are from Belgrade** but there are complainants from all other district throughout Serbia. This is understandable since Belgrade has more inhabitants than any other city in Serbia and being the capital city, it is the seat of the greatest number of administrative authorities.

Note: In addition to 1,728 complaints from different administrative districts in Serbia, 25 complaints are from other countries while 21 complaints were filed without stating the complainant's address (Chart 14).

**Chart 14. - Number and Classification of Complaints in Respect of Administrative District of the Complainant**

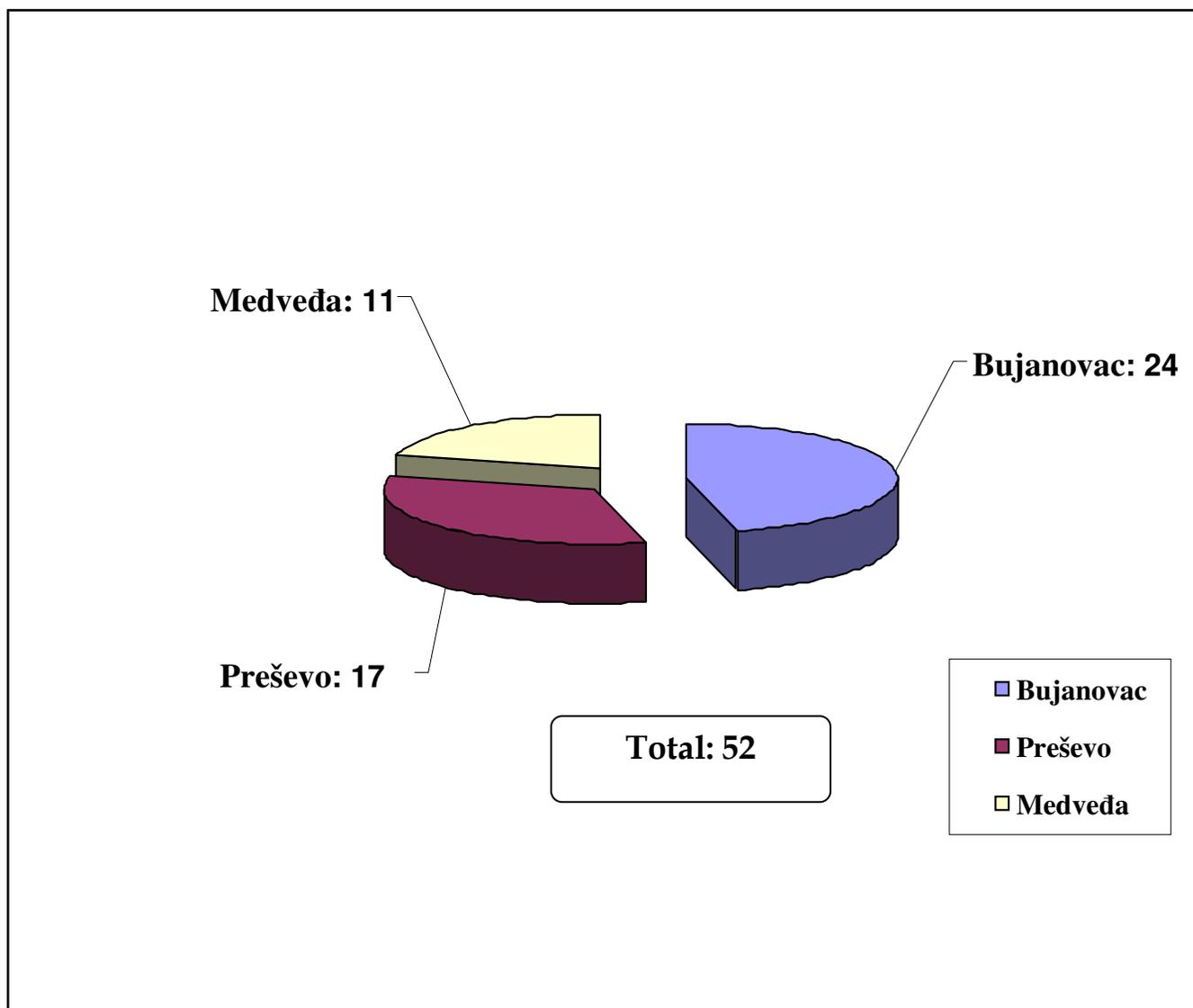


The Protector of Citizens has adopted an **official decision establishing local offices in Preševo, Bujanovac and Medveđa municipalities** so as to step up the accessibility of the Protector of Citizens institution and effectuate a more efficient protection and improvement of human and minority liberties and rights of citizens in that area.

This Official Decision was published in the "Official Gazette of the Republic of Serbia", No. 91/09 from 6 November 2009 and within a short period of time the Protector of Citizens has received 52 complaints from this area, namely 24 from Bujanovac, 17 from Preševo and 11 from Medveđa (Chart 15). Complaints from these three municipalities constitute 3% of the total number of complaints received by the Protector of Citizens in 2009 (1,774).

The Protector of Citizens, Protector of Citizens' Deputies as well as the employees working in the Expert Services Department of the Protector of Citizens have visited the Preševo, Bujanovac and Medveđa municipalities, talked to the citizens and received their complaints.

**Chart 15. - Number and Classification of Complaints Filed by Citizens from Preševo, Bujanovac and Medveđa Municipalities**

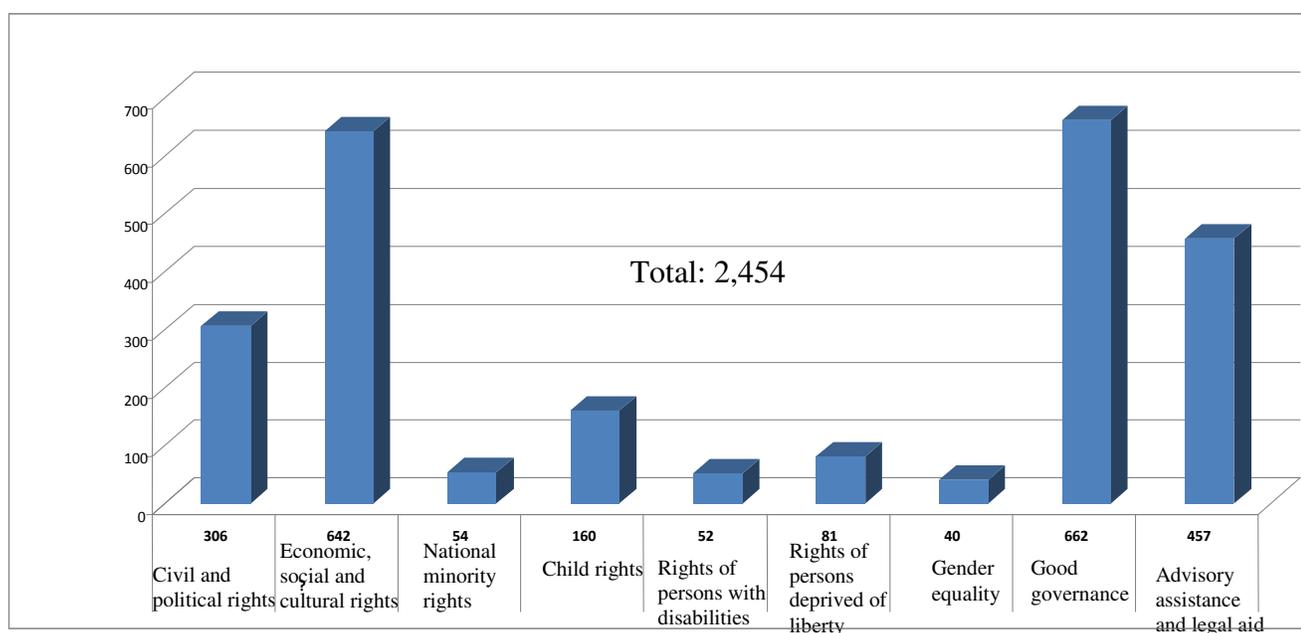


### Number and Classification of Complaints According to Rights Violations

The number and classification of complaints according to the rights violations indicate that the most cases pertain to the violation of economic, social and cultural rights and “good governance” principles, while the number of reported violations of civil and political rights is significantly lower. This is normal for countries undergoing transition and can be explained by the fact that the exercise and protection of economic and social rights in Serbia has been overshadowed by the fight for democracy and the implementation and protection of civil and political rights.

Note: The number of violated rights is greater than the number of complaints because numerous complaints point to the violation of more than one right (Chart 16).

**Chart 16. - Number and Classification of Complaints According to Rights Violations**



**Number and Classification of Complaints According to the Rights Violations Which Were Filed by Citizens from Preševo, Bujanovac and Medveđa Municipalities**

The content of complaints indicates that citizens of these three municipalities, as well as citizens from other parts of Serbia, usually complain against the violation of economic, social and cultural rights. It is interesting to note that only three complaints, all from Bujanovac, complained of national minority rights violation, while from other two municipalities not even one such complaint has been filed (Table 2). However, it is necessary to keep in mind that the number of complaints from these three municipalities is relatively low (52) thus it does not give sufficient basis to draw conclusions in respect of all other complaints received by the Protector of Citizens during 2009 (1,774).

Note: The number of violated rights is higher than the number of complaints because numerous complaints point to the violation of more than one right (Table 2).

**Table 2. - Number and Classification of Violated Rights in Complaints Filed by Citizens from Preševo, Bujanovac and Medveđa Municipalities**

Area of law	Bujanovac	Preševo	Medveđa	Total according to the area of law
Good governance	9	7	4	20
Civil and political rights	7	2	1	10
Economic, social and cultural rights	11	9	9	29
National minority rights	3			3
Child rights	2	1	1	4
Rights of persons with disabilities	1			1
Right to fair trial		1		1
Other rights		1		1
<b>Total by municipality</b>	<b>33</b>	<b>21</b>	<b>15</b>	<b>69</b>

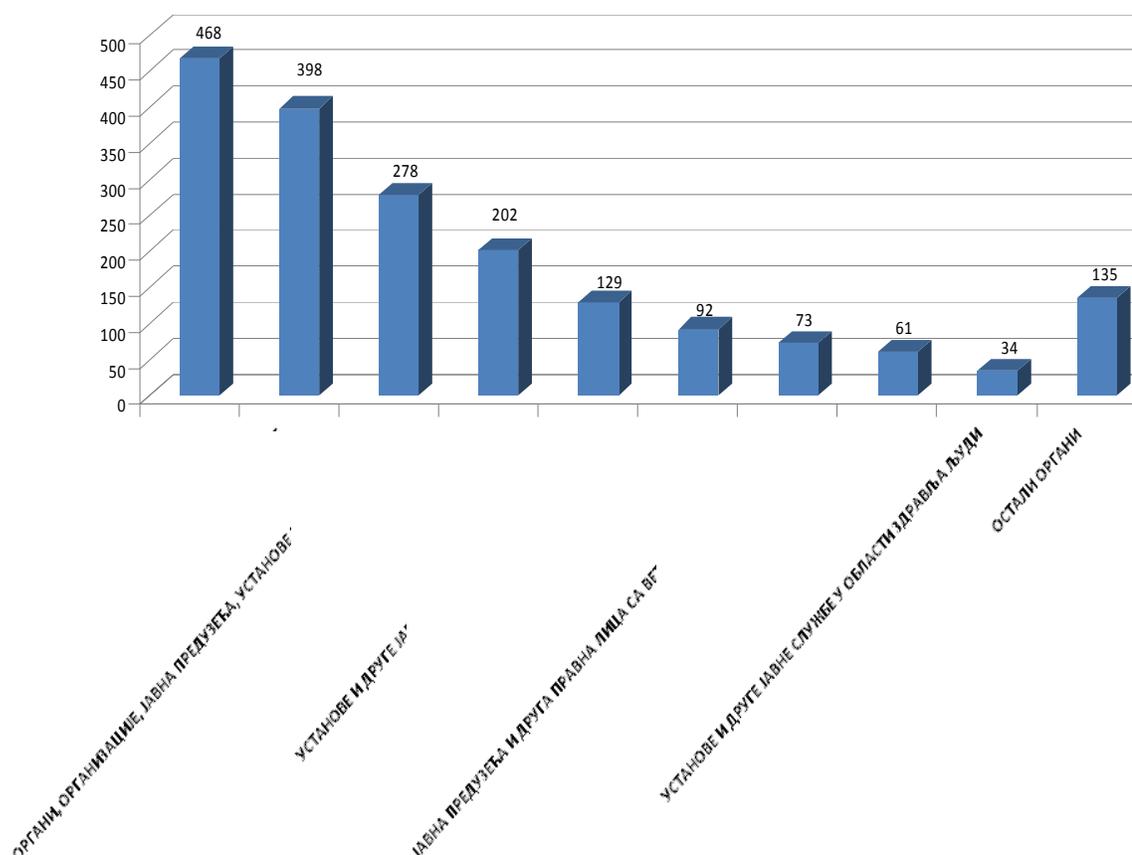
### **Number and Classification of Complaints According to the Authorities against Whose Operation Complaints Were Filed**

The largest number of complaints pertains to the operation of the representatives of authorities with executive powers, in particular to the ministries of the Government of the Republic of Serbia, as well as to the work and activities of different organizations, agencies and enterprises entrusted with public authority. Chart 17 shows complaints against operation of those

authorities which are outside the scope of competence of the Protector of Citizens (for example, courts, prosecutor's office), because the number of such complaints is not small. Regardless of the fact that the Protector of Citizens is not entitled to take action upon such complaints, the sheer number points to the problem citizens face when dealing with these authorities.

