

# Protector of Citizens

## 2011 ANNUAL REPORT

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**2011**

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# INTRODUCTORY NOTE BY THE PROTECTOR OF CITIZENS AND A REPORT SUMMARY<sup>1</sup>

Dear Reader,

I hereby present the 2011 Annual Report of the Protector of Citizens, the last one in my five-year term.

This report, in accordance with the Law, provides the National Assembly and other bodies and organisations, the media, the expert community and the widest public, with the information about the activities of this institution in the past year; informs about the identified shortcomings in the work of public administration bodies, the bodies responsible for legal protection of property rights and interests of the Republic of Serbia, as well as other bodies and organisations, companies and institutions vested with public powers (hereinafter referred to as: authorities) and presents the proposals for improving the position of citizens in relation to authorities.

Although Serbia has built a branched framework for the protection of human rights, there is a discrepancy between the high regulatory standards and practices. The culture of respect for human rights does not exist and the authorities are not sufficiently guided by the principles of "good administration". On the other hand, the number of the informed citizens who demand their rights has been growing and they increasingly often address the independent control bodies, such as the Protector of Citizens. The number of citizen complaints has increased since the previous reporting year by over 40%!

Some positive developments of importance for the improvement of human rights situation occurred in certain areas, such as the reduced institutional and civic tolerance for violence, enhanced regional cooperation, final creation of normative requirements for restitution, greater visibility and formal guarantees of women's participation in public life, beginning of respect for the right to equality and the right to privacy (although the Constitutional Court has not given its opinion, for more than a year, on the Proposal of the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection for assessing the constitutionality of certain provisions of the Law on Electronic Communications and the Law on Military Security Services). However, these developments are far from sufficient to overcome the dissatisfaction of citizens caused by violations and irregularities that are manifest in many places in the form of corruption, political cronyism, irresponsibility, lack of organisation, incompetence and indifference for

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<sup>1</sup> All gender-specific words used in this report denote and refer equally to both sexes.

performing public services and exercising public authority towards citizens in accordance with the letter and spirit of the law.

A particularly aggravating circumstance is the difficult economic situation, rising poverty and unemployment, which convert the majority of economic, social and cultural rights to "a dead letter". It is unknown to most people that the state is obliged to ensure these rights "to the fullest extent possible", which in practice can be almost nothing, and for which reason some legal systems have not considered them the real rights for a long time. Usually, public authority do not "violate" these rights formally, but many citizens remain deprived of them. Some occasional but very persuasive examples experienced by poverty-stricken people intensify the subjective feeling of social injustice among citizens.

Given the nature of the Protector of Citizens' duties, this report will focus more on the problems than on the progress made.

### *About the activities*

In 2011, the number and scope of the Protector of Citizens' activities kept growing. There were 12,130 contacts with citizens (in 2010, there were 8,553); the citizens submitted 3,428 formal complaints (in 2010, there were 2,647); the Protector of Citizens initiated 212 procedures upon own initiative (in 2010, there were 90). A number of completed procedures is 2,546 (2,363 in 2010); 1,084 new procedures of controlling the work of authorities were initiated (930 in 2010) and 214 separate recommendations were issued (152 in 2010). The authorities removed deficiencies in the course of procedure (so that the recommendations were not necessary) in 218 cases (308 in 2010).

**Table 1 - All contacts established with citizens in 2010 and 2011 respectively**

No.	Contacts of the Protector of Citizens with citizens - 2010-2011	2010	2011	Increase %
1	Received complaints	2649	3640	37.41
2	Received legislative initiatives	75	101	45.97
3	Received citizens in person	2865	4182	34.67
4	Phone calls with citizens	5058	7312	44.56
5	Various citizens' submissions other than complaints	571	547	-4.20
<b>Total</b>		<b>11,218</b>	<b>15,782</b>	<b>40.68</b>

A much faster increase in the number of contacts, complaints and initiated procedures than in the number of resolved cases confirms, unfortunately, the statement from the previous annual report that the capacity of this institution in the existing normative and actual conditions reached its maximum, while the citizens' needs and

expectations continue to rise, which may lead to the collapse of this institution under the burden of entrusted tasks and the intensity of citizens' expectations that cannot be fulfilled always and entirely.

This requires that the National Assembly improves the legal framework for the work of the Protector of Citizens and allow the enhanced capacity of its Secretariat. Indeed, it would be even better if the authorities quickly changed the way they work so that citizens would not need to complain against them. However, it is not realistic to expect in the next few reporting periods, because the culture of respect for human rights and civil rights in general cannot be developed overnight.

The significantly increased number of contacts and complaints is a result of considerably improved accessibility of the Protector of Citizens throughout Serbia. In the libraries of ten towns and municipalities, with the support of the Kingdom of Norway, we opened the "virtual" offices of the Protector of Citizens. The citizens of Bačka Palanka, Šid, Užice, Kruševac, Novi Pazar, Prijepolje, Svilajnac, Bor, Dimitrovgrad and Leskovac can, with the librarian's assistance, talk with the associates in the Protector of Citizens' client reception service via the audio/video Internet connection, and, if necessary, file a complaint that will be forwarded to the head office. This cost-effective, multiple useful and entirely original way of communication with citizens was commended by many international and domestic actors and earned an annual award of the Serbian Library Association. With the support of the United Nations, the offices of the Protector of Citizens were opened in Preševo, Bujanovac and Medveđa, with a total of two employees. They work two days a week in Preševo, two in Bujanovac and one in Medveđa.

The Protector of Citizens, his Deputies and associates working in the Secretariat visited in 2011 over 100 towns and municipalities in Serbia to carry out control, preventive and educational activities.

In one part of the Republic of Serbia, the Province of Kosovo and Metohija (KiM), the Protector of Citizens is not able to exercise his competences in the manner prescribed by the Constitution and the Law. Pursuant to the operative Article 11(j) of the UNSC Resolution 1244(1999), UNMIK is obliged to protect and promote human rights in KiM. According to the available information and the allegations from the complaints, the citizens of KiM, particularly non-Albanian population living in the enclaves, are the hostages of the current political processes and face the violations of rights incomprehensible to the rest of contemporary Europe.

The Protector of Citizens acted upon the complaint of a mother, whose minor child was taken away to Kosovo and Metohija by the child's father, her former husband. The child was entrusted to the mother by a final court decision, while the father was completely deprived of his parental rights. The court also pronounced the measures for protection from violence against the child and the mother; the father's detention was determined in a criminal procedure and an arrest warrant was issued; the decisions on enforced execution were also brought. The authorities of the Republic

of Serbia have indications where the child and the father are in the territory of Kosovo and Metohija, but no body, including the Protector of Citizens, can ensure the execution of a final and enforceable court decision.

The Protector of Citizens submitted 40 initiatives and proposals for the amendments to the laws and other regulations hindering the exercise of citizens' rights. Unfortunately, only three of them were accepted, all of immediate vital importance to tens of thousands of citizens, and of interest to the whole society.

The Protector of Citizens published a *Special Report on Conducted Inspections in Social Care Institutions for the Elderly*,<sup>2</sup> drafted after controlling the situation in 13 social care institutions, gerontology centres and homes for pensioners and the elderly. The solving of the problem related to difficult access to banking and financial services for people with disabilities was initiated.

The Protector of Citizens supported the opinion before the National Assembly to amend the law which provided for the presence of at least one third of the underrepresented sex in the National Assembly. Two special reports were published in the field of gender equality: *Special Report on the Situation of Domestic Violence against Women in Serbia*<sup>3</sup> and the *LGBT Population in Serbia - the Situation of Human Rights and Social Status*.<sup>4</sup>

We continued to work on drafting the Law on the Rights of the Child and much remains to be done in that regard. We prepared two special reports in 2011<sup>5</sup> dedicated to child begging and protecting children from violence. The Panel of Young Advisors of the Protector of Citizens conducted a research on violence in schools, the first peer study of its kind in Serbia, which was published and promoted by the Protector of Citizens.

We carried out over 200 investigations for the respect for minority rights, and held dozens of meetings with representatives of their national councils and other relevant bodies and organisations, which revealed that the current cumbersome regulatory system for the protection of national minority rights did not fully respond to the complex inter-ethnic relations in Serbia, nor did it result in practical measures to effectively promote social integration of minorities and ensure the preservation of ethnic, linguistic and cultural characteristics of minority communities. At the same time, there are problems in certain areas where the majority/Serbian population is a minority, and as regards to the right to use the Cyrillic alphabet as official script, there are failures in the whole country. The recommendations given to remedy these problems are implemented with many difficulties and high resistance.

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<sup>2</sup> Available at <http://www.ombudsman.rs/attachments/Domovi%20za%20stare.doc>

<sup>3</sup> <http://www.ombudsman.rs/index.php/lang-sr/component/content/article/1563>

<sup>4</sup> <http://www.ombudsman.rs/attachments/Izvestaj%20LGBT.doc>

<sup>5</sup> *Child Begging in the Republic of Serbia and Protection of Children from Violence in Schools*.



We pointed out to the problems in the work of state bodies and bodies that organise the manner of conducting religious classes and gave appropriate recommendations, to which they did not respond.

It is particularly difficult for Roma to exercise the right to protect identity, due to their extremely unfavourable socio-economic status. The purpose of the Protector of Citizens' recommendation on the eviction of Roma citizens living in the illegal settlement in Block 72 in New Belgrade was to stop the practice of uncontrolled eviction from illegal and unsanitary/slum Roma settlements. The City of Belgrade quickly rectified the errors and came close to the highest standards, but the following eviction, for which the state, as investor, is responsible, began with the same problems.

A series of actions and recommendations improved the exercise of the right of persons belonging to national minorities to have their personal name registered in their own language and script, and partly changed the practice of public administration in relation to the exercise of the right to official use of languages and scripts of national minorities, especially the practice of the registry offices concerning the registration of personal names in the languages and scripts of national minorities.

The Protector of Citizens initiated the amendments to the Law on Identity Cards and the Law on Permanent and Temporary Residence in order to allow the persons unable to have their address registered to obtain identity documents, and worked with professional associations and relevant international organisations and agencies on the proposed amendments to the Law on Non-Contentious Procedure, in order to enable the aforementioned persons to prove before the court the facts necessary for registration into birth registry books and thus solve the problem of thousands of "legally invisible" persons.

The Republic of Serbia, on 28 July 2011, pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, established the National Prevention Mechanism against Torture (NPM). The Law on Ratification of the Optional Protocol<sup>6</sup> provides that the Protector of Citizens shall perform the tasks of the National Prevention Mechanism against Torture and the first six months were used for organising the adopted complex model of the National Prevention Mechanism against Torture in Serbia and necessary preparatory work. In exercising these new competences, the Protector of Citizens particularly cooperates with the Provincial Ombudsman of the Autonomous Province of Vojvodina and 9 associations with which the Protector of Citizens signed a cooperation agreement on systematic monitoring of the position of persons deprived of liberty and the occurrence of torture in certain areas. Meanwhile, there were 53 control and preventive visits to the institutions accommodating the persons deprived of liberty. In these institutions, we identified the problems faced by the persons suffering from mental

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<sup>6</sup> *Official Gazette of Serbia and Montenegro* - International Treaties, No. 16/2005 and 2/2006 and *Official Gazette of RS* - International Treaties, No. 7/2011.

disorders, particularly excessive or unauthorised restriction of liberty and deprivation of legal capacity.

The Protector of Citizens sought to strengthen media freedom, as a part of every citizen right to information, through permanent cooperation with journalist and media associations, mediation in the case of initiating the judicial prosecution by the state against journalists and editors for publishing a confidential document that was of great interest to the public (although the damage caused by its publication was unknown), mediation and support in developing a media strategy, insisting on the need to protect security of research-oriented journalists but also the development of journalistic ethics, and the Protector of Citizens' continuous availability for journalists.

The Protector of Citizens focused more intensively on the problems in exercising the rights related to health insurance, through the procedures of controlling the work of health institutions and competent state authorities. After having identified the irregularities in the work of a large medical institute in the previous reporting period, in this reporting period the Protector of Citizens controlled the work of a clinical centre and several smaller medical institutions. The Protector of Citizens established the irregularities and abuses in the organisation and performance of additional work to the detriment of the patients' rights; a considerable media attention was drawn to that situation and the recommendations were given that, after the initial resistance, resulted in the improved work and the refund of money unlawfully collected from the citizens.

The Protector of Citizens hosted in Belgrade and co-organised, together with the Geneva Centre for the Democratic Control of Armed Forces, the Third International Conference of Ombudsman Institutions for Armed Forces, which brought together 48 official participants from 20 countries around the world.

The representatives of the Protector of Citizens participated in over 50 national and international expert gatherings on human rights, while the Protector of Citizens, on several occasions and upon the invitation of international organisations and colleagues from abroad, presented his experience in the development and work of the Ombudsman institution, which may be useful for other states.

In the European headquarters of the United Nations in Geneva, the Protector of Citizens received an A-Status Accreditation Certificate granted to national institutions for the protection and promotion of human rights, and unless extraordinarily withdrawn for some reason, it will be valid until 2015. The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights grants that status to the body whose normative framework for operation and practice fulfil to the highest degree the standard of "independence" described in the Paris Principles, the most relevant international instrument of its kind.

For the activities conducted in 2011, the Protector of Citizens was named a "Person of the Year", an award traditionally granted by the Organisation for Security

and Cooperation in Europe, Mission to Serbia, and he also received the recognition for the special contribution to the affirmation of the right to free access to information of public importance and transparency in work, awarded by the competent national Commissioner. The Protector of Citizens was also awarded the first honorary membership card of the Independent Journalists Association of Serbia. The non-governmental organisation the First European House awarded the prize "Best European" to the Protector of Citizens Saša Janković for the project of affirmation and promotion of the institution of the Protector of Citizens.

Despite these certificates and awards, the activities of this body are insufficient if one bears in mind the current way of working of the authorities and their attitude towards the rights of citizens, but still more intensive than its current capacity and high quality requirements would objectively allow for a longer period.

### *About the deficiencies in the work of authorities concerning the respect for citizen rights*

The most common errors committed by authorities and established by the Protector of Citizens in the reporting period are:

- Failure to act promptly upon the legally based citizens' requests, which results in the violation of a series of guaranteed rights, such as the right to legal remedy;
- Apparently erroneous application of substantive law, either out of ignorance or knowingly, to the detriment of the broadest spectrum of citizens' rights;
- Failure to enforce and passive attitude towards the final decisions of competent bodies, including courts, on determining the citizens' rights or protecting their legitimate interest;
- Adopting and implementing meaningless administrative procedures that unnecessarily impede the exercise of citizens' rights;
- Passivity in the execution of public powers at the expense of the exercise or protection of citizens' rights and interests;
- Selectivity in the execution of public powers and different treatment of citizens without a justifiable reason, thus violating the right to equality;
- Arbitrariness in decision making (lack of clear rules of procedure, known in advance), thus violating the right to legal certainty;
- Formalism and "routine" procedure that does not respect the particularities of a concrete legal and factual situation of individual citizens and leads to purposeless, unfair and pointless outcomes.

All these failures constitute a violation of the principles of "good administration", which are largely contained in and based on the legally prescribed principles of general administrative procedure, but which the administration very often sees as decorative and not binding and guiding principles.