Note: The number of authorities against whose operation complaints were filed is greater than the number of complaints since many complaints refer to the operation of more than one authority.

**Table 17. - Complaints According to the Authorities against Whose Operation Complaints Were Filed**



### Ministries

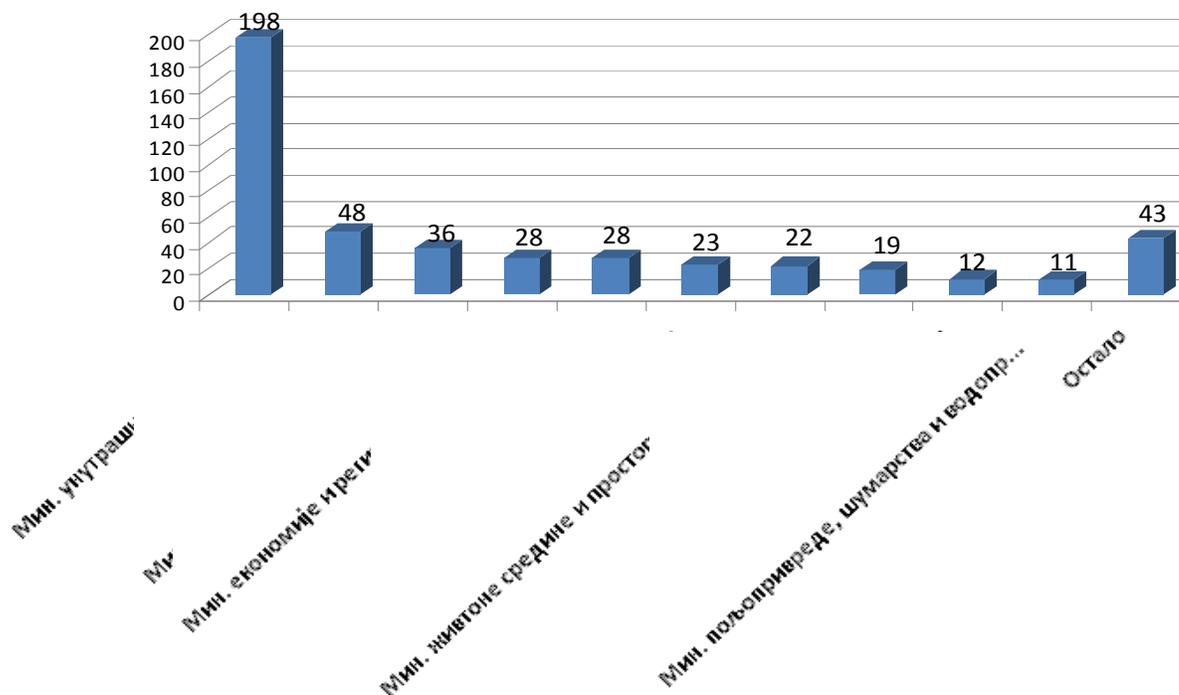
Agencies, institutes and other organizations at the level of the Republic

**Authorities, organizations, public enterprises, institutions and other public...**  
**Judicial authorities**  
**Institutions and other public services of social welfare protection**  
**Judicial institution**  
**Public enterprises and other legal persons with majority state...**  
**Education institutions**  
**Health care institutions and services**  
**Other authorities**

### **Number and Classification of Complaints according to the Ministries against Whose Operation Complaints Were Filed**

The majority of complaints are related to the operation of the Ministry of Internal Affairs (Chart 18), in view of the fact that this Ministry has the authority to decide on vital rights and freedoms of citizens. In addition, in 2009 and in 2008, this Ministry carried out an extensive personal documents replacement procedure during which a number of deficiencies were detected which the Protector of Citizens pointed out, but the majority of such deficiencies were a direct result of objective difficulties. The Protector of Citizens issued several recommendations which the Ministry of Internal Affairs accepted and in almost all cases acted on them in a timely manner.

### **Chart 18. - Complaints According to the Ministries against Whose Operation Complaints Were Filed**



Ministry of Internal Affairs  
 Ministry of Education, Science and Technological Development  
 Ministry of Labor and Social Policy  
 Ministry of Economy and Regional Development  
 Ministry of Justice  
 Ministry of Defense  
 Ministry of Environment and Spatial Planning  
 Ministry of Finance  
 Ministry of Health  
 Ministry of Agriculture, Forestry and Water Management  
 Other ministries

## Results of Actions Taken by the Protector of Citizens upon Complaints

The Protector of Citizens acts upon each and every complaint except in complaints over which it has not authority, complaints filed in an untimely manner, complaints filed prematurely, anonymous complaints, incomplete complaints as well as those complaints filed by unauthorized persons.

The Protector of Citizens notifies the complainant and the authority against whose operation the complaint has been launched, on the launching and

finalizing the procedure. The administration authority has a legal obligation to respond to all requests submitted by the Protector of Citizens and to release all the requested information and documents requested by the Protector of Citizens within a time period from 15 to 60 days.

In 2009 the Protector of Citizens has acted upon 1,980 cases filed during 2009 and the previous period either upon a complaint or at its own initiative.

Out of 1,980 cases the Protector of Citizens acted upon in 2009, 1040 were finalized. The majority of cases were rejected (653) as being unfounded, while the remaining cases (393) were finalized in an appropriate manner (Table 3). The remaining cases which were initiated (940) are currently under procedure.

**Table 3. - Finalized Actions of the Protector of Citizens upon Complaints in 2009**

Ordinal number	Finalized actions of the Protector of Citizens upon complaints in 2009	Number
1.	Rejected complaints	653
2.	Complaints rejected as unfounded	178
3.	Complaints withdrawn by complainants	51
4.	Procedure discontinued – administration authority has eliminated deficiencies in its operation	74
5.	Recommendations– total (upon complaints and at its own initiative.)	44
6.	Opinions – pursuant to Article 24, paragraph 2 of the Law on the Protector of Citizens)	8
7.	Other (different legal documents of the Protector of Citizens on the finalization of the procedure)	32
	<b>Total:</b>	<b>1,040</b>

### Rejected Complaints

In 2009 the prevalent manner of finalizing actions upon complaints was the rejection of a complaint. If the Protector of Citizens found no grounds to initiate proceedings in respect of complaints it had no authority over, which

were filed in an untimely manner, prematurely filed, anonymous, incomplete or filed by an unauthorized person, in those cases such complaint had to be rejected (Chart 19). An integral part of the notification of the Protector of Citizens notifying citizens that no valid grounds for initiating a procedure were found due to one of the previously mentioned reasons is at the same time a form of advisory assistance and legal aid to complainants. Namely, complainants have always been directed towards adequate legal procedures and/or competent authorities.

**Scope of competence.** The Protector of Citizens is an independent state authority which protects the rights of citizens and controls the operation of state administration authorities, authorities in charge of legal protection of property rights and interests of the Republic of Serbia, as well as other authorities and organizations, companies and institutions entrusted with public authority (in the text of the Law on the Protector of Citizens and in this Report an abbreviation “*administration authorities*” is used). Hence, the Protector of Citizens does not have the authority to control the operation and actions of certain entities for example, private employers. Furthermore, the Protector of Citizens does not have the authority to control the operation of the National Assembly, President of the Republic of Serbia, the Government, the Constitutional Court, courts and prosecutor’s office. In addition, the Protector of Citizens has the authority to establish the violations of republican laws, other regulations and legal documents of general nature only, but not the violation of regulations or legal documents of general nature of an autonomous province, or local self-government units.

The Protector of Citizens has rejected the majority of complaints due to the lack of scope of competence (366), most of which pertain to the operation of courts (234) mainly to municipal courts (138). As opposed to this, an insignificant number of complaints were received against operation of the National Assembly (2) and the Government (4).

On numerous occasions in public appearances the Protector of Citizens has indicted the legal scope of competence it has, in particular pointing out the authorities whose operation it has no authority to control. Despite this fact, the Protector of Citizens continues to receive a substantial number of complaints pertaining to the work, activities and operation of these authorities, courts in particular. This speaks not only of the lack of information citizens have about

the scope of competence and authority of the Protector of Citizens, but also about the fact that there obviously are problems in the operation of courts to which the citizens refer in their complaints, in particular the violation of right to fair trial, in particular the right to trial within reasonable time.

**Incomplete complaints** are the next reason why so many complaints are rejected (131). Namely, if a complaint does not contain adequate data necessary to take action and if the complainant fails to eliminate those deficiencies during the subsequently allowed time to supplement his/her complaint, this period usually being 15 days or if he/she fails to contact the Expert Services Department for expert assistance to help him/her eliminate the stated deficiencies, in such cases the Protector of Citizens rejects such complaints.

**Premature complaints** are those which are rejected and there were 113 such complaints. Namely, before filing a complaint the complainant is obliged to try and protect his/her rights in an appropriate legal proceedings while the Protector of Citizens must instruct the complainant to launch adequate legal procedure, if such procedure is available. The Protector of Citizens does not undertake activities until all legal remedies have been exhausted. Exceptionally, the Protector of Citizens may launch a procedure before all available legal remedies have been exhausted, if the complainant would be irretrievably injured or if the complaint pertains to good governance principle violation, in particular unfair treatment of the complainant by the administration authorities, untimely operation or other violations of rules of ethical conduct of employees working in an administration authority.

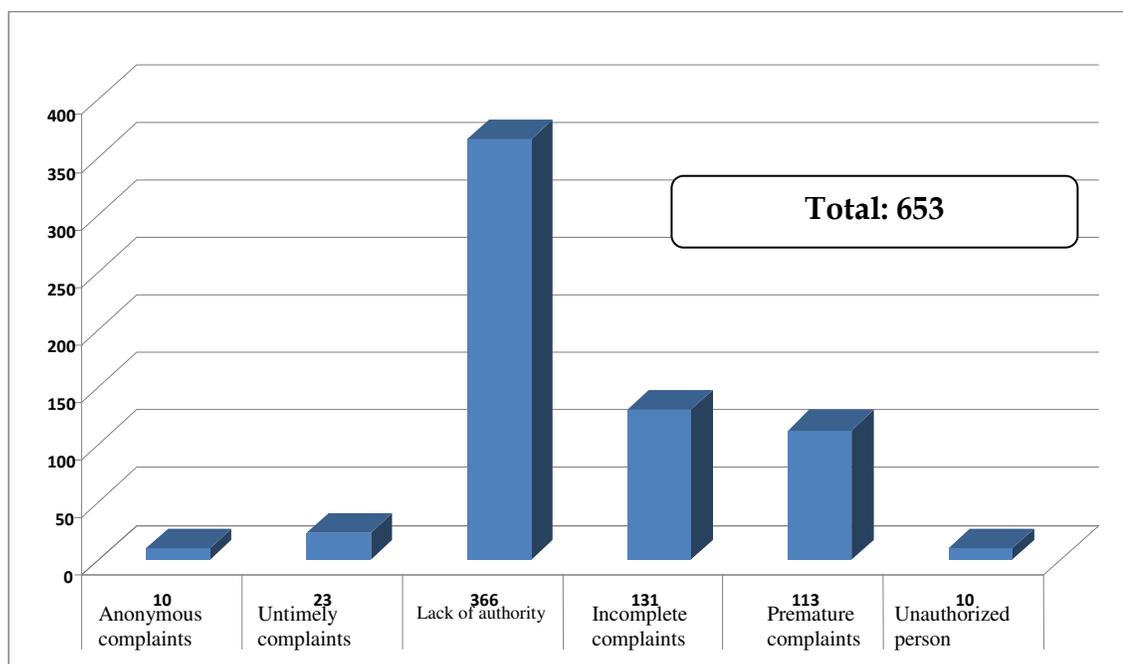
**Untimely complaints** are also those which are subject to rejection by the Protector of Citizens and there were 25 such cases. Namely, a complaint may be filed one year following the citizen's right violation at the most, or one year at the most following the last action taken or not taken by the administration authority in respect of the committed violation of a citizen's right. In addition, the Protector of Citizens may act only in those cases which occurred after the Law on the Protector of Citizens had come into effect (24 September 2005).

**Anonymous complaints** constitute another group of complaints which are rejected and there were 10 such cases. The Protector of Citizens does not act on anonymous complaints except in special cases when it assesses that the

anonymous complaint contains grounds for taking actions and that there is a possibility that a citizen's rights were blatantly violated, in such cases the Protector of Citizens launches the procedure at its own initiative. The assessment of the Protector of Citizens constitutes the basis for action, based on information provided in the anonymous complaint that an administration authority has, by virtue of an act, action or failure to act, violated a citizen's right or liberty, which did indeed occur on several occasions.

Finally, if **the complaint has been filed by an authorized person**, which occurred in 10 cases, this is yet another possible reason for the complaint to be rejected. Each and every private or legal person, both local and foreign, may file a complaint with the Protector of Citizens, if he/she feels that his/her rights have been violated by administration authority's act, action or failure to act. If there was a violation of a child right, in those cases complaints may be filed by the child's parent or an attorney. If there had been a violation of the legal person's rights, the complaint may be filed by a person who has the power of attorney to represent this legal person.

**Chart 19. – Reasons for the Rejection of Complaints**



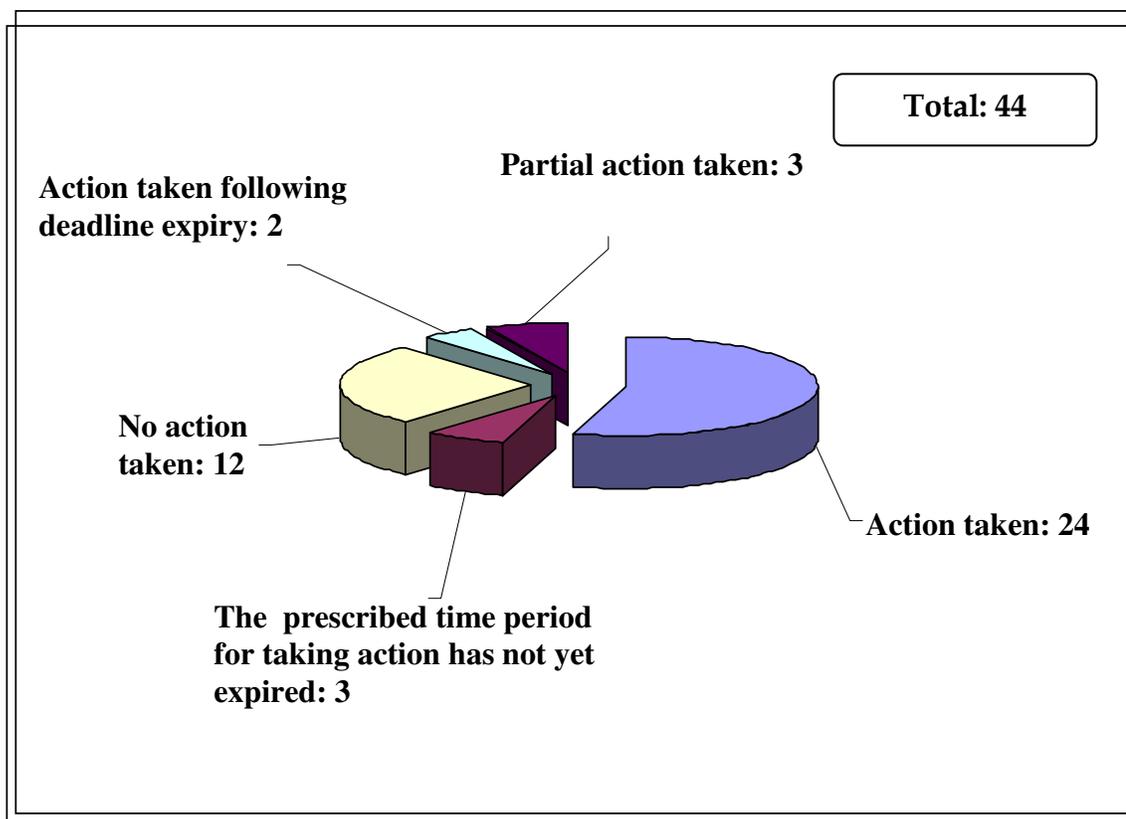
## Recommendations of the Protector of Citizens

When the Protector of Citizens detects deficiencies in the operation of an administrative authority, it issues a recommendation to the authority on how this deficiency should be eliminated. The administration authority is obliged to inform the Protector of Citizens, within a time period between 15 and 60 days from the receipt of the recommendation, on whether it has acted upon that recommendation and eliminated the deficiency or if not, why it failed to act on that recommendation. In cases when an administrative authority fails to act on a recommendation, the Protector of Citizens has the authority to inform the public, the National Assembly and the Government thereof, and it may even recommend that responsibility of an official managing the administration authority be established.

Note: In the section of this Report, “Actions of the Protector of Citizens upon Complaints, Detected Deficiencies in the Operation of the Administration Authorities and Overview of Typical Actions According to Areas” characteristic recommendations will be given in more detail.

In 2009 the Protector of Citizens has issued 44 recommendations to administration authorities. In most cases, when compared to approximately 60% of recommendations of the Protector of Citizens, the administration authorities have acted on these recommendations in a timely manner or shortly after the expiry of the prescribed deadline (Chart 20).

### **Chart 20. – Actions of Administration Authorities on Recommendations Issued by the Protector of Citizens**



The Protector of Citizens stresses in particular that the administrative authorities have not acted on 12 recommendations issued during 2009. The Protector of Citizens has used its legal authority to inform the public on failure to act upon recommendations, both through the media and its internet website, and it is doing so now by means of this Report.

The Protector of Citizens expects that the mentioned administrative authorities will appreciate Ombudsman's efforts towards the promotion and protection of human rights and freedoms and act on the issued recommendations even if belatedly.

## **AUTHORITIES WHICH HAVE NOT ACTED ON RECOMMENDATIONS OF THE PROTECTOR OF CITIZENS**

1. Several state administration authorities; the purpose being that the state authorities, public services and provincial and local self-government unit authorities abide by the obligation to enable representation of national minorities in the recruitment and employment process;

2. State Administration Human Resources Service of the Government of the Republic of Serbia, for the lack of data on the nationality background structure of employees working in the state administration bodies, the lack of plan for hiring them and for not announcing job vacancies in the languages of national minorities;
3. Municipal administration of Zvezdara Belgrade city municipality, for deficiencies in operation which caused the violation of the right to quiet enjoyment of property and other property rights as well as the violation of the good governance principle;
4. City administration of the City of Belgrade, Secretariat for Social and Child Protection, for omissions in their work and activities which have resulted in the violation of child and family rights.
5. Municipal administration of Ub municipality, for the violation of good governance principle and violation of the right to quiet enjoyment of property and other property rights;
6. Municipal administration of Arandelovac municipality, for the violation of good governance principle and violation of the right to quiet enjoyment of property and other property rights acquired pursuant to the law;
7. Property Directorate of the Republic of Serbia, for irregular actions upon request of independent state authorities;
8. City administration of the City of Novi Pazar, for the violation of good governance principle and violation of the right to quiet enjoyment of property and other property rights acquired pursuant to the law;
9. Agricultural school with student residence facilities PK "Beograd" in Belgrade, for the violation of citizens' rights to free access to information of public importance;
10. Ministry of Education, for the purpose of eliminating deficiencies in operation of "Šamu Mihalj" primary school in Bečej;
11. Ministry of Culture, for the purpose of eliminating deficiencies in the financing of publishing activities of the newspaper and publishing company "Bratstvo", and
12. Ministry of Labor and Social Policy, for the deficiencies in the publishing of the public invitation for funds allocation.

In addition, the following five recommendations issued by the Protector of Citizens in 2008, have not been acted upon yet:

1. JAT Airways, for cases of discrimination against persons with disabilities;

2. Ministry of Justice, for the violation of good governance principle due to the failure to act on requests for registration in the Permanent Court Expert Registry;
3. Ministry of Education, for deficiencies in operation resulting in unequal position of secondary school students attending schools not funded from the budget of the Republic of Serbia, when exercising their right to be granted board and lodging in student residence facilities;
4. Municipal administration of the Čukarica city municipality, for the violation of good governance principle when the competent authority acted irregularly and in an untimely manner in issuing a building construction and utilization permit, and
5. Palilula city municipality, for elimination of deficiencies in operation which were the result of failure to act upon the final ruling of the Supreme Court of the Republic of Serbia.

### **Opinions of the Protector of Citizens**

In 2009 the Protector of Citizens has issued eight opinions within the framework of its preemptive activities i.e. extending good services, mediation and offering advice and opinion on issues within its scope of competence, for the purpose of improving the operation of administrative authorities and promotion of the protection of human freedoms and rights (Article 24, paragraph 2 of the Law on the Protector of Citizens). They are as follows:

1. Opinion on the need to promote legal position of churches and religious communities and exercise the freedom of religion by improving regulations and its correct implementation;
2. Opinion regarding payment of debts to the Public Health Institute in Užice;
3. Opinion to the Ministry of Labor and Social Policy on the need to integrate the Kids Help Line into the system and strengthen its accessibility;
4. Opinion regarding the questioning of the legality of the election of Deputy Protector of Citizens for the City of Kragujevac;
5. Opinion on the Rulebook pertaining to the Republic of Serbia Rhetoric and Public Speaking Competition of the Community of Economics, Paralegal, Trade, Services and Hospitality Schools;
6. Opinion regarding complaints filed by citizens who have signed a purchase and sale agreement on the purchase of office space from the “Borovo” company;

7. Report accompanied by an opinion on the results of supervision of the operation of competent authorities regarding the case of violence which occurred in “Nikola Tesla” Secondary Technical School in Sremska Mitrovica, and
8. Opinion regarding tensions and expressed unacceptable social views regarding the relocation of Roma slums.

Opinions issued by the Protector of Citizens within the framework of preemptive activities are different in nature from opinions issued by the Protector of Citizens within the framework of its normative activities, for the purpose of improving regulations from the standpoint of human rights and liberties protection (Article 18, paragraph 4 of the Law on the Protector of Citizens). In 2009 the Protector of Citizens has issued six opinions within the framework of its normative activities (more on this topic can be found in the section of this Report – “Promoting the Exercise of Human Rights and Liberties – Normative Activities of the Protector of Citizens”).

## **Miscellaneous**

Other ways the Protector of Citizens has finalized procedures: rejecting a complaint, complaints withdrawn by complainants, discontinuing the procedure and passing its own legal document on the finalization of the procedure.

### **Complaints Rejected as Unfounded**

If the Protector of Citizens, after having established all relevant facts and circumstances, concludes that a complaint is unfounded or if no violation of human liberties and freedoms or citizens’ rights could be established, it finalizes the action by rejecting the complaint giving detailed reasons for doing so.

In 2009 the Protector of Citizens has rejected, for different reasons, 178 complaints as unfounded.

### **Complaints Withdrawn by Complainants**

A procedure may be finalized with the complainant withdrawing the complaint accompanied by reasons substantiating the decision. This usually happens in cases when an administration authority itself eliminates deficiencies in its operation.

In 2009, 51 complainants withdrew their complaints filed with the Protector of Citizens.

### **Discontinuation of Procedure**

In cases when an authority against which a complaint has been filed, after being informed by the Protector of Citizens that the operations legality and regularity control procedure has been launched upon complaint filed by a citizen, eliminates by itself the deficiencies stated in the notification and informs the Protector of Citizens thereof, the Ombudsman informs the complainant of this fact and gives him/her a period of 15 days to state whether he/she is happy with such action. If the complainant states that he/she is satisfied or if he/she fails to respond within the given time period, the Protector of Citizens discontinues the procedure.

In 2009 the Protector of Citizens has finalized proceedings on these grounds in 74 complaints.

This and the previous manner of finalizing procedures are becoming increasingly frequent. The Protector of Citizens considers these examples particularly positive and always seeks ways to help the administrative authority detect and eliminate the deficiency by itself without waiting for the deficiency to be formally established and recommendation issued by the Protector of Citizens. In such cases the Protector of Citizens takes care that the detected deficiency is not eliminated only in respect of the citizen who had filed the complaint, but rather, nature of the case permitting, in respect of all citizens who are in the same or similar situation.