It has already been mentioned that a large number of citizens complains about the impossibility of exercising their economic, social and cultural rights, such as the right to a *fair* salary or remuneration, or the right to *adequate* social security benefits during and after pregnancy.<sup>7</sup> Thus, a worker believes that his salary is not "fair" because it is insufficient to survive (or he has not received it for years), while a mother considers that the allowance she gets for the child is not "adequate" for the expenses that she objectively has. However, people are often not aware of the fact that these are not absolute rights, but the rights guaranteed by the state "to the maximum of its available resources".<sup>8</sup> Therefore, although the Protector of Citizens in many cases fully shares the frustration of citizens, in the largest number of their complaints we cannot identify a specific authority that has committed an error in its work or establish irregularity or illegality in the work.

Hence, the Protector of Citizens is able deal more effectively with the situations where citizens encounter such administrative rules, procedures and practices that prevent, hinder or discourage them from exercising their rights, which are within the "available resources".

*One of the examples is the legally stipulated rule that only the chosen general practitioner can issue a prescription to the patient, while the specialist doctor who has been treating the patient from a specific disease is not allowed to do so. In practice this means that the patient must first schedule an appointment and wait for an examination by the chosen general practitioner, who will refer him/her to a medical specialist, where the patient needs to re-schedule and wait for a specialist examination. Once the medical specialist has determined a necessary treatment, the patient needs to schedule a new appointment with the chosen general practitioner (often in other part of the town, sometimes even other part of the country, and the patient can have mobility disabilities) so that the chosen general practitioner issues a prescription according to the instruction of his/her specialist colleague. It often happens that the medicine indicated by the specialist is not on the list of drugs approved by the health insurance organisation, so the patient must repeat the entire cycle, or give up and buy the recommended medicine at the pharmacy at full price despite paying for health insurance. The Protector of Citizens urged the Minister of Health to simplify the administrative procedures, and the Ministry of Health began drafting the proposed measures whose implementation is expected in the next reporting period.*

One of the growing problems that may pose an obstacle to the exercise of a series of rights is a tendency to restrict access to justice through the introduction of new requirements and increased costs for addressing courts, especially in the situation

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<sup>7</sup> From Article 10 of the International Covenant on Economic, Social and Cultural Rights.

<sup>8</sup> From Article 2 of the International Covenant on Economic, Social and Cultural Rights.

where the system of free legal aid is not available to those for whom it is intended. The Constitution stipulates that everyone shall have the right to a *public hearing before an independent and impartial tribunal established by the law within reasonable time which shall pronounce judgement on their rights and obligations*, and it should not be burdened with the requirements that, in practice, deprive socially vulnerable citizens of that right. Efficiency should not be achieved by reducing the amount of work, but through better organised and higher quality of work. The intervention of the Protector of Citizens prevented at the last moment the introduction of the amendments that would prevent citizens to file appeals to courts by themselves, allowing them to do so only through attorneys-at-law. In preparing the law, the following provision of the Constitution was ignored: *everyone has the right to appeal or use other legal remedy against any decision on his rights, obligations or lawful interests*, as well as the fact that the law must not impose new conditions for the exercise of the constitutionally guaranteed rights. However, the legal system includes other provisions that restrict the right of citizens to access courts or that renders the exercise of this right more difficult.

### ***Proposals for improving the position of citizens in relation to authorities***

The particular control procedures, preventive activities and otherwise obtained information have resulted in a series of recommendations for improving the position of citizens in relation to administration authorities. These recommendations are presented in detail in a separate section of this report, but the most important and the most specific ones are summarised hereby. They refer to the drafting and adoption of new regulations, strategic and other documents; more correct application of the existing regulations and documents and capacity building and strengthening of the institutions and mechanisms for their application. It is necessary to:

- Establish in all authorities free and available internal mechanisms for considering citizen complaints against their work, which will align their actions with the practice of the Protector of Citizens;
- Build a normative and practical framework for the protection of employees in the authorities, who in good faith point to irregularities and illegal acts that violate the rights of citizens and public interest;
- Establish an institutional mechanism for effective execution of the decisions of international authorities and bodies on individual applications of citizens against the Republic of Serbia for violations of their human rights;
- Create a climate of respect for diversity and human rights, by changing educational programmes and through continuous joint efforts of all authorities and education of officials and citizens, and thus, among other things, eliminate the need for special concern about the safety of human rights defenders and journalists, and provide a safe gathering of LGBT people;
- Draft, and through an extended public debate, check, promote and adopt the Law on the Rights of the Child;

- Develop and implement a national strategy for the protection of children whose life and/or work takes place in the street (“children of the street”);
- Consistently apply and control the application of the Rulebook on procedures in the institutions in response to violence, abuse and neglect, as well as the measures aimed at supporting and rehabilitating the student victims and their reintegration;
- Establish the right to special financial assistance and support to parents/guardians while they provide direct care to the child who, due to illness, disability or developmental challenges requires continuous parental care;
- Re-establish the previously reached, and then lowered level of health care for children with psychophysiological disorders and/or speech pathology;
- Continue working on the amendments to the Criminal Code that improve the criminal protection of the victims of domestic violence and tighten the penal policy in this area;
- Improve the availability and accessibility of public services and polling places for persons with disabilities;
- Adopt a law that will comprehensively regulate the protection of mental health;
- Regulate the system of health and social services for the persons who no longer require treatment in psychiatric hospitals and institutions;
- Intensify the measures of non-institutional care for the elderly, through the development and promotion of home care and domestic help for those people (without their displacement from the natural environment);
- Amend the Law on National Councils of National Minorities;
- Amend the Law on Churches and Religious Communities;
- Regulate the outstanding issues of the organisation of religious education and the status of religious education teachers;
- Amend the Law on Official Use of Languages and Scripts;
- Develop measures to provide the national minorities in Central Serbia with the same opportunities and conditions for the development and preservation of identity that the national minorities in AP Vojvodina have;
- Amend the Law on Non-Contentious Procedure in order to allow the registration of “legally invisible” persons into civil registry books;
- Implement the Strategy for Improvement of the Status of Roma in the Republic of Serbia and appoint a body that will be responsible for monitoring its implementation;
- Strengthen the human resource capacity of the Directorate for Human and Minority Rights of the Ministry of Human and Minority Rights, Public Administration and Local Self-Government;

- Build a system to monitor police detention and build new facilities for the execution of criminal sanctions, fully in accordance with the accepted standards.

Saša Janković, Protector of Citizens

## ACRONYMS

<b>AMO</b> - Association of Mediterranean Ombudsmen
<b>CCPR</b> - Human Rights Committee UN
<b>CEB</b> - Council of Europe Development Bank
<b>CERD</b> - Committee on the Elimination of Racial Discrimination UN
<b>CPT</b> - European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>CRDA</b> - Center for Research of Democratic Alternatives
<b>CRONSEE</b> - Children's Rights Ombudspersons Network in South and Eastern Europe
<b>DCAF</b> - Geneva Centre for the Democratic Control of Armed Forces
<b>EAR</b> - European Agency for Reconstruction
<b>ECRI</b> - European Commission Against Racism and Intolerance
<b>ENOC</b> - European Network of Ombudspersons for Children
<b>EOI</b> - European Ombudsman Institute
<b>HRC</b> - Human Rights Council UN
<b>IAN</b> - International Aid Network
<b>ICC</b> - International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
<b>IOI</b> - International Ombudsman Institute
<b>NHRI</b> - National Institution for Promotion and Protection of Human Rights
<b>NPM</b> - National Prevention Mechanism against Torture
<b>ODIHR</b> - OSCE Office for Democratic Institutions and Human Rights
<b>OHCHR</b> - Office of High Commissioner for Human Rights
<b>PBILD</b> - UN joint programme for Peacebuilding and Inclusive Local Development in South Serbia
<b>SIDA</b> - Swedish International Development Cooperation Agency
<b>UN WOMEN</b> - United Nations Entity for Gender Equality and the Empowerment of Women
<b>UNDP</b> - United Nations Development Programme

**UNICEF** - United Nations Children's Fund  
**UPR** - Universal Periodic Review  
**USAID** - United States Agency for International Development  
**VDS** - Victimology Society of Serbia  
**HJC** - High Judicial Council  
**GSA** -Gay-Straight Alliance  
**ICT** - Information and Communication Technologies  
**PCI** - Penitentiary-Correctional Institution  
**LGBT** - Lesbian, gay, bisexual and transgender people  
**MDRI-S** - Mental Disability Rights Initiative of Serbia  
**MODS** - Network of Civil Society Organizations for Children in Serbia  
**OSCE** - Organisation for Security and Co-operation in Europe  
**DP** - District Prison  
**PS** - Police Station  
**PA** - Police Administration  
**RZZO** - Republic Health Insurance Institute  
**RZS** - Statistical Office of the Republic of Serbia  
**RFPIO** - Republic Fund for Pension and Disability Insurance  
**CoE** - Council of Europe  
**SWC** - Social Welfare Centre



# I INTRODUCTION

## 1.1. LEGAL FRAMEWORK AND SCOPE OF WORK OF THE PROTECTOR OF CITIZENS (OMBUDSMAN)

### 1.1.1. *Legal framework for the operation of the Protector of Citizens*

The Protector of Citizens of the Republic of Serbia is an independent and autonomous state body, introduced in the legal system of the Republic of Serbia in 2005 by the Law on the Protector of Citizens<sup>9</sup> (hereinafter referred to as: the Law) and, subsequently confirmed by the Constitution of the Republic of Serbia<sup>10</sup> (hereinafter referred to as: the Constitution). The competences of the Protector of Citizens consist of controlling the legality and regularity of the work of administration authorities in connection with the exercise of individual and collective rights of citizens, as well as to protect and promote human and minority rights and freedoms of citizens.

The independence of the Protector of Citizens is one of the basic principles in the work of this institution, in accordance with the international documents on the Ombudsman; it means that the Protector of Citizens is organisationally and functionally separate from the administration authorities<sup>11</sup> whose work it controls. The principle of the Protector of Citizens' autonomy arises from the principle of independence, which means that he performs the duties within his competence independently and prevents anyone from influencing his work and actions.

The Protector of Citizens is appointed by the National Assembly and, according to the Constitution and the Law, he reports to the National Assembly for his work. The Protector of Citizens acts in accordance with the Constitution, the Law, other regulations and general acts, as well as the ratified international treaties and generally accepted rules of international law.

### 1.1.2. *Scope of work of the Protector of Citizens*

The Protector of Citizens controls the work of the state administration authorities responsible for legal protection of property rights and interests of the Republic of Serbia, as well as other agencies and organisations, enterprises and institutions vested with public powers. The Protector of Citizens is not authorised to

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<sup>9</sup> The Law on the Protector of Citizens (*Official Gazette of the Republic of Serbia*, Nos 79/05 and 54/07).

<sup>10</sup> Decision on the proclamation of the Constitution of the Republic of Serbia, published in the *Official Gazette of the Republic of Serbia*, No 83/06 and 98/06 (Fifth Part - Organisation of Government, Section 5 - Civic Defender, Article 138).

<sup>11</sup> The Law on the Protector of Citizens (Article 1) introduced the shortened term "administration authorities" which denotes state administration bodies, bodies responsible for the legal protection of property rights and interests of the Republic of Serbia, as well as other agencies and organisations, companies and institutions vested with public powers. In order to make a reader-friendly report, we have used the same shortened term.

control the work of the National Assembly, the President of the Republic, the Government, the Constitutional Court, courts and public prosecutors.

In addition to initiating and conducting the procedures of controlling public administration authorities, the Protector of Citizens can act pre-emptively through providing good services, mediating between citizens and administration authorities and giving advice and opinions on the matters within his competence, in order to improve the work of administration authorities and the protection of human rights and freedoms.

The Protector of Citizens also has the right to launch legislative initiatives. He may propose legislation within his competences; submit initiatives for amending or adopting new regulations if he believes that their shortcomings cause violations of civil rights, or if it is of importance for the realisation and promotion of civil rights. The Protector of Citizens is also authorised to give opinions on draft regulations to the Government of the Republic of Serbia and the National Assembly. Moreover, the Protector of Citizens is authorised to initiate procedures before the Constitutional Court for the assessment of constitutionality and legality of laws, regulations and general acts.

In a relatively quick process, free from excessive formalities, the Protector of Citizens controls the observance of the rights of citizens, establishes violations committed by administration authorities through acts, actions or failure to act, if they violate state laws, other regulations or general acts. The Protector of Citizens investigates (or controls, as stipulated by the Constitution and the Law) whether an administration authority has acted lawfully and properly in the matters related to the rights, freedoms or legally based interests of citizens. If it has not, the Protector of Citizens establishes a failure and recommends the way of correcting it whatever the case may be.

The Protector of Citizens investigates much more than a formal compliance with the law; he examines ethics, conscientiousness, impartiality, competence, usefulness, effectiveness, respect of client's dignity and other properties that should characterise public administration, which citizens, as taxpayers, rightfully expect.

Recommendations, views and opinions of the Protector of Citizens are not legally binding. The work of the Protector of Citizens is not to force, but to persuade, by using the force of argument, as well as the institutional and personal authority, about the necessity of removing gaps and improving the way of work.

However, the administration authorities are obliged to cooperate with the Protector of Citizens, allow him to access their premises and make available all information they hold, regardless of the degree of their confidentiality (when it is in the interest of the initiated procedure). A failure to comply with these legal obligations is the basis for the initiation of appropriate disciplinary and other procedures.

The Protector of Citizens may recommend a dismissal of the official who is considered liable for the violation of civil rights, initiate disciplinary action against the employees of administration authorities, or submit a request for initiating a criminal, misdemeanour or other appropriate procedure.

### ***1.1.3. Needed modifications of the legal framework regulating the operation of the Protector of Citizens***

The reasons for amending the Law on the Protector of Citizens have been identified on the basis of over 4 years of experience in its implementation. Since its adoption in 2005, the Law was modified once (2007), but prior to the election of the Protector of Citizens, in the situation when the institution actually did not exist, so that the amendments made on that occasion could not take into account the experience gained through practice. In the reporting period, we confirmed the earlier starting point that a number of problems in executing the legally prescribed powers stem from the fact that certain issues have not been regulated adequately or have not been regulated at all. This primarily relates to the issue of when and under what circumstances the Protector of Citizens should suspend the procedure of controlling the legality and regularity initiated upon a complaint, establishment of special protection measures for the complainant, handling complaints within the authorities vested with public powers and informing the Protector of Citizens about them, as well as prescribing penal provisions for a failure to fulfil the obligations stipulated under this Law.

In addition, in order to achieve more rational and more efficient use of available material, temporal and human resources, based on the previous experience gained through work, we have elaborated and specified the reasons for which the Protector of Citizens will not initiate the control of administration authorities. The proposed amendments aim at achieving the purpose and full effectiveness of legally prescribed authority of the Protector of Citizens to initiate the amendments of laws, other regulations or general acts before the Government or the National Assembly if he believes that the rights of citizens are violated due to deficiencies in regulations, as well as to initiate the adoption of new laws, regulations or general acts, when he considers it to be vital for the protection of citizens' rights, thus effectively improving the legal framework in the field of exercise and protection of human and minority rights and freedoms.

Recognising these needs, the Ministry of Human and Minority Rights, Public Administration and Local Self-Government, in cooperation with the Protector of Citizens, prepared a draft law amending the Law on the Protector of Citizens. After that, the Government of the Republic of Serbia in February 2012 established the Bill amending the Law on the Protector of Citizens and sent it to the National Assembly of the Republic of Serbia for adoption.