### **Protector of Citizens' Own Legal Documents on the Finalization of Procedures**

A special manner of finalizing procedures initiated by the Protector of Citizens, in particular in respect of actions upon complaints in the area of child

rights, but also in the area of general human rights, are interventions – mediation, preemptive activities, extending good services, offering advice and opinions on the case. This manner of operation is of a less formal nature and has yielded good results so far. Methods of operation are different: telephone contacts with authorities and complainants, forwarding brief legal documents to administration authorities, direct contact with the representatives of authorities and complainants, etc. The Protector of Citizens passes its own legal document on the finalization of the procedure noting the way in which the procedure has been conducted and finalized.

In 2009 the Protector of Citizens has finalized 32 cases in such manner.

### **Advisory Assistance and Legal Aid**

The Protector of Citizens has no legal authority to act upon complaints which are outside its scope of competence, which are untimely, premature, anonymous, incomplete or filed by an unauthorized person. In 2009 the Protector of Citizens has rejected 653 complaints. When notifying citizens on the lack of authority to act upon complaints for one of the mentioned reasons, the Protector of Citizens had always directed the complainants to adequate legal procedures and/or competent authorities.

More detail can be found in the section of this Report “*Actions of the Protector of Citizens upon Complaints – Rejected Complaints*”.

### **Typical Right Violations Claimed in Rejected Complaints**

Typical rights violations claimed in complaints rejected by the Protector of Citizens due to lack of authority, pertain to the violation of right to trial within reasonable time and dissatisfaction with actions taken by courts and judges. In addition, frequent violations of rights stated in complaints are the violations of rights resulting from employment and violation of rights which belong to the scope of competence of local self-government units. Also, there are a certain number of complaints pertaining to the operation of an entity whose operations legality and regularity control is outside of the authority of the Protector of Citizens, as well as the complaints regarding the violation of rights by companies, authorities of foreign countries, lawyers or private persons.

The section of this Report which deals with the right to fair trial contains more details on complaints against the **violation of right to trial within reasonable time**.

Complaints regarding the **dissatisfaction of citizens with the actions taken by courts and judges** are often related to the dissatisfaction with court judgments, so in these cases citizens frequently expect Protector of Citizens' help in altering such decisions. In such cases, the Protector of Citizens, bearing in mind its scope of competence, rejects these complaints and instructs the citizens to use regular and special legal remedies.

*Example: a complainant was dissatisfied with the irrevocable decision of the court in a criminal procedure sentencing him to a prison sentence.*

Regarding complaints claiming the **violation of rights resulting from employment**, more detail is available on this topic in the section dealing with the right to work.

The Protector of Citizens instructs the complainants claiming in their complaints **violations of rights which are within the scope of competence of the local self-government units**, to contact the local Ombudsman, if this authority exists in that particular local self-government unit, if not the complainant is instructed to contact the competent authorities of the local self-government unit, depending on the administrative authority the complaint refers to.

*Example: A complainant was dissatisfied with the fee for heating charged by the Public Utilities Company "Toplana" in his local place of residence, so his complaint was forwarded to the Citizens' Protector in that particular town.*

### **The Lack of Authority of the Protector of Citizens over Private and Legal Relations**

*Example: A citizen has contacted the Protector of Citizens claiming certain difficulties in obtaining personal documents without stating the authority against whose operation he has filed a complaint. Upon review of the complaint it was noted that he could not have his personal identification card*

*issued to him because he could not obtain the proof of residency certificate. During a telephone conversation with the complainant it transpired that he had contacted orally the Ministry of Internal Affairs regarding this problem, but that he did not file an official application for the issuance of personal identification card. He also said that he is unable to obtain the proof of residence certificate since his landlord refuses to register him at his current address.*

*Upon review of the complaint the Protector of Citizens has concluded that the complainant is not complaining against the operation of any known administration authority, but that he was having problems with his landlord who had refused to register him at his current address. Bearing in mind the fact that the Protector of Citizens has no authority to control and govern private and legal relations, the complaint was rejected due to lack of authority on behalf of the Protector of Citizens and the complainant was instructed to seek other ways of protecting his rights.*

## **PROMOTING THE EXERCISE OF HUMAN RIGHTS AND LIBERTIES – NORMATIVE ACTIVITIES OF THE PROTECTOR OF CITIZENS**

### **General remarks**

The position and role of the Protector of Citizens in the legal system of the Republic of Serbia are determined by the considerable level of authority in respect of the improvement of legal documents in the area of human rights and liberties. Apart from the general right to propose laws falling under its scope of competence the Protector of Citizens is also authorized to submit initiatives for the amendments of laws, other regulations and legal documents of general nature if it feels that deficiencies in regulations cause violations of citizens' rights. At the same time, the Protector of Citizens may initiate the adoption of new laws, other regulations and legal documents of general nature, when it feels that this is of significance for exercising and protecting the rights of citizens. The mentioned right of the Protector of Citizens is accompanied by a law which has been prescribed by the obligation of the Government or a competent National Assembly Council, to review initiatives submitted by the Protector of Citizens. Finally, we would wish to point out the authority of the Protector of Citizens in the regulations drafting process to give its official

opinion to the Government and the National Assembly on draft laws and other regulations governing issues pertaining to citizens' rights protection (Article 18 of the Law on the Protector of Citizens).

Despite the fact that the number of citizens proposing to the Protector of Citizens procedures for the adoption of new regulations has increased when compared with the previous year, the Protector of Citizens has limited authority in the regulations adoption procedure, this being the reason for not resorting to this authority prescribed by the law, neither in 2009 nor before that.

Bearing in mind the need to continuously strengthen human liberties and rights protection by adopting new regulations, the Protector of Citizens has submitted certain initiatives assessed as having merit, to administration authorities as authorized sponsors, for further consideration accompanied by its opinion and adoption justification assessment.

The Protector of Citizens has commenced with the drafting of the Law on Children, the so called umbrella law on children. An expert group has been established and it had a string of consultations with all target groups which could significantly contribute to the text quality of this law. The Protector of Citizens has presented this initiative to National Assembly Working Group for Child Rights and is hopeful of its cooperation. The drafting process of this law is receiving assistance from the UNICEF.

## **Proposals and Actions of the Protector of Citizens in Respect of Improving Regulations Regarding the Protection of Human Rights and Liberties**

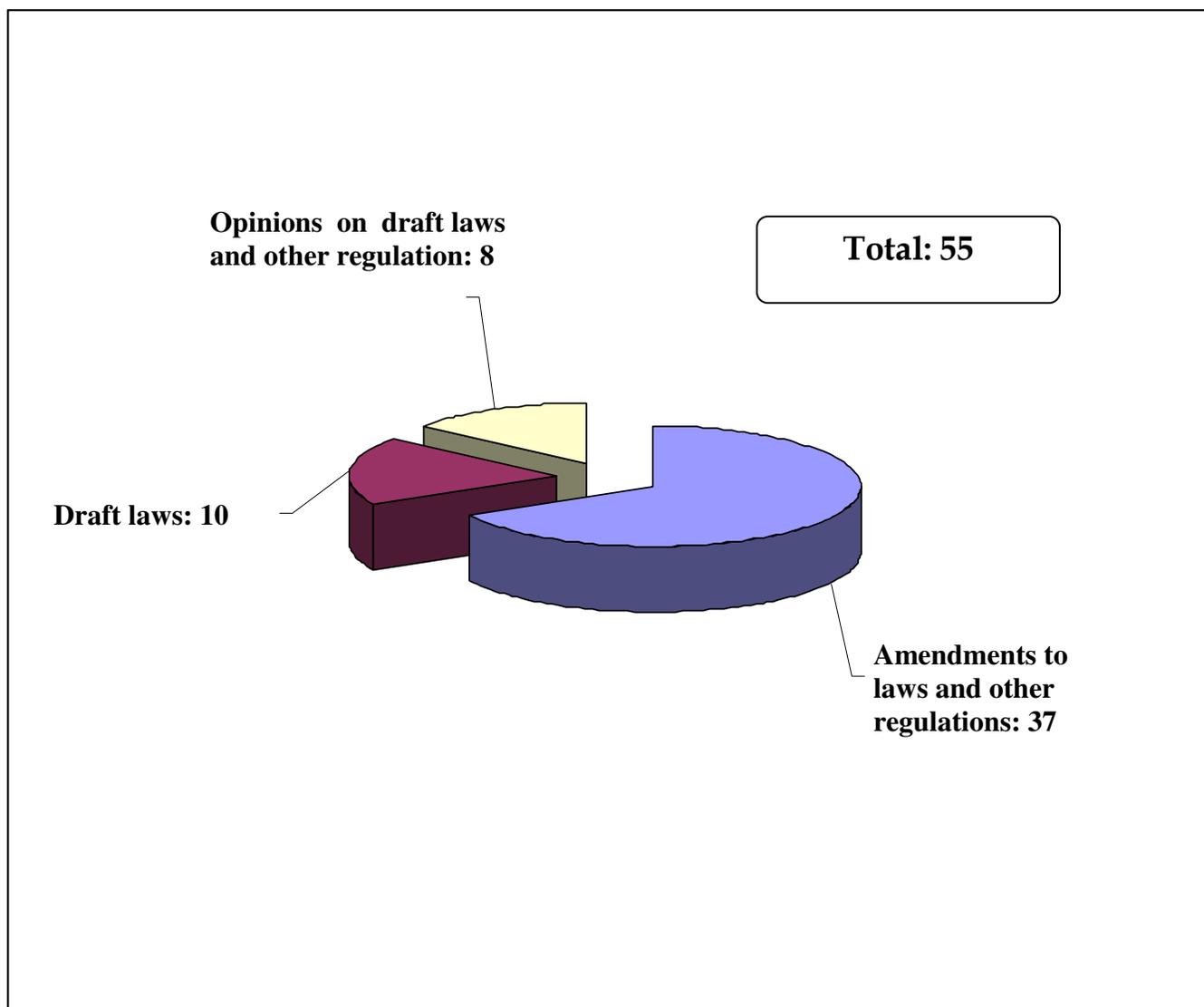
### **Received Proposals**

During 2009 the Protector of Citizens has received 55 proposals for improving laws, other regulations and legal documents of general nature. Considering that this figure outnumbers by far data for 2008 (23), it is safe to say that the institution of the Protector of Citizens has gained trust of citizens who have commended this institution for all the activities it had undertaken in the previous period for the purpose of promoting legal regulations in respect of human liberties and rights protection.

Out of the 55 proposals for improving the laws, other regulations and legal documents of general nature, 30 of them were filed by private persons, 19 were filed by legal persons (out of which 4 were not registered i.e. were not legally considered as legal persons) and 6 proposals were the result of the Protector of Citizens' own initiative.

In 37 cases proposal was to have the Protector of Citizens initiate amendments to laws, other regulations and legal documents of general nature if it feels that the deficiencies in these regulations cause violations of citizens' rights; in 10 cases the Protector of Citizens was asked to propose laws falling within its scope of competence and in 8 cases it was proposed to the Protector of Citizens to give its official opinion during the regulations drafting procedure, regarding draft laws and other regulations if they govern issues of importance for the protection of citizens' rights. (See Chart 21).

**Chart 21. – Proposals for the Improvement of Laws, Other Regulations and Legal Documents of General Nature Received by the Protector of Citizens**



### **a. 2) Proposals of Amendments to Laws, Other Regulations and Legal Documents of General Nature Submitted by the Protector of Citizens**

Within the framework activities aimed at improving regulations in respect of human rights and liberties protection (Article 18, paragraph 2 of the Law on the Protector of Citizens), the Protector of Citizens has submitted seven proposals on amendments to the laws, other regulations and legal documents of general nature, namely:

1. Amendments of the Protector of Citizens to the Draft Law on Data Confidentiality;
2. Initiative for amending the Law on Games of Chance;
3. Initiative for amending the Law on Financial Support to Families with Children;
4. Amendments to Draft Law on the Fundamentals of the Education System;
5. Amendments to Draft Law on Amendments to the Penal Code;
6. Amendments to Draft Law on Amendments to the Law on Free Access to Information of Public Importance, and
7. Initiative to the Ministry of Youth and sport for the amendments to the Decree on National Sports Prizes and Awards.

In cooperation with the Ministry of Justice and the Commissioner for Information of Public Importance and Personal Data Protection, the Protector of Citizens has submitted two **Amendments to the Draft Law on Data Confidentiality**. The first amendment proposes that the provision denying the Protector of Citizens and the Commissioner access to certain confidential data necessary for carrying out control procedures and other activities enshrined in the Constitution and envisaged by the law be deleted from the Draft Law on Data Confidentiality. The National Assembly adopted the amendment to this Article in a more restrictive text form according to which the right to approval of access to and utilization of confidential data without prior security check for the purpose of performing activities within their scope of competences, shall be granted to the highest officials but also to the Protector of Citizens and the Commissioner. The second, accompanying amendment of the Protector of Citizens according to which the provision from the Draft Law limiting access to confidential data has been deleted, was adopted by the National Assembly.

The Protector of Citizens has submitted to the Ministry of Finance the **Initiative for the amendment to the Law on Games of Chance**. Shortly after receiving the initiative of the Protector of Citizens, the Ministry issued its special opinion on how to measure the distance between the sports betting outlets and primary and secondary schools, defining that distance as the “shortest pedestrian walking distance between the building of a primary school and the entrance to the sports betting outlets”, but the Ministry failed to provide the Protector of Citizens with the written reply. This initiative received enormous support from the media, in particular from educators and parents. The Mayor of the City of Belgrade also extended his support which is a point

of significance since the capital city has the greatest number of sports betting outlets, the very reason the Protector of Citizens had launched this initiative requesting that these sports betting outlets be removed from the close vicinity of primary and secondary schools and that the entrance of minors be strictly controlled. The organizers of sports betting i.e. owners of sports betting outlets also joined the media campaign with some of them closing down their sports betting outlets on their own initiative, because a “on-the-spot” action of the Belgrade City administration showed that as many as one third of all sports betting outlets in four central Belgrade municipalities are located at a distance shorter than the law-prescribed norm of 150m. Due to the wide spread gambling addiction among children and the danger it poses to their healthy development, we would wish to reiterate that the Protector of Citizens has requested that this distance be increased from 150m to 2000m. The Protector of Citizens feels that the Ministry of Finance’s failure to present its position on all elements of this initiative as well as the failure to provide a written response to the Protector of Citizens is contrary to the spirit of developing the good governance concept. The Protector of Citizens expects that the National Assembly will accept this initiative aimed at protecting and safeguarding children from gambling, and adopt appropriate amendments to the Law on Games of Chance.

The Protector of Citizens has proposed to the Ministry of Labor and Social Policy amendments to the **Law on Financial Support to Families with Children**. The Protector of Citizens has proposed that a new right be established, namely the right to *supplement to families with a child with disabilities*. The idea behind this proposal was that this would provide support in assisting and empowering the family to accept the child pursuant to the launched process of deinstitutionalization and help the reintegration of children into their biological families. The assessment of the Ministry was that this proposal of the Protector of Citizens would lead to the establishment of a new right, without prior assessment of the applicant’s financial status, which “at this point in time is not feasible”, hence it did not accept this proposal from the initiative of the Protector of Citizens’. However, the Protector of Citizens continues to believe that the competent Ministry will assess the financial status, this being in its scope of competence, and decide in the upcoming period to replace the current mode of support to families with children with developmental impairments (increased amount of attendance allowance) with a new right – “supplement to families with children with developmental

impairments” which in respect of the amount, should correspond to the amount of supplement for special foster care. Thus, instead of devoutly believing in foster care, which the Protector of Citizens deems as a way to provide for children without parental care and guidance, the Ministry would give equal treatment to biological families caring for a child requiring special care. At the end of 2009 the National Assembly adopted this law in which certain changes proposed by the Protector of Citizens were accepted, like for example precisely formulating conditions and manner for determining the sequence of newborn children.

The Protector of Citizens has submitted to the National Assembly two amendments to the **Draft Law on the Fundamentals of the Education System**. These amendments give authority and obligation to the competent ministers (Education Minister and Human and Minority Rights Minister) to jointly prescribe in more detail criteria for detecting discrimination. In addition, the amendments would introduce the obligation for teachers, preschool teachers and professional support staff delivering instruction in the Roma language to know the language of the national minority as well as the ways of testing the knowledge of the Roma language for teachers and teaching assistants delivering teaching and pedagogical activities in that language. The National Assembly has adopted both amendments.

The Protector of Citizens submitted to the National Assembly its **amendments to the Draft Law on the Amendments to the Penal Code**, proposing the alignment of provisions of the Penal Code with the provisions of the Family Law. It has been proposed that the measures of protection against domestic violence, in case a crime against marriage and family has been committed, be governed in such a way that the execution of the prison sentence referred to in the provisions of the Penal Code, cannot be determined and executed in such a way which would prevent the sentenced person from leaving the residence premises, if the convicted person and the injured party share the household. The National Assembly did not adopt this amendment. In addition, the Protector of Citizens has proposed that the alignment of the criminal and family legislation be also done in respect of defining a family member. The National Assembly did not adopt this amendment either, nor the amendment stating that the social protection work and activities be registered in the catalogue of professions of public importance. Finally, the last amendment formulates the request to increase prison sentences for the perpetrators of

domestic violence crimes, whose too low of a threshold resulted in numerous practical problems and it was not aligned with the Report of the European Commission on Serbia's Progress in 2008. The National Assembly voted only in favor of this last proposed amendment.

Guided by the need to strengthen the protection of sources of information of public importance, the Protector of Citizens has submitted **Draft Law on the Amendments to the Law on Free Access to Information of Public Importance**, due to the detected need to protect sources of information of public importance, in particular in cases of serious crimes (corruption, overstepping one's authority or other forms of illegal operation of the state authorities). This amendment envisaged protection of people within institutions who indicate potential abuse of power and corruption i.e. the protection of the so called insiders or whistleblowers. The National Assembly did not adopt this amendment, but rather a different text of the amendment of another sponsor, which envisages a considerably lower level of protection for persons who reveal information of public importance.

Based on applications of citizens - award winners at the Chess Olympic Games for the Blind and Visually Impaired, the Protector of Citizens has initiated with the Ministry of Sports and Youth the procedure for the amending the existing **Decree on National Awards and Awards for Special Contribution to the Development and Affirmation of Sport**. In this initiative it was pointed to the Ministry, as an authorized sponsor, that there is a need to undertake appropriate measures and activities so as to eliminate deficiencies leading to violation of citizens' rights, i.e. to discrimination of blind and visually impaired chess players as compared to other athletes, as well as when compared to other disabled athletes – medalists at world and European competitions competing in sports disciplines at Paralympics. Unfortunately, despite the fact that this Ministry did give due attention to this proposal of the Protector of Citizens, at the end it did not accept the mentioned proposal.

### **Official Opinions of the Protector of Citizens on Draft Laws and Other Regulations Governing Issues of Importance for the Citizens' Rights Protection**

In 2009, within the framework of normative activities aimed at the improvement of regulations pertaining to human rights and liberties protection

(Article 18, paragraph 4 of the Law on the Protector of Citizens), the Protector of Citizens has issued six official opinions to draft laws and other regulations governing issues of importance for the protection of rights of citizens.

At the request of the Ministry of Education, the Protector of Citizens has issued two opinions, namely **Official Opinion on the Draft Law on Textbooks** and **Official Opinion on Draft Law on the Fundamentals of the Education System**. Both official opinions have been submitted to the Ministry of Education and those two opinions were included in the text of the draft law due to which the Protector of Citizens has submitted to the National Assembly amendments to the mentioned draft laws.

At the request of the Ministry of Justice the Protector of Citizens has, in this case during the regulations implementation procedure too, issued the **Official Opinion on the Draft Law on Data Confidentiality**. In this opinion, the Protector of Citizens has indicated certain provisions of the Draft Law which could potentially cause problems in the area of human liberties and rights protection, and it has given certain suggestions on how to go about dealing with them. However, in this case too the official opinion of the Protector of Citizens has only partially been included in the text of the Draft Law, due to which the Protector of Citizens has submitted an amendment to the National Assembly.

The Protector of Citizens has issued an **Official Opinion on the Draft Law on Gender Equality**, stressing that it feels that this law could potentially contribute to the implementation of the gender equality principle by offering a stronger and more substantial basis and prescribe the obligation to undertake measures and active policies for providing equal opportunities to women and men in all areas of life and work. The Protector of Citizens feels that the Law should indicate the importance of the term “gender” in establishing and guaranteeing gender equality. This term denotes socially established roles, positions and statuses of women and men in public and private life which have, due to social, cultural and historical differences, resulted in discrimination based on a gender’s biological background. In addition, the Draft Law does not stress that the inequality between women and men occurs in the realm of “gender”, i.e. in social relations and positions of the two genders, and not in the realm of their biological differences. In much the same way, the Protector of Citizens feels that the local self-government unit authorities should establish

a permanent working body or designate an employee who would be tasked with gender equality issues and activities aimed at attaining equal opportunities. On the adoption of the Draft Law the National Assembly has accepted the official opinion of the Protector of Citizens.

At the proposal of the Group of Deputies of national minorities in the National Assembly to the Protector of Citizens to support and propose the adoption of amendments submitted by this group of deputies, the Protector of Citizens has submitted two opinions to the National Assembly, namely **Official Opinion on the Need to Accept the Amendments of the Group of Deputies of National Minorities to the Draft Law on Determining the Maximum Number of Employees in the Local Administration** and **Official Decision on the Need to Accept the Amendments of the Group of Deputies of National Minorities to Article 27 of the Draft Law on 2011 Population, Household and Residence Census**. For the purpose of strengthening equality of all citizens and human and minority liberties and rights, in the first official opinion the Protector of Citizens has proposed the adoption of the submitted amendments aimed at preserving the achieved level and further promotion of minority rights in local self-government units, in particular the right to the official use of the language and script of national minorities. In the second official opinion the Protector of Citizens has pointed out that the Draft Law on 2011 Population, Household and Residence Census could fulfill its purpose, and noted that this would be possible only if the achieved level of liberties and rights of all citizens, in particular those of national minorities, are assiduously protected in the course of their implementation. In addition, the census questionnaire form must offer the opportunity to the citizens to reply to the question on their ethnic background and mother tongue through the so called “open type” of question, i.e. to provide the answer to the question pursuant to their own free will, wishes and sense of belonging, without being directed, led or influenced in any way. The National Assembly has adopted both amendments, therefore it is expected that this more correct law-prescribed exercise of the right of national minorities to declare themselves on their ethnic background, should enable a better and fuller achievement of the purpose of this law.

## **Constitutionality and Legality Assessment Initiatives**

The Protector of Citizens has the authority to initiate before the Constitutional Court the constitutionality and legality assessment procedure of laws, other regulations and legal documents of general nature (Article 19 of the Law on the Protection of Citizens).

In 2009 the Protector of Citizens has received 11 proposals to initiate the constitutionality and legality assessment procedure of laws, other regulations and legal documents of general nature which were filed by private persons (7 cases), legal persons (3 cases, one of them being non-registered) and one proposal was the result of the initiative of the Protector of Citizens itself.

Those submitting the proposals often asked the Protector of Citizens to initiate the constitutionality and legality assessment procedure of laws, other regulations and legal documents of general nature due to, in their opinion, multiple lack of alignment of provisions of the law with the Constitution, or lack of alignment of other regulations and legal documents of general nature with the law. Hence, out of 11 received proposals 8 of them mainly pertained to civil and political rights, while 3 proposals referred generally to economic, social and cultural rights which indicates a completely different trend in respect of rights violations claimed in complaints. Out of 8 proposals which refer to regulations governing civil and political rights 3 of them refer to the prohibition of discrimination, 2 pertain to the freedom of the media and 1 is related to the freedom of association, right to equal protection of rights and legal remedy as well as the right to legal security. Out of 3 proposals regarding regulations governing economic, social and cultural rights, 1 of each pertains to labor rights and rights resulting from employment, right to property and freedom of scientific and artistic creation.

The Protector of Citizens has submitted to the Constitutional Court **Proposal for Constitutionality Assessment of the Law on Amendments to the Law on Public Information**. Bering in mind that this law has sparked quite a bit of interest of the public, professional associations and independent institutions for its content and manner of adoption, the Protector of Citizens has established a working group consisting of experts in the area of media rights, for the purpose of a comprehensive, detailed and professional consideration of the provisions of the law, as well as for considering the option of initiating a procedure before the Constitutional Court. Based on legal analysis and opinions of the mentioned working group, the Protector of Citizens has concluded that certain

provisions of this law either limit or abolish certain guaranteed liberties and rights which is contrary to the Constitution and the binding international norms, and has thus decided to launch the constitutionality assessment procedure of this law before the Constitutional Court. Shortly after this the Analysis carried out by the “Covington&Bypling” Law Firm, specializing in media rights was added to this proposal..