## 1.2. ENHANCING THE PROTECTOR OF CITIZENS' CAPACITY AND ACCESSIBILITY IN 2011

In order to raise the capacity of the institution, facilitate access of the institution to citizens from all over Serbia and increase the awareness among citizens about the Protector of Citizens' competences and work, the Protector of Citizens, alone or in cooperation with foreign partners, implemented a series of projects in the reporting period.

**Table 2 - Percentage of citizens from different districts received in the offices**

Belgrade	5880	54.52%
Other parts of Serbia	1820	16.88%
AP Vojvodina	1071	<b>9.93%</b>
Pomoravlje District	404	<b>3.75%</b>
Jablanica District (excluding Medveđa)	314	<b>2.91%</b>
Raška District	254	<b>2.36%</b>
Zlatibor District	229	<b>2.12%</b>
Rasina District	214	<b>1.98%</b>
Nišava District	202	<b>1.87%</b>
Municipalities of Preševo, Bujanovac and Medveđa (Local offices of the Protector of Citizens)	324	<b>3.00%</b>
AP Kosovo and Metohija	59	<b>0.55%</b>
Foreign country	14	<b>0.13%</b>

### 1.2.1. Establishing local offices in Preševo, Bujanovac and Medveđa

On the basis of the Law on the Protector of Citizens (*Official Gazette of RS*, Nos 79/05 and 54/07) and the General Act on the Organisation and Operation of the Secretariat, the Protector of Citizens issued a Decision on the establishment of local offices of the Protector of Citizens in the Municipalities of Preševo, Bujanovac and Medveđa (*Official Gazette of RS*, No. 91/09). The offices were opened to increase the accessibility of the Protector of Citizens institution and achieve more effective protection and promotion of human and minority rights and freedoms of citizens in that area.

The locations of the office seats are the following:

1. In Preševo – in the building of the Coordination Centre for the Municipalities of Preševo, Bujanovac and Medveđa, address: 12 Save Kovačevića Street;

2. In Bujanovac – at the address Karađorđev Trg bb, a room in the building of the Basic Court in Vranje, Branch Office in Bujanovac. After being temporarily located in the building of the Municipality of Bujanovac, in the hall of the Press Centre of the Coordination Centre for the Municipalities of Preševo, Bujanovac and Medveđa, the office was moved on 6 December 2011 to the new premises allocated with the approval of the Ministry of Justice.
3. In Medveđa – in the building of the Cultural Centre of the Municipality of Medveđa, address: 63 Jablanička Street.

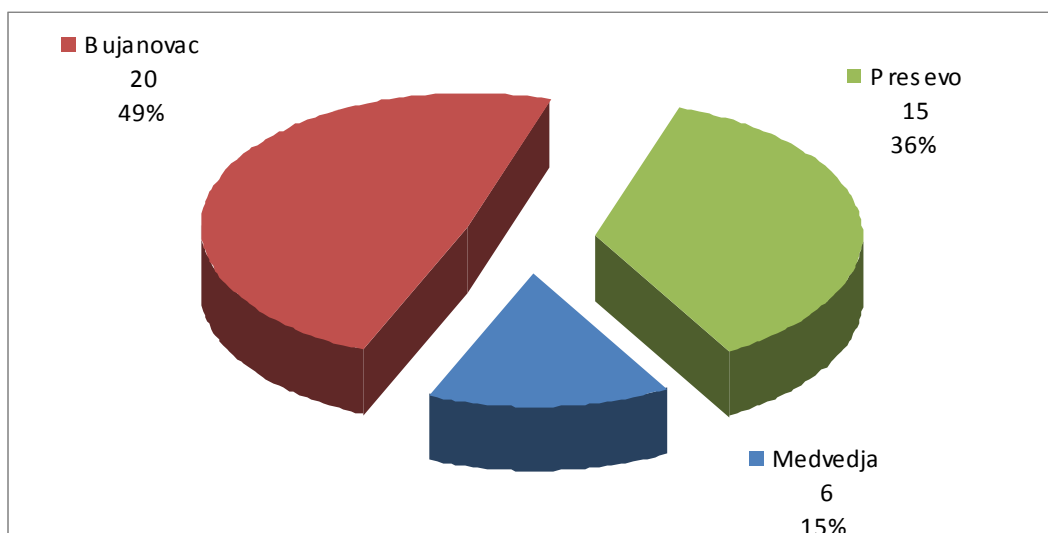
Two state officials work in these offices. They receive clients according to the following schedule: Monday and Tuesday – Municipality of Bujanovac; Wednesday and Thursday – Municipality of Preševo and Friday – Municipality of Medveđa.

**The offices were officially opened on 28 June 2011.**

The offices are equipped with office furniture, computers and communication equipment from the UNDP funds within the project PBILD programme *Capacity Building for Inclusive Local Development in Southern Serbia*.

The number and content of complaints received by the Protector of Citizens from this territory suggest that this decision was justified. Namely, the local offices of the Protector of Citizens in the Municipalities of Preševo, Bujanovac and Medveđa received in 2011 a total of 41 complaints, which is 1.13% of the total number of received complaints in 2011.

**Chart 1 – Number of complaints received from the citizens of the Municipalities of Preševo, Bujanovac and Medveđa**



The Protector of Citizens, the Deputy Protectors of Citizens and the Secretariat employees, according to the previously determined plan, visit once a month the local offices in order to provide expert support to the employees of these offices. On those occasions, they conduct interviews with citizens and receive their complaints, but they

also have meetings with the representatives of local self-government bodies who execute delegated powers in the implementation of state regulations.

### ***1.2.2. Electronic access to the Protector of Citizens***

In 2011, the Protector of Citizens initiated a pilot project *Online Ombudsman*, in cooperation with the Serbian Library Association, libraries and local self-government bodies in ten selected municipalities in Serbia, with the financial support from the Royal Norwegian Government. It was planned that this project would last sixteen months, from June 2011 to April 2012. The project aimed to contribute to a greater visibility and accessibility of the institution for the citizens who live in smaller towns and municipalities in Serbia.

Since 1 June 2011, when the implementation of the project *Online Ombudsman* began, this institution has been contacted by 480 people via video link, while 816 citizens were informed in town libraries about the competences of the Protector of Citizens. A successful cooperation was established with the local authorities and the media, while the contacts were established also with 33 non-governmental human rights organisations. The cooperation was formalised with two non-governmental organisations from Leskovac by signing a Memorandum of Understanding that defines the future joint activities of promotion and protection of human rights.

The citizens from the selected municipalities (Bačka Palanka, Šid, Užice, Kruševac, Novi Pazar, Prijepolje, Svilajnac, Bor, Dimitrovgrad and Leskovac) were enabled to establish easier contact with the Protector of Citizens and receive assistance in drafting their complaints by using the adequate equipment - computers with video communication software installed in the libraries in those municipalities, and if this institution is not the right place for solving their problem, to obtain professional advice on which authority to address.

### ***1.2.3. Projects designed for capacity building and promotion of the Protector of Citizens institution***

In the second half of 2011, we completed the Twinning project *Support to the Strengthening of the Ombudsman Office*, which was conducted in cooperation with the Ombudsmen of Greece and the Netherlands and the European Centre for Public Law, under the auspices of the European Union. During the project period, numerous activities were carried out aimed at strengthening the capacities of staff in the office of the Protector of Citizens and public promotion of that institution, with the participation of a great number of international experts and representatives of prominent international and domestic organisations and institutions dealing with human rights, as well as representatives of central, provincial and local authorities. The project completion was marked by a final conference on the role of the Protector of Citizen in a time of changes in Europe, where the most significant achievements and project outcomes were presented and which was attended by representatives of

relevant national and international organisations and institutions dealing with human rights.

During 2011, the OSCE Mission to Serbia continued to develop the capacity of the institution of the Protector of Citizens. Among the most important activities is a booklet of good practices in the exercise of the rights of persons with disabilities as well as a survey of public opinion about the institution of the Protector of Citizens conducted by Ipsos Strategic Marketing. This survey has shown that the Protector of Citizens enjoys a high level of confidence among the citizens who believe that the institution contributes to the promotion and protection of human rights. The OSCE supported the drafting of a new job classification in the Secretariat of the Protector of Citizens, as well as the work on the amendments to the Law on the Protector of Citizens, which towards the end of the year were presented at the expert debate that was attended by the representatives of the National Assembly, Ministries, non-governmental organisations, the media and the academic community.

During the reporting period, we continued with the implementation of the project *Support to the Protector of Citizens Office in South Serbia*, which is a part of a larger joint programme of the United Nations entitled *Peacebuilding and Inclusive Local Development*. The project is implemented with the financial support of the Swedish International Development Agency (SIDA), in cooperation with the United Nations Development Programme (hereafter UNDP). In the course of 2011, various activities were carried out within the project, aimed at promoting the institution in the municipalities of South Serbia, strengthening the capacity of employees in the offices in the South Serbia and in Belgrade through training sessions and study visits to the Swedish Parliamentary Ombudsman and the Portuguese Ombudsman. The offices in Preševo and Medveđa were renovated and furnished, while the new office premises of the Protector of Citizens Office in Bujanovac were formally opened.

## II OVERVIEW OF ACTIVITY AREAS

### 2.1. RIGHTS OF PERSONS DEPRIVED OF LIBERTY

#### *2.1.1. Description of problems in the specialised area from the aspect of the Protector of Citizens' competence*

In 2011, the Protector of Citizens initiated procedures, upon citizen complaints and upon own initiative, for controlling the observance of the rights of persons deprived of liberty or legality and regularity of the work of the institutions accommodating persons deprived of liberty: police administrations/stations, institutes for execution of criminal sanctions, psychiatric hospitals, social care institutions and shelters for foreigners. In addition, the Protector of Citizens continuously performed monitoring visits to these institutions in order to prevent torture and other forms of cruel, inhuman treatment or punishment of persons deprived of liberty, and to improve the situation of persons deprived of liberty in accordance with applicable regulations and standards. Special attention was devoted to the investigation of torture, examination of material conditions and treatment of persons deprived of liberty, provided health care and social support.

The Protector of Citizens believes that in the Republic of Serbia there is no systemic torture in the institutions accommodating persons deprived of liberty, but there are still present individual cases of torture and abuse and other forms of unlawful or improper conduct of officials or other carers. In addition, continuously poor material conditions, inadequate treatment, deficiencies in health care and lack of social support for persons deprived of liberty can lead to actions that assume the characteristics of inhuman or degrading treatment.

The shortcomings related to the rights of persons deprived of liberty is to a certain extent the result of the lack of regulations and the weaknesses of the existing regulations, as well as negative trends in the practice of state bodies. As regards the rights of persons residing in the institutions for execution of criminal sanctions, there is a lack of by-laws because they have not been adopted within the legally prescribed deadline. As regards the rights of persons with mental challenges, the problem is that in Serbia there is no law on mental health care or a law that would regulate health care and legal protection of these persons, their stay in psychiatric hospitals and provision of care in the local community after release. Regarding the rights of persons accommodated in the social care institutions of inpatient type, the problem lies in the fact that they are kept in these institutions because there are no adequate conditions for social care in the local community. Particularly notable are the negative effects of deprivation of legal capacity, which has become the means of deprivation of liberty by accommodating these persons in psychiatric hospitals and social institutions on the basis of consent for treatment or placement, given in the name of these persons by their legal guardians.



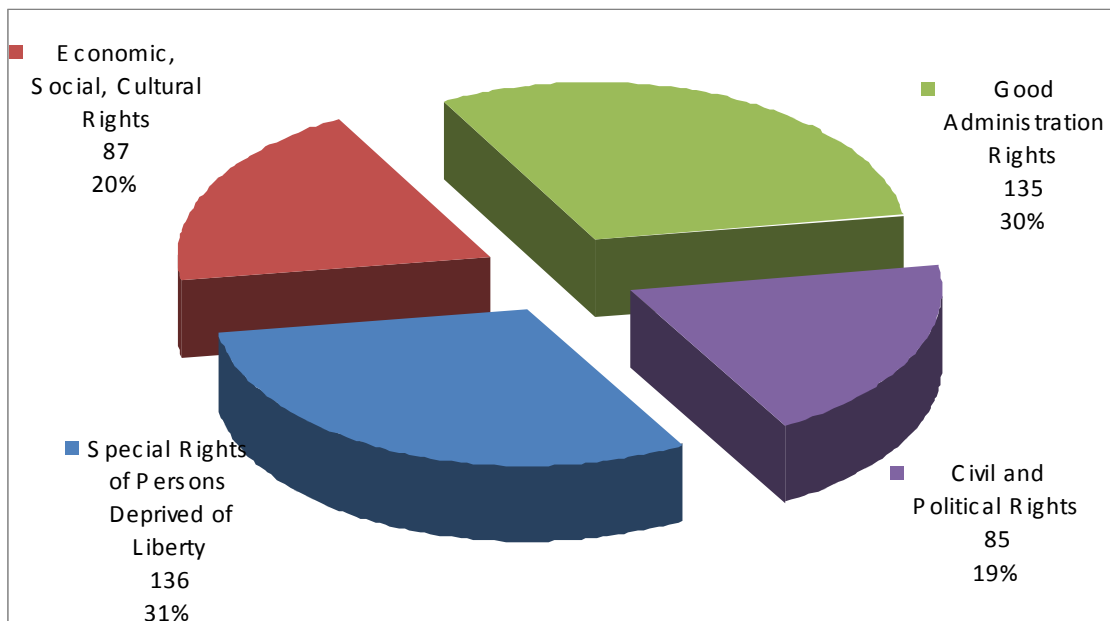
In the upcoming period, Serbia will have to seriously face the problem of position and protection of persons deprived of liberty and to accept and implement the standards requiring that the restrictions imposed on the rights of persons deprived of liberty must be minimum, necessary and proportionate to the legitimate aim.

### ***2.1.2. Statistical overview of citizen complaints concerning the protection of the rights of persons deprived of liberty***

In 2011, the Protector of Citizens acted upon 384 complaints concerning the protection of persons deprived of liberty, out of which 357 were written complaints received from citizens, while in 27 cases the procedures were initiated upon own initiative. The number of complaints received in 2011 increased by about 106% compared to the previous year.

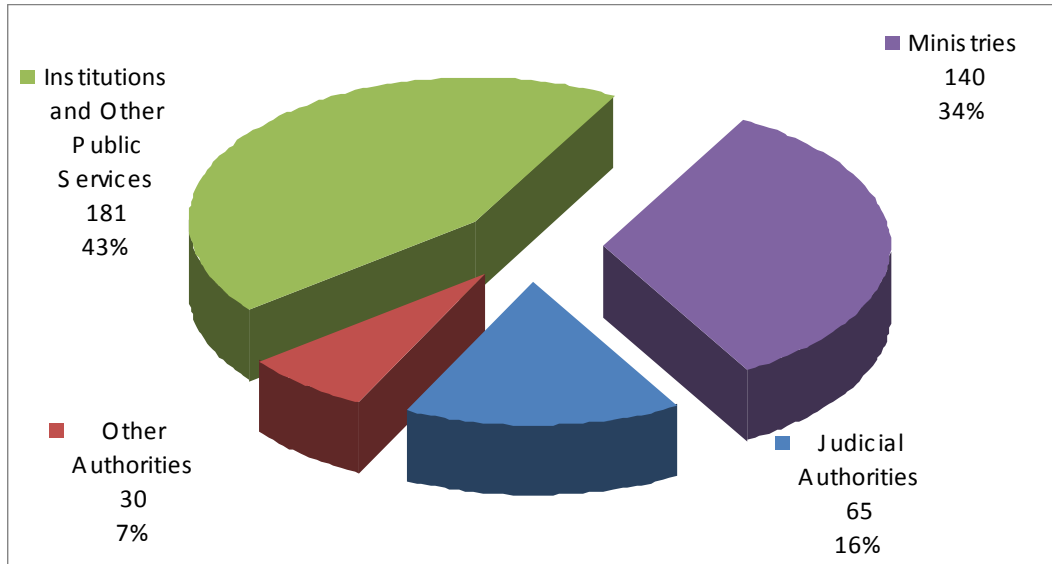
Of the total 384 complaints from 2011 concerning the rights of persons deprived of liberty, the procedures initiated upon 232 complaints (60%) were completed, while 152 (40%) procedures are still pending. The majority of complaints related to the work of institutions for execution of criminal sanctions and police.<sup>12</sup>

**Chart 2 - Violated rights, number and percentage of complaints concerning the persons deprived of liberty**



<sup>12</sup> The complaints related to inadequate health care, poor living conditions, hygiene and nutrition, the right to stay in the fresh air, classification, transfers, the right to obtain information and legal assistance, improper conduct of procedure, ungrounded arrest and others. In 2011, 32 complaints pointed to the occurrence of torture and other ill-treatment and inhuman or degrading treatment or punishment, which is a significant increase compared to the previous years, etc.

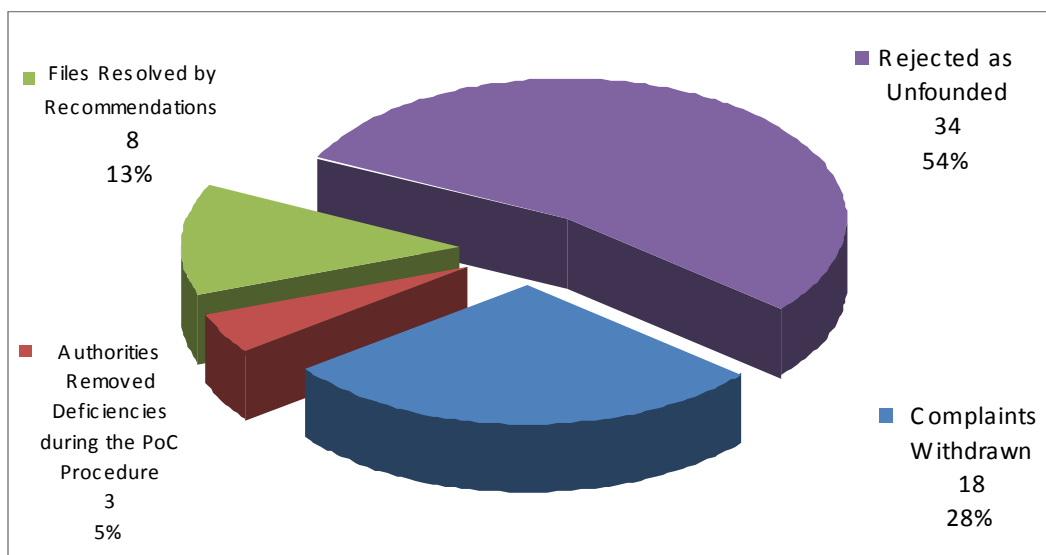
**Chart 3 - Complaints by the authorities to which they refer**



*Note:* The number of authorities is always higher than the number of complaints since the individual complaints sometimes indicate a violation of citizens' rights by more than one authority.

The Protector of Citizens initiated 68 procedures of controlling the work of administration authorities and carried out 53 control and preventive visits to the authorities, mainly to the institutions for execution of penal sanctions and the police. The procedures initiated upon complaints were completed in 63 cases.

**Chart 4 - Way of completing the procedure in the cases in 2011**



In 2011, 169 complaints from 2011 concerning persons deprived of liberty were rejected and the complainants were informed in writing about the legal reasons for which the procedures of controlling administration authorities could not be carried out upon their complaints: failure to exhaust all legal remedies (73), complaints outside of the Protector of Citizens' competence (57), incomplete complaints (19), untimely complaints (13), anonymous complaints (5) and complaints filed by an unauthorised person (2). Moreover, the work on 43 complaints from the previous years was also completed as follows: complaints outside of the Protector of Citizens' competence (13), unfounded complaint (18), recommendations made (6), authorities removed deficiencies (3) and withdrawal (3).

### ***2.1.3. Achievements in 2011 in the area of the protection of the rights of persons deprived of liberty***

The Protector of Citizens in 2011 completed 53 controls and preventive visits to the institutions accommodating persons deprived of liberty.<sup>13</sup> During the visits to the facilities where persons deprived of liberty were accommodated, the officials fully cooperated with the Protector of Citizens and enabled him to work smoothly and to access all premises, especially those in which persons deprived of liberty resided, and allowed uncontrolled conversation with these persons and with all staff. All requested information was made available.

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<sup>13</sup> District Prison in Belgrade, District Prison in Kruševac, District Prison in Kraljevo, District Prison in Smederevo, District Prison in Novi Pazar, Juvenile Correctional Facility in Kruševac, Police Administration in Kragujevac, Police Administration in Novi Pazar, District Prison in Belgrade – Special Unit for Organised Crime and War Crimes, Special Psychiatric Hospital *Dr Laza Lazarević* in Belgrade, Special Psychiatric Hospital in Kovin, Special Psychiatric Hospital *Dr Laza Lazarević* – Unit in Padinska skela, *Male Pčelice* in Kragujevac, Police Station Pirot, District Prison in Užice, Police Station Dimitrovgrad, Police Administration in Užice, Penitentiary-Correctional Institute in Niš, Detention Unit Pirot, Penitentiary-Correctional Institute in Sombor, District Prison in Subotica, District Prison in Leskovac, Penitentiary-Correctional Institute in Sremska Mitrovica, Penitentiary-Correctional Institute in Čuprija, District Prison in Vranje, District Prison in Novi Sad.

In 2011, the Protector of Citizens sent a total of 24 recommendations, as well as more than 70 proposals of the measures for rectifying the errors in work.<sup>14</sup> The administration authorities against which the Protector of Citizens initiated the procedures of legality and regularity of work cooperated as prescribed by the Law. The recommendations and proposals of measures sent to administration authorities with the aim of rectifying the errors concerning the rights of persons deprived of liberty are mostly systemic, referring to a large number of cases or complaints addressed to the Protector of Citizens. The administration authorities to which these recommendations were addressed informed the Protector of Citizens in a timely fashion about having taken or taking all necessary actions and measures in order to comply with the recommendations. In the future, the Protector of Citizens will pay special attention to the actions of authorities upon the received recommendations.

The following overview presents the basic observations concerning the observance of the rights of persons deprived of liberty and achieved outcomes of the Protector of Citizens:

### *Police custody*

Based on the observations during visits to police administrations/stations in Serbia, the Protector of Citizens established the substantial deficiencies in the accommodation capacity for police custody. Through the recommendations<sup>15</sup> and reports sent to competent authorities<sup>16</sup> and numerous public statements, the Protector of Citizens pointed to the necessity of improving the conditions of police custody. The insufficient accommodation capacity for police custody was also noted in the reports of the European Committee for the Prevention of Torture.<sup>17</sup> The competent police authorities do not dispute the identified deficiencies or the necessity of creating adequate accommodation conditions, but suggest that no necessary funds have been provided for that.

In a large number of police stations, there are no separate premises for police custody. Persons deprived of liberty are kept in the offices or on the basis of the Rulebook on Police Powers<sup>18</sup>, upon the order of the Public Prosecutor, in the prison detention units.<sup>19</sup> The Protector of Citizens believes that the practice of keeping persons for hours, and especially the whole day, in police offices or other inadequate premises not intended for that purpose, should be immediately discontinued. Keeping people in

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<sup>14</sup> To the Directorate for Execution of Penitentiary Sanctions of the Ministry of Justice, Ministry of Internal Affairs, Police Station in Smederevo, Penitentiary-Correctional Institute in Požarevac - Zabela, Penitentiary-Correctional Institute in Niš, Penitentiary-Correctional Institute in Čuprija, Penitentiary-Correctional Institute in Sombor, District Prison in Belgrade, District Prison in Novi Sad, District Prison in Zrenjanin, District Prison in Šabac, District Prison in Pančevo, District Prison in Subotica, District Prison in Novi Pazar, District Prison in Leskovac and District Prison in Prokuplje.

<sup>15</sup> Protector of Citizens, Recommendation 12 - 2619/10;

<sup>16</sup> Annual Report of the Protector of Citizens (2009), p. 101; (2010), p. 66;

<sup>17</sup> CPT, Report to Serbia (2004), 42; Ibid CPT, Report to Serbia (2007), 35, 36; CPT, Prel. Report to Serbia (2011);

<sup>18</sup> Official Gazette of RS, No. 54/06;

<sup>19</sup> Protector of Citizens, Report on Visit to PA Sombor, PA Novi Pazar, PA Bujanovac, PA Preševo;

the offices of police stations is completely inappropriate if it lasts more than a few hours.<sup>20</sup> The placement of persons in police custody in the prison detention units is justified by better accommodation conditions. Escorting and placing persons kept in police custody in the prison detention units causes to the police both many organisational and security problems. Besides, it additionally burdens the existing overcrowded detention facilities in prisons and renders the work of an insufficient number of prison officers more difficult.<sup>21</sup>

In some police stations, there are special rooms for police custody, but they, to a greater or lesser extent, do not meet the minimum standards. Accommodation in such premises can be characterised as degrading treatment, in some cases even as abuse. Based on the conducted visits to police stations, the Protector of Citizens<sup>22</sup> and the European Committee for the Prevention of Torture<sup>23</sup> established a number of deficiencies of police custody premises and made recommendations for adjusting the police custody facilities to the applicable standards.<sup>24</sup>

The competent authorities of the Republic of Serbia must immediately take effective measures and activities aimed at creating accommodation conditions for police custody at the police stations in Serbia in accordance with the applicable standards. The premises for police custody must be sufficiently spacious. Their size must be at least 6 square meters for single cells, or at least 4 square meters per person for multi-occupancy cells.<sup>25</sup> The distance between the walls of the room must be at least 2 meters, the height from the floor to the ceiling at least 2.5 meters, and if the room is smaller, it may be used only if people are not kept in it longer than a few hours.<sup>26</sup> The rooms must be dry and ventilated; there must be fresh air, they must have both natural and artificial light and they must be heated according to climatic conditions. They must have a bed, a mattress and a sufficient number of blankets, running water for drinking and sanitary installations, an alarm/button to call the guard, with the accompanying space for spending time in the fresh air; they also must be controlled through video surveillance, and without elements that the kept persons could be used for self-infliction.<sup>27</sup>

Acting upon citizen complaints and in the course of direct supervision of the police work and their treatment of arrested persons and persons kept in police custody, the Protector of Citizens did not establish any significant transgressions relating to the exercise of the right to legal representation, use of mother tongue, a phone call to the

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<sup>20</sup> CPT, Report to Serbia (2007), 35; within the meaning of CPT, Second General Report (1991), 43.

<sup>21</sup> Protector of Citizens, Report on Visit to DP Novi Pazar; DP Vranje;

<sup>22</sup> Protector of Citizens, Report on Visit to PS Čukarica, PS Savski Venac, PS Novi Beograd, PS Ruma and PS Kragujevac;

<sup>23</sup> CPT, Report to Serbia (2011) - preliminary

<sup>24</sup> Protector of Citizens, Recommendation 12 - 2619/ 10; CPT, Report to Serbia (2007), p. 36.

<sup>25</sup> CPT, Report to Serbia (2007), p. 36.

<sup>26</sup> CPT, Second General Report (1991), p. 43.

<sup>27</sup> Protector of Citizens, Recommendation 12 - 2619/ 10; within that meaning also CPT, Serbia (2007), p.36.

family, medical examination or the right to be brought before the competent court within 48 hours of detention at the latest.

Although no systemic torture was noted, the Protector of Citizens established the individual cases of torture and degrading treatment, as well as other forms of unlawful or improper conduct of police officers.

#### **TORTURE IN POLICE CUSTODY**

The Protector of Citizens received a complaint in which the complainant, a person deprived of liberty, claimed to be physically and mentally abused by the police officers in the PA Smederevo. He stated that he had sustained injuries during the arrest, and then also in the PA Smederevo, where he was taken immediately after the arrest. He also said that he was admitted to the detention unit of the District Prison in Smederevo the same day with visible bodily injuries. In the conducted procedure, the Protector of Citizens found that the PA Smederevo violated the complainant's right to physical and mental integrity, humane treatment and respect for the dignity of his personality, because he sustained injuries in the period between his arrest and the admission to the detention unit of the District Court in Smederevo. In addition, it was established that the facts about the origin of bodily injury, the contents of the statements of police officers, as well as the facts on medical findings, had been presented inaccurately. The Protector of Citizens sent a recommendation to the PA Smederevo to establish individual errors made in the drafting of documentation on physical injuries inflicted upon the complainant in the period from his arrest until his admission to the detention unit of the District Court in Smederevo, and to keep accurate documentation on the origin of bodily harm in its future work.<sup>28</sup>

#### **EXCEEDING POLICE POWERS AND GROUNDLESS AND FORCED DEPRIVATION OF LIBERTY**

The complaint of the citizens' associations IM says that the police officers of the PS Stari Grad, the Police Administration for the City of Belgrade, arrested nine of their members in the night between 31 March and 1 April 2010 after they had written a message for the parliamentarians on the sidewalk in front of the National Assembly. They state that they were arrested without any explanations and taken to the police station where they were interviewed for the purpose of collecting information. The conducted procedure revealed that the Public Prosecutor of the First Basic Public Prosecutor's Office in Belgrade, who was on duty, instructed the police officers of the

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<sup>28</sup> Protector of Citizens, Recommendation 12-1782/10

PS Stari Grad to take statements from the IM activists in the form of information collected from citizens, and that contrary to this order, they were arrested in front of the National Assembly and taken forcibly to the PS Stari Grad, although they were neither the persons that should have been taken in for the purpose of establishing their identity, nor the persons for whom the arrest warrant was issued or the persons who had to be kept pursuant to Articles 53 and 54 of the Law on Police. The Protector of Citizens deems that the PS Stari Grad committed an error in the way of executing police powers, because these persons were forcibly brought to the police premises in order to provide information. The recommendation was sent to the PS Stari Grad saying that the police officers in their future work should not forcibly take citizens, whom they verbally summoned, to the police station for the purpose of collecting information, that they should always communicate the reason for summoning them, and bring them to the official premises in a police vehicle only with their consent. In addition, the PS Stari Grad was recommended to send an apology to the aforementioned people<sup>29</sup>.

### *Detention*

The current judicial reform did not lead in 2011 to more efficient operation of courts in the so-called detention cases. It is believed that the detention measures are easily imposed and that they last an inappropriately long period of time. The Protector of Citizens reiterates that the circumstances accompanying the execution of detention measures often represent a sort of punishment prior to conviction<sup>30</sup>.