By submitting this proposal the Protector of Citizens has launched before the Constitutional Court the constitutionality assessment procedure of the provisions of this law which prescribe that:

- Only a national legal person is entitled to establish a media outlet thus, according to the opinion of the Protector of Citizens, this right is denied to national private persons and foreign private and legal persons, despite the provisions of the Constitution which guarantee “everyone” the right to establish a public media outlet.
- The founder of the public media outlet is not entitled to transfer nor in any other way dispose of his/her right to public media outlet or to their publication, thus, according to the opinion of the Protector of Citizens, violating the right to economic activity and property rights;
- The establishment of a public media outlet under the same or similar name possibly causing confusion as to the identity of the media outlet is prohibited, thus, according to the opinion of the Protector of Citizens, excessively and unreasonably limiting the freedom of publication of a media outlet by pegging the identity of a public media outlet to its name only;
- In case of violation of the prohibition to repeatedly publish the same media outlet, a procedure for an economic offence is launched and a temporary measure to discontinue the publication of this media until a final decision in a legal procedure is reached is imposed. The Protector of Citizens feels that the economic offence consisting of publishing the same public media outlet again, is not one of the reasons listed in the Constitution allowing for the ban on public media outlet publication;
- The prohibition to publish a media outlet which is not registered in the Public Media Outlet Registry, and a fine for an “economic offence” of publishing a media outlet not entered in the Public Media Outlets Registry, are not, according to the opinion of the Protector of Citizens, in keeping with the provisions of the Constitution and the binding

international sources of the law, since they do not allow for the ban of a public media outlet because it has not been entered into the Registry. The Protector of Citizens feels that the Constitution guarantees that a media outlet may be published free of any previous action by the authorities, such as censorship, permits, approvals, applications or registrations, which constitute interference of the public authority with the freedom of establishing public media outlets. The state may only regulate by law the publishing of an electronic public media outlet i.e. to require a permit for the operation of such a media outlet.

- The fines prescribed by the Law on Amendments of the Law on Public Information both for economic offences and violations, are higher than the fines for offences and violations prescribed by other laws, although it has not been ascertained that the gravity and consequences of actions pronounced as economic offences or violations by this law are higher than the gravity and consequences of actions which are punishable pursuant to other regulations as offences or violations. The Protector of Citizens feels that this has led to the violation of the constitutional principle of equality before the law. Certain fines are of a fixed amount in all cases, regardless of the gravity of the offence and other relevant circumstances of a particular case, thus also violating the punishment individualization principle as a reflection of the constitutional principle of equality before the law. Fines prescribed by the Law on Amendments to the Law on Public Information are neither proportional nor reasonable and have the capacity to terminate the existence of public media outlets threatened by such fines, hence crippling the freedom of the media and jeopardizing the citizens' right to information.

With reference to this, the Protector of Citizens has stressed that the competent decision of the Constitutional Court on issues initiated during this procedure is very important for guaranteeing and exercising the freedoms and rights of fundamental significance for our but also for any other democratic system, and assessed that a prospective decision of the Constitutional Court in this procedure would be very useful for a full exercise of citizens' rights and freedoms.

## **OTHER ACTIVITIES OF THE PROTECTOR OF CITIZENS**

### **Press Releases and Information**

In 2009 the Protector of Citizens has issued 30 press releases reacting to the existing negative phenomena in the society which endanger an efficient implementation of human and minority liberties and rights. Through press releases the Protector of Citizens wished to remind the state of its obligation to enable all citizens, without discrimination, to exercise their human rights and freedoms.

### **Actions Taken by the Protector of Citizens Pursuant to the Law on Free Access to Information of Public Importance**

In 2009 the Protector of Citizens has received 13 requests for the exercise of the right to access to information of public importance, out of which 12 requests were filed by private persons, while one request was filed by a legal person (People's Initiative for Property Restitution and Human Rights). The Protector of Citizens has responded to all requests comprehensively and in a timely manner by issuing legal documents of the Protector of Citizens. Fees for exercising the right to access to information of public importance have not been charged.

The of the Protector of Citizens' Work and Activities Rulebook has been visibly posted on the official web site of the Protector of Citizens.

### **International Cooperation**

In 2009 the Protector of Citizens enjoyed intensive international cooperation in particular multilateral cooperation but also bilateral cooperation.

Intensive **multilateral cooperation** of the Protector of Citizens thrived in particular with the OSCE, Council of Europe, USAID, European Committee for the Prevention of Torture, UN Committee against Torture, UN Committee on the Rights of the Child, International Rehabilitation Council for Torture Victims, UNICEF, UNIFEM and other international organizations and institutions as well as with their specialized bodies. A very fruitful cooperation has been achieved with Ombudsmen of other countries, mainly European ones, at international conferences and other gatherings.

The cooperation with the abovementioned and other organizations has been implemented by submitting adequate reports to international bodies, by jointly organizing or extending support in the organization of meetings dealing with issues of interest for the Protector of Citizens, participation at conferences, round tables, seminars, training sessions and other educational meetings organized nationally and internationally as well as by offering support to research projects dealing with topics within the scope of competence of the Protector of Citizens.

In respect of submitting appropriate reports to international bodies, the Protector of Citizens has prepared a Special Report on the Implementation of the Facultative Protocol on the Sale of Children, Child Prostitution and the Use of Children in Pornography and submitted it to the UN Committee on the Rights of the Child.

The results of intensive international cooperation among others include the admission of the Protector of Citizens into the full-fledged membership of three international Ombudsmen associations: **European Ombudsman Institute – EOI**, **International Ombudsman Association – IOA** and **European Network of Ombudspersons for Children – ENOC**. In addition, the membership of the Protector of Citizens in the South East European Children’s Ombudsperson’s Network (CRONSEE) has been officially confirmed. The representatives of the Protector of Citizens have participated in at annual meetings of the CRONSEE and ENOC. (In 2008 the Protector of Citizens was admitted to the **Association of Mediterranean Ombudsmen**).

The **Twinning Project** should be underlined as an instrument of the European Union aimed at strengthening the Protector of Citizens’ capacities during the Serbia’s pre-accession and preparation phase in filing for the EU membership candidacy application. The main idea of the project is that the same or similar institutions of EU member states should extend support to the Protector of Citizens and suggest methods and techniques of operation. The Twinning Project commenced with the International Conference “Support to Strengthening the Office of the Protector of Citizens” at the beginning of October in Belgrade. The project is implemented through joint partnership with Greece and the Netherlands. The employees working for the Protector of Citizens were able to learn more about the operation of the project team from Greece and the Netherlands as well as to meet experts working in Ombudsman

institutions in Austria, Slovenia and Spain (from Catalonia). A structure and schedule of planned project activities, priorities and work strategy have been formulated and examples of good practice of institutions participating in the project have been presented. The staff of the Protector of Citizens had the opportunity to take part in training sessions on the manner and procedures of operation upon complaints, writing annual and special reports, while a Communications Unit tasked with cooperation, organization and communication within the institution including international relations, has been established.

In this Report we would wish to point out in certain international cooperation related activities, in particular:

The Protector of Citizens participated at international and European conferences, for example at the World Conference of Ombudsmen held in Stockholm on the occasion marking 200 year anniversary of the Ombudsman institution, at the European Ombudsmen Conference held in Tirana and at the First International Conference of Military Ombudsmen in Berlin. The main conclusions of these conferences pertain to searching for new ways of defining the role of the Ombudsman and improving cooperation of Ombudsmen institutions. Cooperation between institutions was advocated in particular in certain areas of human rights protection.

The representatives of the Protector of Citizens participated at the conference on human rights protection in Sofia, at the Conference of Ombudsmen for Children of the South East Europe on Child Rights in Dubrovnik, Zagreb, Podgorica, etc.

The return working visits of the Catalonian Ombudsman delegation to the Protector of Citizens took place in July and October 2009, the main topics being further cooperation in the area of rights of persons deprived of liberty and promotion activities in the field of child rights, primarily developing a special Internet web page for children.

At the invitation of the Council of Europe – Directorate General of Human Rights and Legal Affairs and Association for the Prevention of Torture, the team of the Protector of Citizens attended the First Meeting of the European Network of National Preventive Mechanisms (NPM). The conference was

organized with a view to establishing an active network of national preventive mechanisms for combating torture. The European National Preventive Mechanism Project was presented, its purpose, methods of operation and the team tasked with its implementation. A Decision on Establishing the Preventive Mechanism as well as the Methodology of Operation of the Preventive Mechanism of the Protector of Citizens have been presented at the meeting, while the organizer of the meeting forwarded these documents as working material to all participants.

At the invitation of the European Committee for the Prevention of Torture and the Association for the Prevention of Torture, the team of the Protector of Citizens participated at the conference on establishing the “New Partnerships for Torture Prevention in Europe”, held in Strasbourg. The purpose of the conference was to establish partnerships in the area of torture prevention in Europe i.e. establish cooperation between different international bodies at the level of the United Nations (UN Committee against Torture, UN Subcommittee on the Prevention of Torture, UN Special Rapporteur on Human Rights, UN Special Rapporteur on Torture), Council of Europe (European Committee for the Prevention of Torture and Commissioner for Human Rights of the Council of Europe) and international non-governmental organizations dealing with issues of torture prevention (Association for the Prevention of Torture). Particular attention was given to information exchange strengthening, establishing unified operation standards and ensuring efficient implementation of recommendations issued by these preventive bodies.

**OSCE Mission** to Serbia (Organization for Security and Cooperation in Europe) continues to develop and strengthen capacities of the Protector of Citizens. Numerous activities were implemented within the framework of that cooperation, namely:

The team of the Protector of Citizens went for a study visit to the Czech Ombudsman in Brno. The purpose of the visit was to strengthen Protector of Citizens’ capacities in the area of rights protection of persons deprived of liberty and to develop a methodology for monitoring institutions with persons deprived of liberty. The team of the Protector of Citizens was acquainted with the experience of the Czech Ombudsman in the area of rights of persons deprived of liberty, as well as with the actions taken by the Czech Ombudsman as the National Preventive Mechanism. A visit to several institutions with

persons deprived of liberty was part of the program agenda of the Protector of Citizens' team.

The team of the Protector of Citizens went for a visit to the Catalanian Ombudsman (*SINDIC*) in Barcelona. The purpose of the visit was to strengthen Protector of Citizens' capacities in the area of rights protection of persons deprived of liberty, child rights and create instruments for monitoring institutions with persons deprived of liberty.

In cooperation with the OSCE Mission to Serbia and Office of the Council of Europe in Belgrade, the Protector of Citizens has organized an international conference "The Prevention of Torture in Serbia".

The preparation of the Internet web page on child rights is currently under way. The content of this Internet web page is adapted to children, primarily in the age span between ten and fifteen years of age. In addition, the Prevention Mechanism electronic data base (for persons deprived of liberty) has been established, as a portal within the Protector of Citizens' network and it is expected that in the upcoming period it will be accessible to the wider audience.

The Protector of Citizens has promoted the use of gender sensitive language in public discourse by organizing three public discussions in the Media Center in Belgrade, at the Faculty of Law in Niš and at the City Council building in Užice. The target groups were the representatives of legislature, media and students.

The OSCE has supported the program for strengthening the capacities of employees in the area of gender equality, underlining the gender based discrimination, gender based violence, use of gender differentiated language and rights of sexual minorities. With reference to this, two seminars for employees working in the Expert Services Department were delivered.

With the support of the OSCE Mission to Serbia, the Protector of Citizens has carried out a research pertaining to exercising the right to official use of national minority languages but also the Serbian language. The results of the research will be analyzed and communicated to the public and the competent authorities during 2010.

The cooperation with the **UNICEF** (United Nations Children’s Fund) was implemented through several different activities, for example joint cooperation with the National Assembly Working Group for Child Rights; participation in the project for the transformation of residential institutions for children and development of sustainable alternatives; the development of normative and ethical standards towards children and adolescents at high risk of HIV infection; organizing and preparing education and training sessions for members of the Protector of Citizens’ Preventive Mechanism in the area of child rights; taking part in the panel for the UNICEF annual award for the best essay on children and child rights; exchange of opinion with foreign experts in certain areas of interest for the implementation of child rights, etc. In addition, in several cases UNICEF has directed citizens to file their complaints with the Protector of Citizens for the purpose of protecting child’ rights.

The objective of the “Gender Equality in Practice of Local Ombudsmen” Project, implemented by the Protector of Citizens in cooperation with the Provincial Ombudsman with financial assistance by the **UNIFEM** (United Nations Development Fund for Women) is to contribute to: an increased accountability of local Ombudsmen and local self-government units towards women and women rights, gender equality awareness raising, its values and principles, as well as to the protection of women’s work rights.

Intensive **bilateral cooperation** of the Protector of Citizens was established and maintained with Ombudsmen from European countries, primarily the Ombudsmen from Greece, the Netherlands, Spain, Catalonia, Austria, Slovenia, Germany, Sweden, Czech Republic, Albania, Montenegro, Kyrgyzstan.

The discussion topics at these meetings included the position, authority and manner of operation of Ombudsmen aimed at providing adequate protection and promotion of human rights and liberties. Bilateral meetings were often organized around certain issues from different areas of operation of the Protector of Citizens.