The detention units in the prisons in Serbia are insufficient to accommodate the existing number of detainees in accordance with the applicable regulations and standards. There are some 3000 persons in detention, while the capacity of detention units is less than 2000 persons. The law stipulates that the premises where detainees are accommodated must be so spacious that each detainee has at least eight cubic meters and four square meters of space, which is impossible to achieve in the situation of massive overcrowding of detention units. There are cases that a dozen persons are accommodated in a detention room of 25 m<sup>2</sup>, or three persons in a room of 8 m<sup>2</sup> or two persons in a room of 5 m<sup>2</sup>, which is about 2.5 m<sup>2</sup> per detainee or substantially less than the minimum provided by law.<sup>31</sup> Obviously, the existing accommodation capacity of detention units should be expanded by some 5000 m<sup>2</sup>.

The law also stipulates that every prisoner is entitled to a separate bed. However, during visits, we found the detainees who did not have their own bed, but slept on mattresses – the so called *cubes*, which are placed on the floor of dormitories before sleeping. In addition, some bed bunks are mounted on three levels, which stultifies the idea of a separate bed.

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<sup>29</sup> Protector of Citizens, Recommendation 17-730/10

<sup>30</sup> Annual Report of the Protector of Citizens (2010), p. 67;

<sup>31</sup> Protector of Citizens, Report on Visit to PCI Niš, DP Pančevo, DP Novi Sad

Although the law stipulates that detainees are entitled to accommodation in accordance with contemporary hygienic conditions and local climate, that the detention premises must be clean, dry and heated, equipped with appropriate sanitary installations and personal hygiene items, the premises in which the detainees are accommodated generally do not meet the above-mentioned requirements. The rooms are mostly ruined, unpainted, heating is unsatisfactory in a large number of rooms, humidity is noticeable (as a result of poor insulation or poor plumbing), and it happens very often that in the sanitary facilities water is constantly leaking from the taps and toilet flushes, which causes dampness.

The law stipulates that the premises in which the detainees are accommodated must be sufficiently ventilated and lighted, both by natural and artificial light that enables reading and working without disturbances to vision. However, many premises do not have direct flow of fresh air and natural light. This is especially the case with the detention unit in the District Prison in Belgrade which on average accommodates about 1,300 detainees (about 50% of the total number of detainees in Serbia), where the detention rooms have no windows, and fresh air and natural light come only through the bars from the shared corridor.

Although according to the current regulations detainees are entitled to spend at least two hours every day in the open air, it is common that they are allowed to spend only one hour in the open air per day. The existing walkways generally lack adequate protection from precipitation.

Special attention was paid to the position of female detainees. More specifically, it often happens that there is only one woman in the prison detention unit, or if there are more of them, they have to be separated pursuant to a court order, in the interest of the proceedings, so that during the execution of detention measure, they are practically in isolation. It renders their position much more difficult.

It is indisputable that many aspects of living conditions of detainees in Serbia are rather inadequate, contrary to positive regulations and international standards, which may constitute inhuman and degrading treatment.

### *Prison*

Acting upon complaints, and based on the monitoring visits conducted in 2011, the Protector of Citizens has established numerous errors in work or deficiencies in accommodation capacities and other living conditions in prisons.

Explicitly, 29 institutions for the execution of criminal sanctions in Serbia accommodate convicted persons and misdemeanour offenders sentenced to imprisonment, persons sentenced to juvenile imprisonment, persons subjected to a security measure of mandatory psychiatric treatment and confinement in a medical institution, compulsory treatment of drug addicts, compulsory treatment of alcoholics,



educational measure of committal to an educational correctional facility and detainees. Over the past ten years, the number of such persons has doubled which is, among other reasons, a result of stricter penal policy and the intensive application of detention measures. Nevertheless, the necessary accommodation facilities have not been constructed accordingly. It is estimated that the current capacity of all the institutions for the execution of criminal sanctions in Serbia is about 7,500 persons. In 2011, the average number of detained persons was between 11,000 and 11,500, which indicates a lack of space for about 4,000 persons. The Protector of Citizens expresses his satisfaction that in late 2011 a newly built Penitentiary-Correctional Institute Belgrade in Padinska Skela was opened with the capacity for about 450 prisoners. However, according to the current regulations and standards that provide that dormitories must have at least four square meters per person, it is still necessary to expand the prison capacity in Serbia by about 20,000 square meters.

The existing prison facilities are problematic primarily due to the fact that some of them were built at the beginning of the last century; many of them are located in the central parts of the cities and cannot be adjusted to the applicable standards. A large number of dormitories are ruined, sanitary facilities are wet,<sup>32</sup> in some of them there is no direct flow of fresh air or natural light, but they come through the shared corridor, and artificial lighting is usually insufficient. A large number of prisoners are not allowed to spend enough time in the open air; their stay outdoors often lasts half an hour per day, although the regulations require a minimum of two hours. This is primarily due to the lack of adequate walking space. The existing walkways for prisoners usually do not have adequate protection from precipitation<sup>33</sup>.

The Protector of Citizens is particularly concerned about the lack of individual and collective work of educators with prisoners. In addition, the interviews with prison educators and management reveal that according to the current system of classification the option of being transferred to a more favourable correctional group, as a result of good behaviour, is inappropriately restricted. The rule that according to the existing classification methodology impedes the transfer to a more favourable correctional group during the execution of sentence, leads to the situation that the prisoners are discharged from the prison directly from the closed prison units. In this sense, the problem of the system of the execution of criminal sanctions lies also in the fact that the prisons do not have any discharge units.

Social support to persons deprived of liberty is almost non-existent, and their position is additionally burdened by insufficient provision of social support to their families, especially to their children. The programmes developed for the purpose of providing social assistance to the prisoners after discharge are not comprehensive. Upon discharge, these persons are left to themselves, and since they are not adequately

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<sup>32</sup> Protector of Citizens, Recommendation 12-3675/11, 12-3666/11, 12-3694/11

<sup>33</sup> Protector of Citizens, Recommendation 12-2612/10

adjusted to life outside the prison cell, it increases the risk of committing another criminal offence very shortly afterwards.

Attention should also be paid to particularly vulnerable persons deprived of liberty. Persons with disabilities generally are not provided with accommodation that meets their needs. In some prisons, the rooms and sanitary facilities are not adjusted; there are no ramps; doors are too narrow for wheelchairs.<sup>34</sup> The assistance to such persons is usually not clearly defined.

In 2011, the Protector of Citizens devoted special attention to the occurrence of torture and other forms of cruel, inhuman treatment and punishment of persons deprived of liberty. It can be concluded that torture is not a systemic phenomenon in the prisons in Serbia, but there are individual cases of torture and abuse.

Having received the information, on several occasions, about the systemic torture in the Pavilion VII of the Penitentiary-Correctional Institute in Požarevac-Zabela, the Protector of Citizens on 5 December 2011 conducted a pilot visit to that Pavilion. The team, led by the Deputy Protector of Citizens for the protection of persons deprived of liberty, consisted of the staff working in the Protector of Citizens' Secretariat, one psychiatrist and two forensic doctors, and a representative of the Helsinki Committee in Serbia. The visit was previously announced and upon the arrival in the Pavilion VII, the prison officials were told that no one should be taken out of the Pavilion or enter the cells without the presence of the monitoring team members. The team members, divided into three groups, visited all 90 cells, as well as all other rooms in the Pavilion. The doctors/team members conducted brief unsupervised interviews with all 240 prisoners individually to obtain information whether in the past six months they had been subjected to torture or any form of abuse. The prisoners who claimed that their injuries had been inflicted were examined on the spot by forensic doctors and their injuries were photographed.

In accordance with the established state, the Protector of Citizens sent to the Penitentiary-Correctional Institute in Požarevac-Zabela several recommendations for remedying the identified deficiencies in the work, including the recommendation to install video surveillance in the basement of Pavilion VII and lights in the corridor,<sup>35</sup> and to have the prison doctors visiting all the prisoners once a month.<sup>36</sup>

#### **PHYSICAL AND MENTAL ABUSE OF PRISONERS**

*Example:* After the above-described visit, the Protector of Citizens received a complaint by a prisoner claiming to have been subjected to unlawful actions by prison officers in the Pavilion VII of the Penitentiary-Correctional Institute in Požarevac-Zabela. On 27 December 2011, the Protector of Citizens visited the complainant and

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<sup>34</sup> Protector of Citizens, Recommendation 12-2615/10

<sup>35</sup> Protector of Citizens, Recommendation 12-3693/11

<sup>36</sup> Protector of Citizens, Recommendation 12-3670/11

on that occasion established that on 24 December 2011 he suffered multiple bodily injuries, whereas the type of injuries and the manner of inflicting them undoubtedly led to a conclusion that the bodily injuries were inflicted by the security service staff that used rubber batons.

According to the Protector of Citizens' opinion, this constitutes an act of torture that resulted in the violation of mental and physical integrity of the complainant, and the fact that the bodily injuries were not recorded in the official files and that the prison governor was not informed about them constitutes an unlawful and incorrect act. Moreover, the failure to take the complainant to a medical examination after having inflicted injuries upon him led to the violation of his right to health care.

The Protector of Citizens sent a recommendation to the Penitentiary-Correctional Institute in Požarevac-Zabela to undertake all available measures for establishing the liability of prison officers for the violation against the complainant, for the failure to record the inflicted bodily injuries and for the failure to inform the prison governor, as well as for the failure to take the complainant to a medical examination<sup>37</sup>.

In 2011, the Protector of Citizens devoted considerable attention to the provision of health care in prisons, which is the subject matter of the majority of complaints. It has been noticed that the medical examinations upon the admission to prisons are superficial and that there are no uniform protocols, but they differ from prison to prison. In most prisons, there are no regular medical examinations in the intervals of up to three months. A large number of prisons do not have patient rooms<sup>38</sup>, and in some prisons the dispensary premises are entirely inadequate, some of them are even open-passage premises<sup>39</sup>. The presence of a medical doctor in many prisons is reduced to insufficient two hours a day, while a medical doctor is not present at all at weekends and holidays. Usually, therapies are administered by non-medical staff. It also happens that non-medical staff are present during medical examinations even when the medical worker does not request so, which violates the privacy of prisoners and the confidentiality of data about their health state<sup>40</sup>.

It has been established that in certain prisons, particularly in the cases of prisoners under close supervision, the contact between a medical doctor and prisoners has been rendered rather difficult. These difficulties stem primarily from the specific way of the execution of punishment, as well as the fact that, for example in the Pavilion VII of the Penitentiary-Correctional Institute in Požarevac-Zabela, the prisoners are closed in the rooms/dormitories 23 hours a day and their contact with the prison staff is minimised, which also renders the contact with a medical doctor more difficult. The

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<sup>37</sup> Protector of Citizens, Recommendation 12-3630/11

<sup>38</sup> Protector of Citizens, Recommendation 12-2614/10

<sup>39</sup> Report on DP Pančevo; Rationale of the Protector of Citizens' Recommendation 12-3695/11

<sup>40</sup> Protector of Citizens, Recommendation 12-3695/11

Protector of Citizens gave a recommendation to the Penitentiary-Correctional Institute in Požarevac-Zabela that a prison doctor should visit once a month all persons deprived of liberty in the Pavilion VII, enter each room/dormitory and establish the need for a medical examination through the conversation with the persons deprived of liberty<sup>41</sup>.

During the visits to prisons, the Protector of Citizens established that a certain number of prisoners with serious mental disorders are accommodated in these prisons<sup>42</sup> (patients suffering from chronic psychotic mental disorder from the group F20 - F29 of the World Health Organisation), which lack adequate conditions for their treatment. Their accommodation in the regular imprisonment regime cannot satisfy their basic needs in terms of adequate treatment, which may lead to the worsening of their health state. Besides, their mental condition makes them also extremely vulnerable and creates a risk of being susceptible to abuse and ill-treatment. For the purpose of eliminating these irregularities, the Protector of Citizens sent to the Directorate for Execution of Penitentiary Sanctions a recommendation to transfer, without delay, the prisoners with such disorders to the Special Prison Hospital or other adequate medical institution<sup>43</sup>.

### *Inpatient social care and psychiatric institutions*

In 2011, the Protector of Citizens began a continuous process of monitoring psychiatric hospitals and inpatient social care institutions. The team consisting of lawyers, psychiatrists, forensic doctors and psychologists visited the Special Hospital for Psychiatric Disorders *Dr Laza Lazarević* in Belgrade, its separate unit in Padinska Skela, the Special Hospital for Psychiatric Disorders in Kovin and *Male Pčelice* in Kragujevac. A series of systemic deficiencies have been identified. In his further procedures of controlling legality and regularity of the work of these institutions, as well as through cooperation with competent authorities, the Protector of Citizens will point to established deficiencies in work and recommend the way of their elimination, particularly the systemic regulation of this field.

The Protector of Citizens believes that without further delay a law should be adopted regulating the protection of mental health, treatment and position of persons with mental disorders. In addition to the absence of that systemic law, the problem is also the inconsistency of regulations<sup>44</sup> governing the placement of mentally ill persons to treatment without their consent; in the upcoming period, these regulations should be aligned to eliminate confusion in their application. Moreover, on one hand, the applicable regulations allow the forced hospitalisation of a mentally ill person for 33 days in order to be treated in a psychiatric hospital, on the basis of a psychiatrist's decision and a notification to the court, without a court decision, while on the other hand, the judges have a usual practice not to hear or even see the persons on whose

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<sup>41</sup> Protector of Citizens, Recommendation 12-3670/11

<sup>42</sup> (patients suffering from chronic psychotic mental disorder from the group F20 - F29 WHO)

<sup>43</sup> Protector of Citizens, Recommendation 12-3698/11

<sup>44</sup> The Law on Non-Contentious Procedure and the Law on Health Care

forced hospitalisation they decide. Unlike mentally ill persons, according to the applicable regulations, a person who has been ordered police custody must be handed over to the competent court promptly, or 48 hours at the latest, or released. The said discrimination against the mentally ill, compared to potential perpetrators of criminal offences, is extremely inappropriate and it is necessary to eliminate it as soon as possible by amending the relevant regulations.

The errors have also been established in the documentation on establishing the consent of persons with mental disorders for inpatient treatment in psychiatric hospitals. The said consents are mainly not in compliance with the applicable regulations and the placement of these persons in locked premises or tying them up casts a doubt on the authenticity of their consent. This statement is supported by an honest explanation of a medical doctor who says that it is often incorrectly stated in the documentation that the patients have consented to treatment to avoid the formalities of forced hospitalisation.

The problem in treating mentally ill persons in psychiatric hospitals and social care institutions of inpatient type is their frequent physical restraint. According to the applicable standards and recommendations, tying up should be the last means for controlling the mentally ill patients who exhibit aggressive behaviour toward themselves and/or their environment. It is permitted only in certain special cases for which there is clear medical evidence showing that their aggression could not be controlled in any other medically reasonable manner. Although it must be time-limited, the Protector of Citizens' team found in its recent visits the persons who had been tied up for over 10 hours. The physically restrained persons must be supervised, but the existing records do not contain the notes on their periodical untying, or monitoring by a medical doctor. Tying up must be done by special adequate ties, rather than some improvised means, such as cloth pieces or cords.

The Protector of Citizens' team noted the extremely adverse living conditions in the visited institutions. The facilities that accommodate people with mental disorders are mostly old, ruined, unpainted and often damp. The sanitary facilities are mostly in very poor condition and damp. The unpleasant odour is present in the premises. The poor living conditions affect also the medical staff.

The employees of the social care institutions of inpatient type indicate that many users are unjustifiably kept in these institutions, only because there are no conditions for social care outside of these institutions, so that psychiatric hospitals to a large extent are used as social care institutions. Specifically, they say that it is a common practice to keep the mentally ill in hospitals without medical indications. The medical doctors claim that the acute medical condition of these mentally ill persons is not so serious to require medical treatment and placement in a psychiatric hospital, but they are kept for social reasons, for example because they have no close relatives, or they have relatives who are not interested in providing them with necessary care and attention, or would like to but objectively have no possibilities for that.

The Republic of Serbia has to develop a system, immediately, for providing health and social care at the local level to people who no longer need treatment or placement in psychiatric hospitals and social care institutions of inpatient type.

The Protector of Citizens points to the disputability of consent given by the guardians of the persons deprived of legal capacity according to which such persons are placed in psychiatric hospitals and social care institutions of inpatient type, which puts them in the position of persons deprived of liberty.

The problem is also the restricted freedom of movement of the elderly residing in public and private institutions, the prohibition to leave the institution, by locking their bedrooms and the like. A possible approval of the family, their personal consent or an approval of a guardian of the person deprived of legal capacity does not constitute a legal basis for keeping these people permanently in a locked area or in the conditions of detention. Despite the understanding of the need to keep some older individuals in these institutions in specific circumstances and in their best interest, it must be stated that such situations are not legally regulated and emphasise the need to regulate them.

#### ***2.1.4. National Prevention Mechanism against Torture***

The Republic of Serbia, on 28 July 2011, pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as: the Optional Protocol), established the National Prevention Mechanism against Torture (NPM). The Law on the Ratification of the Optional Protocol<sup>45</sup> provides that the Protector of Citizens shall perform the tasks of the National Prevention Mechanism against Torture, and that in performing these tasks, it shall cooperate with the Ombudsmen of Autonomous Provinces and the associations whose statutes envisage the promotion and protection of human rights and freedoms as the purpose of association.

There are many reasons for which the legislator has decided to entrust the tasks of the National Prevention Mechanism against Torture to the Protector of Citizens. First of all, the Law on the Protector of Citizens determines the purview of this institution which, *inter alia*, includes the competences concerning the National Prevention Mechanism against Torture envisaged by the Optional Protocol.<sup>46</sup> Moreover, the Protector of Citizens' numerous preventive visits to the facilities accommodating persons deprived of liberty in the past period have been

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<sup>45</sup> *Official Gazette of Serbia and Montenegro* – International Treaties, Nos 16/2005 and 2/2006 and *Official Gazette of RS* – International Treaties, No. 7/2011

<sup>46</sup> The right to unimpeded, unannounced access, at any time, to all the facilities and rooms in which there are or may be persons deprived of liberty; the right to have private conversation with these persons, officials (who are obliged to cooperate in this regard) and all other persons that may have the information relevant to the treatment of persons deprived of liberty; the right to access all records, regardless of the degree of confidentiality; the right to recommend to the competent authorities how to improve the treatment of persons deprived of liberty and improve the conditions in which they are kept or detained.

acknowledged.<sup>47</sup> In addition, the decisive reason was the fact that the Protector of Citizens was recognised as an authority whose actions were based on the Paris Principles, which resulted in the "A" status accreditation as a National Human Rights Institution in the United Nations system, granted in April 2010.

The reason for stipulating the Protector of Citizens' cooperation with the Ombudsmen of Autonomous Provinces and associations in performing the tasks of the National Prevention Mechanism against Torture lies in the fact that the Provincial Ombudsman of the AP Vojvodina and numerous associations of citizens have been for many years very active in protecting the rights of persons deprived of liberty and preventing torture, and possess a substantial knowledge and experience in monitoring the institutions that accommodate persons deprived of liberty and their protection from torture or any other form of ill-treatment.

After being appointed to perform the tasks of the National Prevention Mechanism against Torture, the Protector of Citizens did not immediately start visiting institutions accommodating persons deprived of liberty, but used the first six months for organising the adopted complex model of the National Prevention Mechanism against Torture in Serbia and performing necessary preparatory activities for efficient monitoring visits. A special report on these activities was prepared.<sup>48</sup>

In order to regulate in more detail the cooperation that would be established in performing the tasks of the National Prevention Mechanism against Torture, the Protector of Citizens and the Provincial Ombudsman of AP Vojvodina on 12 December 2011 signed a Memorandum of Understanding, by which they agreed on active participation of the Provincial Ombudsman in the monitoring team visits to the institutions accommodating persons deprived of liberty in the territory of AP Vojvodina, and also in preparing reports, recommendations, opinions and other acts of the National Prevention Mechanism against Torture.

In order to exchange opinions on the best model of cooperation in performing the tasks of the National Prevention Mechanism against Torture with the associations whose statutes envisage the promotion and protection of human rights and freedoms as the purpose of association, the Protector of Citizens held a public debate with the participation of numerous associations, international organisations, academia and the media. In late December 2011, the Protector of Citizens announced an Open Call for the selection of associations to cooperate with in performing the tasks of the National Prevention Mechanism against Torture<sup>49</sup>, and 9 associations submitted their applications. A specially established commission suggested to the Protector of Citizens in mid-January 2012 to establish cooperation with all associations that had applied

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<sup>47</sup> The expert team of the Protector of Citizens entitled "Preventive Mechanism", composed also of forensic doctors and psychiatrists, has visited continuously for two years police stations, detention units, prisons, social care institutions of inpatient type, psychiatric institutions, shelters for asylum seekers, etc.

<sup>48</sup> Available at: [http://www.lis.rs/attachments/148\\_Izvestaj%20NPM.pdf](http://www.lis.rs/attachments/148_Izvestaj%20NPM.pdf)

<sup>49</sup> *Official Gazette of RS*, No. 100/2011 and the website of the Protector of Citizens

because all of them fulfilled the requirements set in the Open Call and also proposed that certain associations should undertake, under cooperation agreements, to systemically monitor the position of persons deprived of liberty and the occurrence of torture in certain areas<sup>50</sup>.

It is necessary to establish a separate organisational unit for the National Prevention Mechanism against Torture, within the Protector of Citizens' Secretariat, with four employees. The basic task of that unit would be to act pre-emptively in order to prevent torture or any other form of ill-treatment and improve the position of persons deprived of liberty. That proactive unit will be functionally entirely separated from the existing organisational unit for the protection of persons deprived of liberty, whose function is reactive. Presently, three advisors are hired on a fixed-term contract and they use separate premises<sup>51</sup>. Towards the end of 2011, a mini-van was bought with the Protector of Citizens' funds for the needs of visiting the institutions. The adopted 2012 budget for the Protector of Citizens includes the separate funds earmarked for the activities of the National Prevention Mechanism against Torture, equalling 7,670,000 dinars<sup>52</sup>. The 2012 Financial Plan accurately specifies the purpose of approved funds<sup>53</sup>.

A special webpage was designed<sup>54</sup> for presenting the activities of the National Prevention Mechanism against Torture, primarily the information on visits, recommendations given to authorities, publications, etc.<sup>55</sup> The relevant national and international regulations and standards will be available on this webpage.

In accordance with the agreement between the Protector of Citizens and the Provincial Ombudsman and the selected associations tasked with monitoring the position of persons deprived of liberty in special fields, the Plan of Visits of the National Prevention Mechanism against Torture for 2012 was adopted in 2011. Starting from the intention to visit all the institutions accommodating persons deprived of liberty in the next four years, 80 visits were planned for 2012 covering 50 police stations, 8 prisons, 3 psychiatric hospitals, 4 psychiatric wards, 6 social care institutions of inpatient type, 1 shelter for foreigners and 10 homes for the elderly.

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<sup>50</sup> Belgrade Centre for Human Rights - in police stations and detention units, Helsinki Centre for Human Rights in Serbia - in prisons, Mental Disability Rights Initiative of Serbia (MDRI-S) - in social care institutions of inpatient type, International Aid Network (IAN) - in psychiatric hospitals, Dijalog and Human Right Committee Valjevo - position of juvenile convicted and detained persons, and the Victimology Society of Serbia - position of women in closed institutions, while the separate tasks should be determined subsequently for the Lawyers' Committee for Human Rights (YUCOM) and the Centre for Human Rights- Niš.

<sup>51</sup> Equipped with furniture, telephones, computers, internet connection, etc.

<sup>52</sup> This amount excludes the salaries and contributions for four positions in a separate organisational unit.

<sup>53</sup> For travel expenses, per diem, fees for experts and representatives of associations for participation in visits and reporting, equipment, fuel, preparing a publication, translation of documents.

<sup>54</sup> Available at [www.npm.ombudsman.rs](http://www.npm.ombudsman.rs)

<sup>55</sup> Available in the Serbian language, the English language version is being prepared.



A Draft Methodology was developed for visiting the institutions accommodating persons deprived of liberty within the National Prevention Mechanism against Torture, based on the previously adopted methodology of the Preventive Mechanism of Protector of Citizens.<sup>56</sup>

In the past period, numerous activities were organised aimed at promoting the role of the National Prevention Mechanism against Torture. In October 2011, a conference was held under the title *Establishing Conditions for Efficient Functioning of the National Prevention Mechanism against Torture in Serbia*<sup>57</sup>, and in December 2011, a roundtable was held and on that occasion the National Prevention Mechanism against Torture in Serbia was presented<sup>58</sup>.

The National Prevention Mechanism against Torture in Serbia is strongly supported by the OSCE Mission to Serbia, the Office of the High Commissioner for Human Rights in Serbia, the CoE's European Network of National Prevention Mechanism against Torture and the Association for the Prevention of Torture.

The cooperation has been established with the Subcommittee for Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the 2011 Activity Report was submitted in January 2012.<sup>59</sup> The cooperation was also established with the National Prevention Mechanisms against Torture of other countries<sup>60</sup>.

## **2.2. PROTECTION OF THE RIGHTS OF NATIONAL MINORITIES**

### ***2.2.1. Description of problems in the specialised area from the aspect of the Protector of Citizens' competence***

Despite the developed Constitutional and legal protection of individual and collective rights of national minorities, there are certain problems that cause legal and social uncertainty and inequality of national minorities. The ethnic minorities living in the AP Vojvodina are provided with greater legal certainty for the protection of their identity. On the other hand, the institutional, financial and normative conditions for exercising the rights of Albanians, Bosniaks, Bulgarians, Vlachs, Greeks, Roma and other national minorities in other parts of Serbia lag behind Vojvodina.

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<sup>56</sup> The preventive mechanism for monitoring the institutions accommodating persons deprived of liberty was established by the Protector of Citizens' decision in July 2009.

<sup>57</sup> The participants were MPs, representatives of ministries, representatives of the Association for the Prevention of Torture, the Swiss National Mechanism for the Prevention of Torture, the Spanish Ombudsman, and representatives of the European Commission, the Council of Europe, OSCE and numerous representative of civil society.

<sup>58</sup> It was attended by MPs, representatives of ministries, international and regional organisations, citizens' associations, academia and the media, but the former prisoners also took an important part in discussion.

<sup>59</sup> Available at: [http://www.lis.rs/attachments/139\\_Izvestaj%20SPT.pdf](http://www.lis.rs/attachments/139_Izvestaj%20SPT.pdf)

<sup>60</sup> Slovenia, Spain, Macedonia, Czech Republic, Lithuania, Switzerland, United Kingdom, Albania and Azerbaijan.

Certain problems related to the exercise of national minority rights arise also from the way of regulating the system of election and competences of the national minority councils. The 2009 Law on National Councils of National Minorities<sup>61</sup> entrusted the system of exercising, protecting and promoting cultural (collective) rights of national minorities to the minority self-governments (national councils), elected exclusively at the national level. Although the comparative legislations and practices in the region have the system of protection of national minorities, designed primarily to provide the effective protection of their identity within the local community, and also at the regional and national levels, and to ensure a wide participation of citizens belonging to national minorities in a decision-making process concerning the recognised group rights, our legal system and social organisation rely on the model of protection that allows the minority self-governments to have a central administration in the field of cultural autonomy of the community they represent. In addition, the provisions of the Law create favourable conditions for political parties to exert a significant influence on the election of minority self-governments and their work.

In the cases of ethnic minorities that support several political parties, such normative orientation transfers political tensions and interests to the field of cultural autonomy, which may hinder the election of minority self-government, realisation of rights, transfer of competences, relationship between the minority self-government and the local authorities and thus undermine the purpose of cultural autonomy or protection of identity. Few national minorities and those national minorities whose members reside throughout Serbia face the problems related to the organisation of work and the execution of competences, since the provisions of the Law support the social circumstances of large and ethnically homogeneous communities of national minorities.

The Roma encounter extreme difficulties in exercising the right to protect their identity, due to their adverse socio-economic status. Most Roma are faced with structural poverty and are not aware of the ways to realise their fundamental rights - to social and health care, employment, education and others. There are a number of persons among them, about 6,500 according to some estimates, who, as a result of deficiencies in regulations and administrative procedures, are "legally invisible" or not registered in birth registry books and therefore without a recognised civil status. The Government of the Republic of Serbia adopted the Strategy for Improvement of the Status of Roma in the Republic of Serbia and the Action Plan for its implementation,<sup>62</sup> but despite some progress in the areas of education and health care, the basic normative, institutional, personnel and material conditions for achieving the goals of the Strategy have not been created yet. The indicator for that is the fact that among 500 respondents in the Protector of Citizens' survey on the implementation of the Strategy<sup>63</sup>, there are 62.3% of them who have not been informed about that document,

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<sup>61</sup> *Official Gazette of RS*, No. 72/2009

<sup>62</sup> *Official Gazette of RS*, No. 27/2009

<sup>63</sup> The report on survey was not published on the website of the Protector of Citizens in 2011, but it will be in 2012.

while 82% of them have not seen any improvement in the status in the last five years of its implementation. Faced with such problems, the majority of Roma population, which may be defined as a specific "ethno-class", are not in such a social position to be able to exercise effectively the group-specific "cultural" rights.

Finally, the non-implementation of recommendations relating to the exercise and protection of collective rights of national minorities is a problem that has been occurring for years. This refers to the failure to implement the recommendations given by the Protector of Citizens to the competent authorities in connection with ensuring the conditions for the application of laws, regulations and decisions of the Government and other state bodies. Moreover, the absence of supervision over the realisation of minority rights is one of the weaknesses of public administration.