## **Cooperation with Civil Society Organizations**

In 2009 the Protector of Citizens, as an independent state authority, has established and maintained intensive cooperation with civil society organizations which it recognized as its partner working in the same field – protection of citizens’ rights and liberties. The quality of cooperation is obvious in the fact that when the Protector of Citizen established certain advisory bodies for particular specialized areas, these councils included the representatives of the civil society, especially from the academic community and non-governmental organizations.

The Protector of Citizens has established and maintained a regular dialogue with the representatives of the civil sector on the role and problems the independent state authorities and non-governmental organizations face. In that respect, the Protector of Citizens had talks on many occasions with non-governmental organizations representatives (NGO), pleaded for the adoption of the Law on Associations and protested attacks against non-governmental organizations and their activists by issuing public statements. Likewise, the Protector of Citizens called on the state authorities to take all available measures in keeping with the law so as to prevent and sanction violence, calls to violence, hatred driven crimes and hate speech, regardless of the identity of the perpetrators.

The cooperation of the Protector of Citizens with the organizations of civil society was also implemented through joint organization of various meetings and other forms of partnership. Thus, the Protector of Citizens has analyzed, in cooperation with non-governmental organizations, situation in certain areas, exchanged experience, prepared legislative initiatives, etc. Complaints filed by numerous non-governmental organizations, upon which the Protector of Citizens has directly taken action, represent a particular form of cooperation. In some cases the Protector of Citizens has used the information from the complaints coupled with other information obtained from other sources to launch procedures at its own initiative.

On numerous occasions the Protector of Citizens has condemned every form of discrimination, violence, calls to violence, hatred driven crimes and hate speech caused by homophobia or misogyny, which threaten the safety and security of men and women citizens of Serbia, regardless of their background or orientation of any kind.

Significant cooperation has been established with a number of non-governmental organizations, for example: Belgrade Center for Human Rights, Center for Civilian and Military Relations, Citizens' Initiatives, Helsinki Committee for Human Rights, Belgrade Fund for Political Excellence, Lawyers' Committee for Human Rights, Transparency Serbia, Humanitarian Law Fund, Open Society Fund, International Aid Network in Serbia, Human Rights Center in Niš, JAZAS, Labris, *Qyee pia*, *Gaymen*, "Iy kruga" ("From the Circle"), Associations of Journalists, Helpline for Women Victims of Discrimination, Center for the Rights of Child, "VelikiMali" ("Big Little People"), Kids Help Line, Center for the Integration of Youth, etc.

### **Participation at Conferences, Round Tables, Seminars, Public Presentations and Lectures as Well as at Other Meetings**

In 2009 the Protector of Citizens has organized several conferences, round tables, seminars and other meetings, the most important being the following:

In cooperation with the **OSCE Mission to Serbia** and the **Council of Europe Office in Belgrade**, the Protector of Citizens has organized in Belgrade on 23 and 24 March 2009 "Prevention of Torture in Serbia" conference. The representatives of the ministries, judiciary, international organizations, independent state authorities, national and foreign non-governmental organizations, as well as many national and foreign experts and the media were present at this conference. One of the most important conclusions of this conference was that torture as an institutional or systemic phenomenon does not exist in Serbia, however certain detected phenomena may be labeled as cruel, inhuman and degrading and that the unrelenting fight of the state to combat such practice, presents among other things, a preconditions for preserving the country's international credibility.

On 28 April 2009, the Protector of Citizens organized an expert discussion "Legal Position of Churches and Religious Communities and Acquiring the Status of a Legal Person". The complaints of the "unrecognized" churches and religious communities, which could not be registered with the competent ministry and thus be granted the status of a legal person due to unclear criteria, initiated this discussion. However, actions undertaken upon these complaints have triggered other contentious issues in respect of provisions and application of the Law on Churches and Religious Communities and the Rulebook on the Content and Manner of Keeping the Registry of Churches and Religious Communities. The discussion received support from the

Council of Europe and saw the participation of experts from Serbia, Croatia, Slovenia, Bosnia and Herzegovina, Bulgaria and Montenegro but also of high dignitaries of both traditional and the so called small churches and religious communities, as well as the Minister of Religion of the Republic of Serbia.

In cooperation with the **MDRI** (*Mental Rights Disability Rights International*) on 16 June 2009 the Protector of Citizens has organized a round table on the monitoring of the respect of human rights of persons with mental difficulties. The key issues pertaining to the monitoring of human rights of persons with mental difficulties in social protection and mental health institutions, with particular stress on challenges in the changes of the existing practice in the treatment of persons with mental difficulties, were considered at this workshop. The representatives of foreign and national non-governmental organizations from Serbia dealing with these issues participated in this round table.

In cooperation with the Belgrade Center for Human Rights and the OSCE Mission to Serbia, the Protector of Citizens has organized on 4 September 2009 a round table on standards and methodology of monitoring institutions with persons deprived of liberty. The chairperson and the key-note speaker was professor Dr Manfred Nowak, a United Nations Special Rapporteur on Torture. Key issues pertaining to standards and methodology of monitoring the respect of human rights of persons deprived of liberty were discussed in this workshop. Particular attention was given to concrete actions which are taken during visits to institutions and are aimed at detecting instances of torture. Representatives of non-governmental organizations from Serbia dealing with these issues participated at this round table.

In cooperation with the OSCE Mission to Serbia the Protector of Citizens has organized in Kovačica in June and September 2009 training sessions for employees working in the Expert Services Department of the Protector of Citizens, for the purpose of training and enabling them for the operation of the Preventive Mechanism – functional team of the Protector of Citizens for monitoring institutions with persons deprived of liberty (prisons, police stations, health care, social welfare and other institutions). The objective of the training sessions was further competence improvement of employees working in the area of prevention of torture and other cruel, inhuman and degrading treatment. These training sessions gave particular attention to specificities of certain groups: children, elderly, underage persons, disabled persons, ill persons, members of the LGBT population, members of national and religious minorities and women.

On 13 November 2009 the Protector of Citizens has organized an expert meeting “Exercising the Right to Official Use of National Minority Languages and Script” and on 27 November 2009 the Protector of Citizens organized an expert meeting related to problems of citizens’ in declaring themselves on their ethnic background during 2011 Census.

In cooperation with the Helsinki Committee for Human Rights in Serbia the Protector of Citizens organized in Belgrade on 16 December 2009 a round table on human rights in social welfare institutions in Serbia and on the social welfare protection system reform. The system related problems and deficiencies in this area, noted in reports and recommendations of the Protector of Citizens and the Helsinki Committee, were the basis of this discussion. It was underlined that the social welfare protection system must adapt to new circumstances and that the competent state authorities, independent institutions, non-governmental sector and the media play the main role. It was noted that the forthcoming reform of the institutional system will be related to the transformation of social welfare institutions and relocation of social institution clients, primarily children without parental care and guidance and children with developmental impairments, into foster families or biological families with the assistance of the state, which would contribute to the improvement of clients’ life quality. The participants agreed that better cooperation between competent ministries must be established.

During the year the Protector of Citizens, Saša Janković, gave a string of lectures and presentations to students, representatives of different levels of power, the media and non-governmental organizations on the authority and operation of this institution and on the importance of the respect of human rights as well as on the responsibility of the state authorities as significant democratization process success indicators.

The Protector of Citizens has organized a number of lectures and public presentations, in particular related to topics in the area of gender equality and rights of persons with disabilities. Among others, Dr Zorica Mršević, Deputy Protector of Citizens, spoke on the “1999 United Nations Declaration on the Defenders of Human Rights and Report of Hina Jilani”, “Participation of Women in Public and Political Life and on Institutional Mechanisms for Achieving Gender Equality”, “Toledo Instructions for Organizing Religious Instruction”, “Authority, Operation and Procedures of the Protector of Citizens in the Area of Gender Equality”, “The Importance of Official Use of Gender Sensitive Language”, “Xenophobia”, “Roma Women – A Multi-discrimination Story”, “Practice of the Protector of Citizens Pertaining to Domestic Violence”, “Human,

Legal and Social Aspect of Language Use”, “Visibility of Women in Society”, “Contemporary Presence of Women in Public Life”, “Importance of Global Campaign for Combating Violence against Women”, “Practice of the Protector of Citizens when Acting upon Complaints Filed by Persons with Disability”, “The Role of Stereotypes and Issue of Double Discrimination.”

Dr Rajko Đurić, an advisor working in the Expert Services Department, delivered a lecture “Racism – Past, Present and Future” on the occasion of marking the International Day against Racism. After the lecture a meeting between Dr Đurić and Dr Goran Bašić, Deputy Protector of Citizens on the one side and local Ombudsmen and employees working in the Expert Services Department was organized. The objective of this lecture was to strengthen expert knowledge pertaining to Roma and ways to tackle problems of bare minimum for their survival.

### **Publishing activities**

In 2009 within its publishing activities the Protector of Citizens has continued with the publication of the four already established series – Recommendations and Opinions, Monographs, Collection of Works and Reports. These series differ among themselves not only in respect of topics but visually too – in format, visual and graphic design of the publications. A book “Recommendations, Opinions, Views, Legal and Other Initiatives” was published within the Recommendations and Opinions series. The book “Exercising the Right to Religious Freedom and Legal Position of Churches and Religious Communities” by Dr Nenad Đurđević was printed within the Monographs series, while the “2008 Annual Report” was published within the Reports series.

At the same time, posters promoting all at once the institution of the Protector of Citizens, the new internet webpage on child rights and United Nations Convention on the Rights of the Child were printed. The posters are the accompanying promotion material to the brochures intended for primary and secondary school children which were printed earlier. In cooperation with the Ministry of Education all these information materials are distributed in primary and secondary schools throughout Serbia.

### **The Protector of Citizens in the Media**

In 2009 twice as many texts were published in the printed and electronic media than in 2008. The printed media have published 879 texts (reports, releases, comments,

statements, including those texts in which the institution of the Protector of Citizens was only mentioned in some context). In electronic media, 207 television clippings of different genres were broadcast, out of which in 52 the institution of the Protector of Citizens was only mentioned. This spike in media presence as compared to the previous year came as a result of intensified activities of the Protector of Citizens, increased awareness on the existence, work and activities of this institution in our society, and activities of the four deputies to the Protector of Citizens who assumed office at the end of 2008.

The overwhelming majority of comments about the activities of the Protector of Citizens were positive. The only negative comments occurred in those cases when the Protector of Citizens filed criminal charges against those responsible for physical abuse which took place in Crna Reka spiritual and recovery center, in cases when the use of gender sensitive language was advocated, as well as in cases when the Protector of Citizens issued a recommendation to the Ministry of Youth and Sport to reexamine the criteria for awarding national sports awards and the nature of those awards.

On the occasion of the presentation of the report on the police stations operation control regarding the receiving and processing of applications for personal documents – passports and personal identification cards, the Protector of Citizens held a press conference on 23 January in the Belgrade Media Center. At this press conference, apart from the Protector of Citizens, Saša Janković and his Deputy Miloš Janković who spoke on this activity, the Provincial Ombudsman Petar Teofilović, Deputy Provincial Ombudsman Stevan Arambašić and Ombudsman of Šabac Miloš Mijajlović also spoke at this event.

In 2009 the Protector of Citizens gave eight interviews to the printed media, out of which two were given to *Blic* daily, and one interview to each of the following newspapers: *Danas*, *Građanski list*, *Mađar So* (*Magyar Szo* – daily newspaper in the Hungarian language), *Politika* and to weekly magazines *Vreme* and *NIN* in which he spoke about current social trends and events as well as on the operation and authority of the institution of the Protector of Citizens.

In 2009 the *Blic* daily newspaper published ten comments of the Ombudsman and its deputies, while in the *NIN* weekly newspaper two such comments were published. In those comments the Protector of Citizens gave his personal opinion on draft laws pertaining to the protection and promotion of the rights of citizens, on the need to strengthen accountability of local and state officials in respect of citizens, on the state

administration reform, on the obstacles Serbia faces in its efforts to join the European Union, on the shortcomings of the operation of public institutions.

In 2009 the most articles referring to the Protector of Citizens were published by the daily newspapers Blic (121), Politika (105) and Danas (96). As for the electronic media, the most news items were broadcasted by the National Radio and Television Broadcasting Agency (RTS) (80) and B92 (50). There were considerably more invitations for participation in television shows in 2009 – during which the Protector of Citizens, his deputies and staff members were guests of theme shows or news – B92 Television (8 times), RTS (4 times), TV Avala (3 times ) and TV Kopernikus (2 times), than they were in 2008 when the Ombudsman was a guest in three television shows. Apart from appearances on national television stations, the Protector of Citizens appeared on local television stations in Vranje, Bujanovac and Presevo while on a visit with his associates to the south of Serbia, in May and December; he also appeared on Kikinda Television Station and Vojvodina Television in shows broadcasted in Serbian and in Hungarian language.