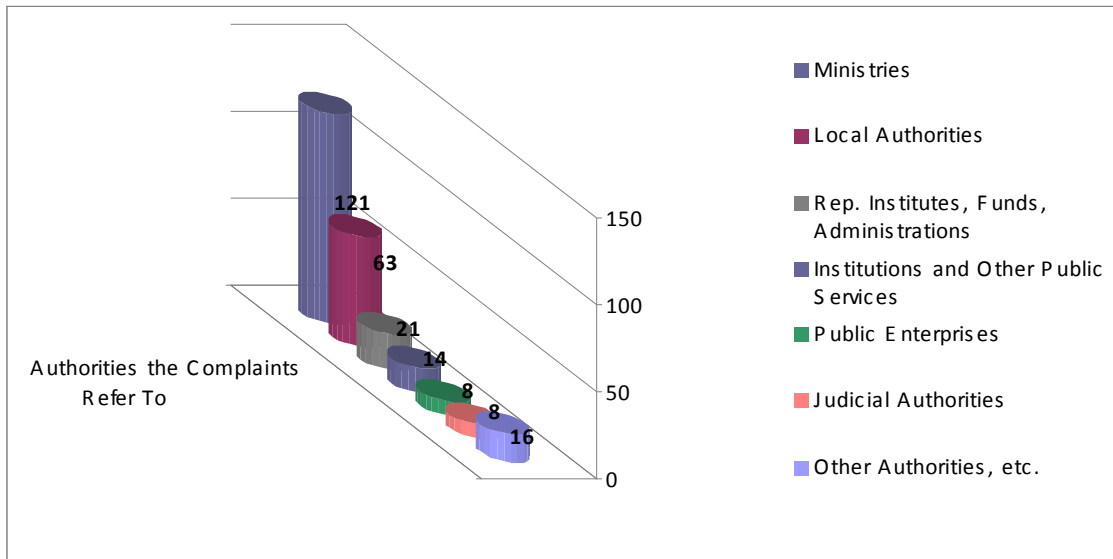
### ***2.2.2. Statistical overview of citizen complaints concerning the protection of the rights of national minorities***

In 2011, the Protector of Citizens carried out 221 procedures in the field of national minority rights, out of which 51 procedures were instigated on the Protector of Citizens' own initiative. The Protector of Citizens completed the procedures initiated upon 84 complaints (38%), while the procedures initiated upon 137 complaints (62%) are still ongoing.

Out of 58 cases related to the violation of specific individual and collective rights of national minorities, most of them refer to the official use of languages and scripts - 21, non-discrimination on the basis of nationality - 17, rights to cultural creation - 6, education in mother tongue - 4 and equality in the conduct of public affairs - 3.

The majority of procedures, 121 of them, refer to the work of the following ministries: the Ministry of Internal Affairs - 51, the Ministry of Human and Minority Rights, Public Administration and Local Self-Government - 25 and the Ministry of Education and Science - 31. In addition to the ministries, in the reporting period a considerable number of complaints referred also to other state authorities in the field of the protection of national minority rights (Chart 5):

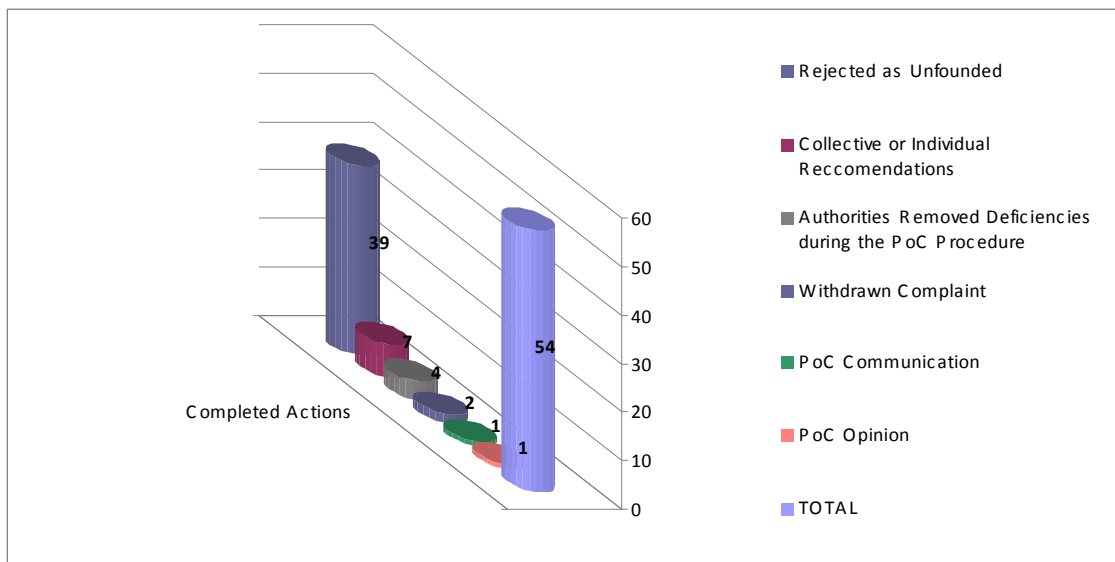
#### **Chart 5 - Complaints grouped according to the authorities they refer to**



*Note:* The number of authorities is always higher than the number of complaints since the individual complaints sometimes indicate a violation of citizens' rights by more than one authority.

In 2011, the Protector of Citizens initiated 89 procedures for controlling the work of administration authorities. At the same time, the Protector of Citizens completed 10 direct supervisory controls over the work of authorities. After completed procedures of control and supervision, 54 cases from 2011 were closed.

**Chart 6 - Completed procedures in the field of national minority rights**



In 2011, 30 complaints were rejected due to the following reasons: complaints outside of the Protector of Citizens' competence (14), incomplete complaints (8), failure to exhaust all legal remedies (8) and one anonymous complaint.

The work on the cases from 2010 was continued and 11 cases were completed: in 3 cases the omissions were established and recommendations sent, 2 complaints were rejected, in 2 cases complainants were informed and advised, one complainant withdrew the complaint, and 3 complaints were rejected: 2 of them for being outside of the Protector of Citizens' competence and one of them for being incomplete.

### ***2.2.3. Achievements in 2011 in the area of the protection of the rights of national minorities***

Ten recommendations and one opinion were given to the competent public administration authorities, 4 of which were implemented. Out of 221 conducted procedures, 94 of them were ended by eliminating deficiencies in the work of public administration. Since these are collective rights, which have no foundation in our legal system and practice of public administration, we may be relatively satisfied with the number of procedures completed in the interests of citizens and implemented recommendations. However, since the basic purpose of the Protector of Citizens is to contribute to the establishment of a system and ways of exercising human, minority and other rights by the public administration at all levels of government, and since more than 50% of recommendations have not been implemented, the achieved outcomes indicate that the public administration authorities must develop additional capacity to carry out their responsibilities in the best interest of the citizens.

#### ***Activities in Roma settlements***

The direct collection of complaints and the establishment of facts about the problems of citizens in 55 Roma settlements in 37 local self-government units is a unique example of work in the field of the protection and promotion of Roma rights. A small number of complaints filed by the Roma and awareness about their situation and problems faced in the realisation of human and civil rights urged the Protector of Citizens to organise the work in the way to enable the citizens of Roma ethnicity to file complaints with the Protector of Citizens directly and without incurred costs, and also to be informed about the actions they should take in order to achieve certain rights before numerous administrative and judicial bodies, and when and how they can contact the Protector of Citizens.

#### ***"Legally invisible" and undocumented persons***

Based on the conducted procedures, research and information received from the citizens in the Roma settlements, the Protector of Citizens initiated the amendments to the Law on Identity Cards and the Law on Permanent and Temporary Residence of Citizens and requested from the relevant ministries to regulate the status of "legally invisible" persons. A direct insight into the problems and causes that keep the position of the persons without recognised civil status unchanged for decades enabled the Protector of Citizens to develop, in cooperation with non-governmental organisations, a proposed solution that will be submitted to the Government of the Republic of Serbia

and National Assembly in early 2012, unless the relevant ministries offer a better solution.

At the Protector of Citizens' initiative, the Ministry of Internal Affairs proposed the amendments to the Law on Identity Cards Act and the Law on Permanent and Temporary Residence of Citizens, and the National Assembly adopted them. This problem has hampered the exercise of human and other rights for a long time because the registered temporary residence was a requirement for obtaining an identity document. The citizens who did not have an address at which they could register their temporary residence faced problems in obtaining or renewing their identity cards and/or passports; they also encountered problems concerning employment or exercising the right to some form of social assistance. In addition to the citizens of Roma ethnicity who have often faced with these problems, the Protector of Citizens' attention was drawn by a citizen who was forced to go on a hunger strike for not having his temporary residence registered. The Protector of Citizens proposed a solution to the Ministry of Internal Affairs, according to which the addresses of social welfare centres would be considered the place of temporary residence of all persons without registered residence and based on the document issued by that authority, those persons would be able to submit to the Ministry of Internal Affairs a request for an ID card that could be issued for a limited period of time or for two years.

#### ***Recommendation on the displacement of unsanitary settlements***

It is an undeniable success that the Protector of Citizens' activities and recommendation stopped the practice of uncontrolled and damaging way of evicting citizens from illegal and unsanitary settlements. More specifically, before the recommendation given to the competent public administration authorities concerning the eviction of Roma citizens living in the illegal settlement in Block 72 in New Belgrade, the displacement of such settlement had been carried out without a plan and without complying with the principles or documents adopted by the Government of the Republic of Serbia in connection with human displacement. In the said recommendation, the Protector of Citizens requested from the competent ministries and other implementers of measures specified in the Government of the Republic of Serbia' Strategy for Improvement of the Status of Roma in the Republic of Serbia to determine and prescribe the procedure that the competent authorities must follow when evicting the residents of unsanitary settlements.

#### ***Official use of languages and scripts of national minorities***

After the joint recommendation of the Protector of Citizens and the Provincial Ombudsman of AP Vojvodina, which was supported by the National Councils of National Minorities, the application of the right of the persons belonging to national minorities to have their personal name registered in their language and orthography was improved, while the practice of public administration related to the exercise of the right to the official use of language and script of national minorities has been partially

changed, especially the practice of registry offices concerning the entry of personal name in the language and script of national minorities.

The recommendation implemented by the Ministry of Human and Minority Rights, Public Administration and Local Self-Government and the Ministry of Internal Affairs contributed to the change of practice in some local self-governments, but the subsequent practice and the complaints that followed indicated that some issues regarding the application of the right to official use of languages and scripts of national minorities had not been resolved, so that the new recommendation was sent to the Ministry of Human and Minority Rights, Public Administration and Local Self-Government urging it to amend the Law on Official Use of Languages and Scripts to ensure the full implementation of minority rights to the official use of their languages and scripts.

The recommendation suggests to the Ministry that, by taking measures within its purview, it should ensure the following: a) compulsory introduction in the official use of languages and scripts of national minorities in the territory of a local self-government unit where the percentage of that minority in the total population in its territory reaches 15 according to the latest population census, b) obligatory inscription of the names of authorities vested with public powers, names of local self-government units, populated places, squares, streets and other toponyms according to the tradition and orthography of the national minority language which is in official use in the territory of a local self-government unit and c) provide all necessary conditions for the implementation of the Law on Official Use of Languages and Scripts, and effective control of its implementation. It was also recommended to the same Ministry to take measures for regulating, by the amendments to the Law on Official Use of Languages and Scripts, the official use of Serbian language and Cyrillic script without exception in public communication, as well as to establish a way to monitor the implementation of the use of Serbian language and its script and the minority languages and their scripts. The recommendation has not been implemented. However, the city administration in Novi Pazar complied with the received recommendation to remedy the deficiencies that were hampering the registry office to issue birth certificates in the Cyrillic script.

### ***Religious education and the status of religious education teachers***

In a conducted procedure, the Protector of Citizens established that the exclusion of representatives of the Islamic Community in Serbia from the Commission on Religious Education was a result of the fact that the procedure of appointment and dismissal of the members of the Commission on Religious Education in primary and secondary schools was not legally regulated. After a decade of organising religious education classes in public schools, there is a series of open issues regarding the employment status of religious education teachers and the fulfilment of legally prescribed requirements regarding the level and type of their qualification. A particular problem stems from the absence of regulations that should govern the procedures and criteria for the creation of a unified list of proposed teachers, determined by the Minister of Education each school year. This problem is particularly

acute in the case of organising religious education for Muslim children because the proposals are submitted by three Meshihats. The absence of regulations leads to the situation that the established list does not include the religious education teachers who meet the requirements of degree and type of education, and that the persons without proper qualification are selected in accordance with the proposals of religious communities. The recommendations of the Protector of Citizens point out the necessity of amending the existing regulations in order to ensure the legality and regularity of these procedures, and to resolve all disputable issues of organising and conducting religious education.



## 2.3. CHILD RIGHTS

### *2.3.1. Description of problems in the specialised area from the aspect of the Protector of Citizens' competence*

Despite numerous adopted regulations, strategic documents<sup>64</sup> and protocols on the procedure of relevant state authorities to protect children from violence, abuse and neglect<sup>65</sup>, the children in Serbia are exposed to a high degree of violence (physical, mental, social, via information and communication technologies), in schools and outside of them, but unfortunately also in their families. The level of violence in schools is alarmingly high. It is confirmed by the research of the Protector of Citizens and the Panel of Young Advisors about the protection of children from violence in schools.<sup>66</sup>

According to the legislation regulating family and legal protection of children, the child who is exposed to domestic violence is still not granted the status of victim of violence, abuse and neglect, nor is this fact given due weight in deciding about the best interests of the child. On the contrary, children are often subjected to prolonged exposure to traumatic events, which happens frequently in a dysfunctional partnership of parents, including the cases of conflictual divorce. In the Republic of Serbia, corporal punishment is still a dominant way of disciplining children, and the initiatives for a legal ban on corporal punishment are still opposed by one part of the public, which is supported by the media presentation of this topic through the creation of artificial divisions in the public, even among experts.

The children's right to live with a parent, as well as to maintain contacts with the parent they do not live with, is still violated to a great extent, because the competent authorities are unable to execute final and enforceable court decisions, and their necessary coordination and exchange of information often does not exist or comes

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<sup>64</sup> The National Plan of Action for Children, the General Protocol on Child Protection from Abuse and Neglect, the Special Protocols on Child Protection from Abuse and Neglect, the National Strategy for the Prevention and Protection of Children from Violence, the Strategy for Youth Development and Health, the Strategy for Combating Drugs in the Republic of Serbia for the period 2009-2013, the National Programme of Preventive Health Care for Children with Psychophysiological Disorders and Speech Pathology, the Strategy for Combating Trafficking in Human Beings in the Republic of Serbia, the Strategy for Improvement of the Status of Roma in the Republic of Serbia, the Strategy for Social Protection Development, the Strategy for Improvement of the Status of Persons with Disabilities in the Republic of Serbia, etc.

<sup>65</sup> The General Protocol on Child Protection from Abuse and Neglect, the Special Protocol on Child Protection from Violence, Abuse and Neglect in Educational Institutions, the Rulebook on the Protocol for Responding to Violence, Abuse and Neglect;

<sup>66</sup> Nešić, Jović, *Protection of Children from Violence in Schools*, Protector of Citizens, 2011. Available at <http://www.zastitnik.rs/> and <http://www.pravadeteta.rs/ci/aktivnosti/publikacije.html>. According to the findings of the survey conducted by the Protector of Citizens and the Panel of Young Advisors, 73% of children experienced peer violence in schools, whereas peer violence is much more present in primary than in secondary schools – nearly 90% of interviewed primary school pupils had direct or indirect experience with peer violence. Almost one fourth of interviewed primary school pupils and secondary school students witnessed some form of teachers' violence against children. The students/pupils are not well informed about the preventive and (interventive) measures of support in case of violence; only 2% of students/pupils are fully informed about the existence of the school Team for the protection from violence, abuse and neglect, its role and way of being addressed by students/pupils.

too late or under pressure, which was exerted by the Protector of Citizens in several cases.