The media reported on the Protector of Citizens based on statements (the Protector of Citizens and his deputies have given 153 statements to the printed media and 46 to the electronic media), on reports from events where the Protector of Citizens was present (141, i.e. 136), based on reports (115, i.e. 22) or based on news with information value (145 i.e. 19).

The media were specially interested in the opinion of the Protector of Citizens on draft laws, for example, Law on Data Confidentiality, Law on Prohibition of Discrimination, Law on Information, Law on Free Access to Information, Law on the Protection of Whistleblowers, Law on Increasing the Distance between Sports Betting Outlets and Primary and Secondary Schools, etc. The Protector of Citizens diligently kept the public posted on its activities hence the media invoked the positions of the Protector of Citizens when reporting and commenting.

## **FINANCIAL STATEMENT**

The 2009 Law on the Budget of the Republic of Serbia and amendments to that law provided the total sum of RSD 107,257,000 for the Protector of Citizens, which is compared to RSD 92,247,657 for 2008 an increase of 14%.

In 2009 the Protector of Citizens has spent a total of RSD 98,001,217 i.e. 91.37% of the total amount of RSD 107,257,000.

In 2009 the Protector of Citizens has spent a total of RSD 98,001,217, which is when compared to 2008 when a total of RSD 51,854,564 was spent, represents an increase of 47.3%.

The funds allocated in the budget of the Republic of Serbia were used to finance regular activities of the Protector of Citizens pursuant to the financial plan.

**Table 4. 2009 Budget Allocation**

Class	Function	Economic classification	DESCRIPTION	Funds from the budget Law on the Budget 2009	Funds from the budget Revised budget 2009	Allocation of the budget expressed in RSD	Allocation of the budget expressed in %
1	2	3	4	5	6	7	8
6	133		<b>PROTECTOR OF CITIZENS</b>				
		411	Salaries, supplements and benefits of employees	65,770,000	63,802,694	63,751,295	99.92
		412	Social welfare contributions at the expense of the employer	11,623,000	11,045,356	11,044,805	100.00
		414	Social spendings for employees	1,250,000	1,250,000	450,813	36.07
		415	Employee allowances	2,000,000	2,000,000	1,851,401	92.57
		421	On-going expenses	5,600,000	5,320,000	3,785,260	71.15
		422	Travel expenses	7,342,000	5,605,000	3,601,294	64.25
		423	Piece-work services	14,000,000	9,500,000	7,666,870	80.70
		425	On-going repairs and maintenance	630,000	481,000	345,734	71.88
		426	Material	8,182,500	7,650,950	4,429,434	66.60
		482	Taxes, fees	1,600,000	600,000	82,027	13.67
		512	Machines and equipment	4,000,000	1,000,000	992,283	99.23
			<b>TOTAL:</b>	<b>121,999,500</b>	<b>107,257,000</b>	<b>98,001,217</b>	<b>91.37</b>

During the allocation of the budget the Protector of Citizens occasionally experienced difficulties due to the fact that the Treasury of the Ministry of Finance failed to make timely payments based on payment orders and prescribed documentation.

The Protector of Citizens feels that a complete financial independence of the Ombudsman institution has not yet been established, due to the fact that the Treasury Service does not distinguish clearly independent state authorities from budget users which must obey the budget policy of the Government of the Republic of Serbia whenever prescribed by the law and necessary for the preservation of independence of those institutions. The Protector of Citizens spoke to the Minister of Finance and expects that the progress will be made in this respect.

## **PROPOSALS TO THE NATIONAL ASSEMBLY AIMED AT PROMOTING THE STATUS OF CITIZENS IN RELETION TO THE STATE ADMINISTRATION**

The Protector of Citizens feels that the competent council of the National Assembly, in cooperation with the Protector of Citizens in a procedure which remains yet to be determined, will, based on this Report, put together the text of the Official Decision by which the National Assembly will support improvements in the exercise and protection of the rights of citizens, i.e. human liberties and rights. The Protector of Citizens will submit to the competent council, at its invitation, proposal of the text of the Official Decision pertaining to the following:

- When proposing and adopting new regulations, as well as amendments of the existing, it should be insisted on mechanisms and guarantees for their implementation in practice and monitoring of their implementation;
- Call on the Government of the Republic of Serbia and other authorities and organization to fully cooperate with the Protector of Citizens and implement recommendations, opinions and other legal documents of this and other independent state authorities;
- Step up the accountability measures for deficiencies in the operation of state authorities, state officials and civil servants;
- State administration reform should be implemented in a planned way, based on objective analysis of the current state of affairs, clearly defined objectives and identified measures and activities necessary for their achievement;
- Strengthen internal control mechanisms within state authorities for the purpose of implementing internal supervision over the exercise of rights by citizens;
- Promote the citizens' accessibility to all state authorities and public services without discrimination on any grounds;

- (Re)introduce to all public services the rule of employment on permanent basis based on a publicly announced competition, with an exception for only certain job descriptions and work tasks;
- Warn the Government of the Republic of Serbia of its obligation to maintain social dialogue with social partners;
- Prepare amendments to regulations which would prevent the workers from bearing the consequences of law violations by their current and previous employers (in the form of a decreased amount of pension or inability to obtain health care insurance due to the fact that the employer failed to pay the mandatory contributions to social and health care fund);
- Strengthen inspection and other legality control mechanisms of legal actions of employers and the respect of the rights of workers, women in particular; at the same time insist on the real and not formal implementation of regulations;
- Work on a more comprehensive exercise of rights and prevention of discrimination of persons with disabilities, women and national minority members;
- The state and other authorities, public services and services shall work on decreasing homophobia which exists among certain parts of population, at the same time taking care that no one's sexual orientation or moral is belittled; particular attention and reaction shall be reserved for hate speech; it is necessary to enable the exercise of guaranteed human rights and freedoms, including the freedom of assembly, to sexual minorities which face numerous prejudices and discrimination;
- Immediately adopt and implement amendments to regulations of importance for the exercise and protection of human rights, for example, the Penal Code (defines very narrowly members of a family hence preventing the adequate application of a criminal act of domestic violence); the Law on Games of Chance (for the purpose of increasing the existing distance limit of 150m between sports betting outlets and primary and secondary schools), Law on Rehabilitation (for the purpose of providing adequate legal framework for the exercise of the right to the award of damages resulting from a verdict on rehabilitation) etc.
- Monitor the effects of judiciary reform on the exercise of the right to a fair and just trial, in particular to a trial in reasonable time, as well as the execution of a court ruling within the law prescribed time period;
- Continue with human rights education, in particular within curricula for training the police forces as well as judges;

- Request full cooperation from the competent authorities and a more active implementation of authority in cases of domestic violence; adequate protocols will be passed on the cooperation between authorities and institutions;
- Pass appropriate instructions on actions of employees in competent authorities in cases of domestic violence;
- Provide cooperation of authorities and education institutions, social welfare protection institutions, health care and internal affairs institutions, with the help of territorial authorities at the local level (schools, social welfare centers, health community centers and police administrations), strengthen preemptive measures for the prevention of domestic violence, provide the necessary assistance and support to victims and punish the perpetrators;
- Provide special protection of children from all forms of violence, abuse, neglect and all other types of abuse regardless of who the violator might be;
- Establish a centralized data base on cases of violence against children;
- In certain cases of ethnic violence react firmly and identify, prosecute and sanction the perpetrator more efficiently;
- Most rigorously punish violence and racism directed towards Roma children;
- Continue with the preparation of the Law on Child Rights (Working Group of the Protector of Citizens);
- In a new Law on Social Welfare Protection separate the existing capacities and competences of the social welfare center and introduce special institutions for the protection of children at the level of each municipality (or for several smaller neighboring municipalities), which would be financed from the state budget, while material costs and other administrative activities should be organized and financed at the local level, with the appropriate subsidies of the state;
- In the area of social welfare protection of children – be utterly restrictive when placing children in institutions, accelerate the initiated process of deinstitutionalization by decreasing the capacities of homes for children and youth, offer support to foster and biological families, establish small communities;
- Develop protocols on cooperation between competent ministries of education, labor, justice, health care and internal affairs, for the purpose of achieving a more regular cooperation in executing court decisions in the area of legal protection of children, aimed at reacting efficiently in cases of parental abduction of children, preventing a child to establish and maintain personal relations with parents and failure of parents/other persons to act upon a court order on entrusting a child;

- In the area of education, mainly primary and secondary education, consistently apply principles of inclusive education so as to enable the development of each child and his/her talents, mental and physical potentials to the best of their capacities;
- Stimulate the adoption of local plans for children, which would envisage appropriate cooperation at the local level, instrumentalized through protocols on cooperation between local self-government units, its authorities and bodies and institutions on its territory, aimed at exercising and protecting the child rights;
- Undertake measure to increase the participation of persons with disabilities in public, political and cultural life, in particular in the area of education, employment and labor relations, as well as health care;
- Refrain from abolishing institutions of social welfare protection for adults with disabilities and elderly persons, moreover there is a need to expand those capacities (unlike those institutions whose main clients are children). For many adults with disabilities as well as for the elderly, these institutions are the only solution;
- Increase accessibility to the necessary treatments and medical appliances for children with disabilities and their parents;
- Promote legal framework and regulations in the area of national minorities rights, in particular regulations governing the right to education, official use of language and script, preserving cultural identity, information, effective participation in political and public life, etc.
- Encourage the learning of the language of the social environment among which are all the languages protected by the state; insist on a higher level of learning and knowledge of the Serbian language among members of national minorities, so as to facilitate their integration and employment in the public services;
- Undertake more profound and practical measures for the promotion of the Roma national minority, in particular in areas such as education, housing, health care, civil status, etc. since their situation and position are glaringly and permanently the most difficult;
- Enable the implementation of all rights belonging to a group patients' rights (including the right to an efficient objection to the quality of service provided or action of a health worker in a health care institution);
- Apply systemic measures to improve conditions in the prison system and provide additional accommodation capacities of at least 25,000m<sup>2</sup> for the accommodation of detained persons and persons serving prison sentence (by vigorously pursuing the construction of new prison facilities, refurbishing the existing prisons,

providing for natural light and heating of rooms, spending appropriate amount of time in fresh air, increasing the health care level of prisoners and detainees, by improving conditions in the forty eight hour detention in certain police stations, etc.);

- Develop a concept of alternative service of prison sanctions, in particular with underage perpetrators;
- Strengthen cooperation between prison institutions and the institutions of social welfare protection and the civil society, so as to enable the persons deprived of liberty to reintegrate into the free society;
- Establish one or more national mechanisms for the prevention of torture, since it is an obligation assumed with the ratification of the Optional Protocol with the United Nation Convention against Torture. This mechanism should be and justly so, the Protector of Citizens.
- Health care services in prisons which are within the authority of the Ministry of Justice should be transferred to the authority of the Ministry of Health;
- Create a system which would engage person serving a prison sentence in work, education and training activities as much as possible;
- In institutions with persons deprived of liberty a certain number of doctors specialist, in particular psychiatrists and dentist should be employed, while premises where health care services are to be provided should be adequately equipped;
- The improvement of the efficiency of judicial authorities would discontinue the practice of unreasonable duration of detention;
- Enable refugees and internally displaced persons to efficiently and fully exercise their guaranteed rights in Serbia;
- Step up the security of protectors of human rights, in keeping with international documents which provide for state's accountability regarding the protection and security of activists when performing their work and activities;
- Provide tax breaks for non-governmental, not-for-profit organizations dealing with the protection and promotion of human rights, so as to establish a stronger framework for the freedom of association and activities in that area;
- In line with the comparative practice of an overwhelming majority of countries, specialized parliamentary Ombudsmen should not be established because it would lead to inflation in numbers of and deflation of the authority of the highest control institutions, confusing the citizens, overlapping of competences and authorities, shifting accountability from authorities with executive power to institutions without executive powers and requires significant expenditures.

Instead, encourage the establishment of sector Ombudsmen at the level of independent areas of rights (patients, consumers, students, banking system...), to which national Ombudsman would be an efficient and strong institutional support and extension;

- Encourage the spread of the local Ombudsmen network and strengthen their offices so as to enable a more equal accessibility of the Ombudsmen to citizens as well as to enable a more efficient protection of the rights and liberties of citizens.

The 2009 Annual Report of the Protector of Citizens shall be published in the “Official Gazette of the Republic of Serbia”.

## PROTECTOR OF CITIZENS

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