The position of children with developmental challenges and disabilities has not significantly changed compared to the previous year, which is not unexpected considering that Serbia still does not possess the information on how many children with developmental challenges and disabilities live in Serbia and what kind of challenges/disabilities they have, although such data is the condition *sine qua non* for undertaking any serious planning of support and assistance measures. The position of children in rural areas is particularly disadvantaged, because they live in poverty, isolated from local communities and are often exposed to a high degree of prejudice; they are not able to access health care; they are rarely included in the social welfare system and do not attend school regularly.<sup>67</sup>

In 2011, the Law on Social Protection<sup>68</sup> was adopted on the proposal of the Ministry of Labour and Social Policy, which, however, failed to ensure quality and timely support to the families who provide immediate care for children with developmental challenges and disabilities and children with serious illnesses. There is still an absurd situation in Serbia that foster parents and "specialised" foster parents (those who provide care for children with developmental challenges and disabilities) receive compensation for foster care, including pension and disability insurance, while the parents, who have renounced their right to work (and earn) in order to provide care to their children, do not receive such assistance and support in the current situation, but only when the parent has qualified for old-age retirement!<sup>69</sup>

There are no data either about the number of children exposed to exploitation and the worst forms of child labour. The Protector of Citizens' Report on Child Begging in the Republic of Serbia followed the conducted research in 2011 and clearly showed the lack of understanding of the reasons for which children live and work on the street and the factors that contribute to this phenomenon. The activities targeting this group of children do not envisage child participation; neglect the importance of intervention at an early age and the importance of working with the family. There is no sufficient field work or damage control measures; there are still "legally invisible" children who have been excluded from all systems (education, social protection, health care, etc.) due to the lack of documents.

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<sup>67</sup> According to a research conducted by the NGO Amity in the period 2009 – 2011, through the activities of its mobile teams and during the two-year support provided to 500 children with developmental challenges from 458 families in 141 villages of Šumadija District and the Town of Kraljevo, it has been established that only 23% of children are included in the social welfare system and 50% of children in the system of education.

<sup>68</sup> *Official Gazette of RS*, No. 24/2011

<sup>69</sup> Since the Law on Social Protection entered into force, less than 100 parents have received this type of support, but their children are now either older than 18 or unfortunately, not alive. The information is available at: <http://www.glas-javnosti.rs/clanak/drustvo/glas-javnosti-07-01-08-01-2012/roditeljima-dece-sa-invaliditetom-12-200-dinara-naknad>

The education of children is still burdened with many problems, the most notable of which is a passive attitude of schools towards violence, abuse and neglect of children, regardless of where it occurs. The "war" between schools and parents, whose "full price" is paid by the child, is not an unusual occurrence; unfortunately, both parties ignore the principle by which they should be guided - the best interests of the child. The way of approving the textbooks for primary and secondary schools is burdened by a series of failures and problems, which leave room for arbitrariness and abuse. The public procurement of free textbooks is subject to the Protector of Citizens' investigation, which began in the second half of 2011, since both citizens and state authorities raised many objections to that procedure.

The amendments to the Law on the Fundamentals of Education System lowered the standard of the protection of child rights related to educational-disciplinary procedure against the students who have violated students' obligations and the prohibition of discrimination, abuse and neglect, thus leaving a legal void regarding the procedural provisions to be applied in this procedure,<sup>70</sup> and a large room for fast-paced solutions to the detriment of the child/student.

### *2.3.2. Statistical overview of citizen complaints concerning child rights*

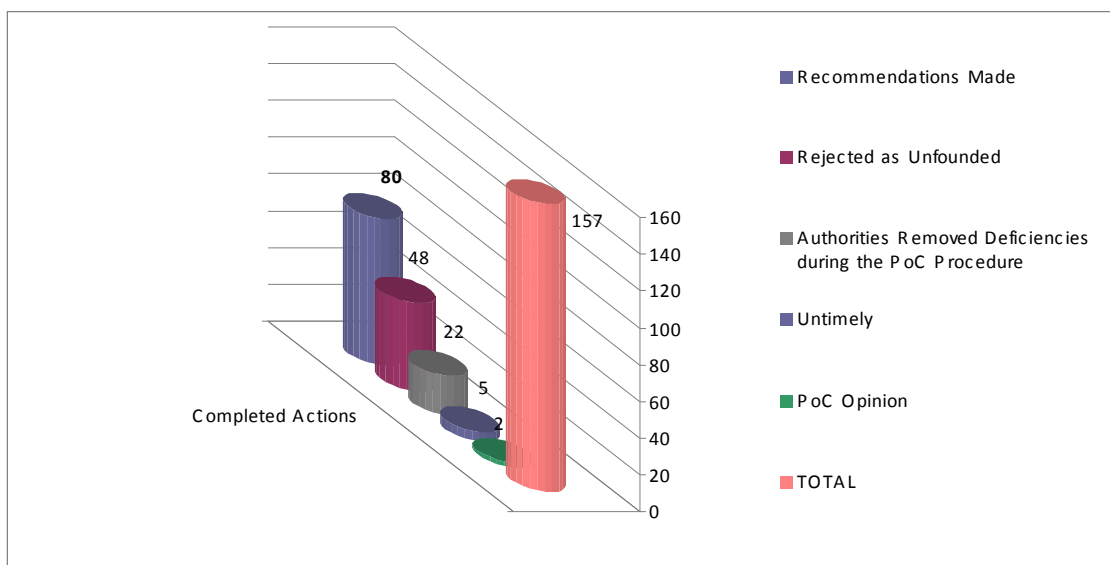
In 2011, the Protector of Citizens received 307 complaints in the field of the child rights, and investigated 84 cases upon own initiative, which makes a total of 391 procedures or 10.7% complaints received by the Protector of Citizens in 2011. Out of this number, **the work was completed in 237 cases (61%), while 154 complaints (39%) are still in the procedure.**

The conducted procedures were completed in the following ways: **the failures were established and recommendations given in 80 cases**; the opinions were issued in two cases; 22 procedures were suspended; 48 complaints were rejected after the assessment that there was no violation of the child rights; five complainants withdrew their complaints.

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<sup>70</sup> The earlier provision stipulating that an educational-disciplinary procedure shall be conducted by applying the rules of the general administrative procedure was deleted by the amendments to the Law on the Fundamentals of Education System.

**Chart 7 - Completed procedure of the Protector of Citizens concerning child rights**



Through the webpage dedicated to children ([www.pravadeteta.rs](http://www.pravadeteta.rs)), we received 78 questions from children and adults concerned for the position of children, which mainly referred to: the child’s right to quality education (27):

*Question:*

*I am 14 and an eighth grader. I would like to know whether a teacher is allowed to give us a test 15 minutes before the end of the class. Also, is a teacher allowed to insult pupils? Thank you!*

and the child’s right to protection from violence, abuse and neglect (11):

*Question:*

*I have a friend who lives in a foster family, but she is not treated right. For example, she does not go out at all, she is not allowed to touch the computer, they yell at her for every little thing she does or touches, and she is only a child eager to play. I would like to say all of this to the people from the Centre who visit her, but that family has taken a loan and if they lose the income they are getting for taking care of her, they probably will not be able to pay it off. I don’t know what to do, so please advise me.*

The complaints referred to the actions or failure to act by the following administration authorities: educational institutions, (166), social care institutions, (111), bodies of local self-government units (35 - including 15 complaints against the bodies of the City of Belgrade and its city municipalities), the Ministry of Internal Affairs (31), the Ministry of Education and Science (27), the Ministry of Labour and Social Policy

(17). Twenty-six cases referred to judicial bodies, and 24 to other state administration bodies<sup>71</sup>.

The reasons for the rejection of 80 complaints from 2011 were the following: incomplete complaint (34), unexhausted legal remedies (18), outside of the Protector of Citizens' competence (18), untimely complaints (5) and anonymous complaints (3).

In most cases (334), there was a suspicion of the multiple violations of child rights. The majority of cases cover the violations of the following child rights (Table 3):

**Table 3: Types of violations of child right**

Right to respect the best interest of the child	282	72.12%
Right to protection from violence, abuse and neglect	164	41.94%
Right to education	159	40.66%
Right to the child's proper development	70	17.90%
Right of the child to maintain personal relations with the parent who does not live with the child	48	12.28%
Right to assistance to parents in fulfilling their parental responsibilities	42	10.74%
Right of the child to express own opinion	34	8.70%
Right of the child with developmental challenges to quality life and special state protection	33	8.44%
Right to live together with the parents	22	5.63%
Right to adequate living standard	15	3.84%
Right to providing support to the family in achieving the child's right to adequate living standard	17	4.35%
Right to inviolability of physical and mental integrity	16	4.09%
Right to health care	14	3.58%
Right to social protection	12	3.07%
Right to psychological recovery	12	3.07%
Right to control the way of child care under the supervision of the state	12	3.07%
Right to protection from parental abduction	11	2.81%
Other violations of child rights	10	2.56%

<sup>71</sup> The Ministry of Infrastructure and Energy, the Ministry of Health, the Ministry of Culture, Media and Information Society, the Ministry of Defence, the Ministry of Justice, the Ministry of Foreign Affairs, the Republic Health Insurance Fund, the Civil Aviation Directorate of the Republic of Serbia and other.

In addition to the cases from 2011, the Protector of Citizens also worked on the cases concerning the child rights initiated in 2009 and 2010 (total of 143).<sup>72</sup> The procedure was completed in 99 cases, while 44 procedures are still ongoing. The cases were closed in the following ways: unfounded complaint (46), authorities remedied deficiencies (29), outside of the Protector of Citizens' competence (13) and given recommendations (11).

### ***2.3.3. Achievements in 2011 in the area of child rights***

#### ***Protection of children from violence in schools***

In 2011, the problem of violence among and against children emerged as a priority issue, both through the work on particular cases and through the survey conducted by the Protector of Citizens and the Panel of Young Advisors<sup>73</sup>.

The anonymous opinion polling method was used for data collection based on the attitudes of children. A questionnaire with 11 questions adjusted to children was developed and used for interviewing a total of 1257 pupils/students in 72 schools (37 primary and 35 secondary schools) from 13 out of 15 school administrations. Based on the findings of this survey, the Protector of Citizens and the Panel of Young Advisors prepared a *Report on Protection of Children from Violence in Schools*, which showed that the level of violence in schools remained disturbingly high. The degree of recognition of violence in schools (in particular its non-physical forms) is low, i. e. violence is often minimised or justified. The implemented measures are random, unplanned and unorganised, while the initial forms of violence are often ignored, and the school response is often reduced to repressive measures taken against the students/pupils who are perpetrators of violence. The teams for the protection from violence, abuse and neglect are not established in all schools, and where they are, their activities are often scarce or non-existent. The cooperation of schools with other institutions is inadequate and ineffective, and it is established usually when the problem of violence escalates significantly.

Interviewing the peers by the Panel members ensures a high degree of authenticity of the obtained results, which is an additional reason for concern and for the need to plan the activities for reducing and combating all forms of violence in schools.

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<sup>72</sup> Procedures are still ongoing in 44 cases. The procedure was completed in 99 cases as follows: 13 complaints were rejected (5 for being outside the Protector of Citizen's competence, 5 for being incomplete, 1 for being untimely and 2 for other reasons); 11 cases were closed with recommendations; 29 procedures were suspended and in 46 cases the complaints were rejected as unfounded (or it was assessed that there were no failures in the work of authorities).

<sup>73</sup> During the first half of 2011, the members of the Panel of Young Advisors conducted a research on violence in schools in order to collect data about the activities of the primary and secondary schools in Serbia aimed at preventing and protecting children from violence, after the adoption of the Special Protocol on Child Protection from Violence, Abuse and Neglect in Educational Institutions and the Rulebook on the Protocol for Responding to Violence, Abuse and Neglect.

The Protector of Citizens obtained the same results, i.e. the information about peer violence, in the procedures conducted upon complaints. Two cases were finalised by recommendations given to schools, upon having established that the students were exposed to violence, abuse and neglect, and the school failed to provide these children with adequate and efficient protection.

The Protector of Citizens identified the systemic failures in the actions of competent services and authorities in the cases that indicated the existence or history of domestic violence.

**VIOLENT METHODS AND MEANS FOR MAINTAINING DISCIPLINE IN SCHOOLS ARE PROHIBITED**

The teacher forbade a lower grade pupil to leave the class and go to the toilet, mistakenly believing that the child's request was not authentic and that it was disturbing the work discipline and also that it was not safe for lower graders to hang around in the school during the class time. The pupil urinated in the classroom, in the clothes. Since the child suffered many harmful consequences and the committed errors, the Protector of Citizens gave the recommendations to the school, aimed at reducing the consequences from suffered violence at school, dealing with the school failures, improving the school work and preventing such failures in the future.

***Protection of children from violence and sexual abuse within the family***

Investigating the cases that referred to the child's position in the family, mainly in the situations of conflictual divorces or separation of partners, the Protector of Citizens identified systemic failures in the actions of competent services and bodies in the cases indicating violence or domestic violence history.

The fact of domestic violence was neglected and the child was not granted the status of the victim of violence, abuse and neglect despite the clear instructions and standards of the *General and Special Protocols for the Protection of Children from Abuse and Neglect*.

**THE CHILD WITNESSING DOMESTIC VIOLENCE IS ALWAYS AND WITHOUT EXCEPTION THE VICTIM OF ABUSE AND NEGLECT**

Seven different cases of the SWC New Belgrade undoubtedly pointed to a systemic failure in the work of this guardianship authority, which during years of work on these cases, failed to take measures for protecting the child victim of domestic violence at an early age; the SWC performed its activities exclusively within the court procedure, underestimated problems, failed to assess whether the children in the family were abused or neglected, delayed taking measures in accordance with

its authority, by delegating its competences to other bodies. After the procedures conducted by the Protector of Citizens, the Head of the Centre was dismissed.

Although the sexual abuse of children in the family has been increasingly openly discussed in Serbia, we face the facts that the authorities and their experts not only fail to provide child victims with assistance and support, but also return the victim to the family and the abuser's house, not recognising the importance of the child's testimony and failing to take even basic activities envisaged and provided in the cases of suspected sexual abuse of children.

#### **SUSPICION OF SEXUAL VIOLENCE REQUIRES URGENT RESPONSE**

Although the Social Welfare Centre Trgovište was informed by the neighbouring municipality's guardianship authority about a serious suspicion of sexual abuse of a twelve-year-old girl, it failed to protect the child or investigate the case, but on three occasions returned the child to the family of the person suspected to be an abuser. The child's agony had lasted for two years, until the Protector of Citizens learned about the case and recommended to the guardianship authority to establish the responsibility for the failures of its experts and to assess their competences, knowledge and skills.

The Council of Europe initiated a three-year campaign for the protection of children from sexual abuse and exploitation entitled "ONE in FIVE".<sup>74</sup> The Republic of Serbia has ratified the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*,<sup>75</sup> while the Protector of Citizens submitted an initiative to the Ministry of Justice for aligning the Criminal Code of the Republic of Serbia with this Convention and the standards it has set for protecting children from sexual exploitation and sexual abuse.<sup>76</sup>

#### ***Children with developmental challenges***

Children with developmental challenges and disabilities still face a number of obstacles in exercising their right to education, while the inter-departmental commissions are often a "dead letter" because they do not have even the basic conditions for work, since the local self-governments have failed to secure funds for their work. This is one of examples of uncoordinated work of competent authorities.

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<sup>74</sup> One in five children in Europe is a victim of sexual abuse or sexual exploitation.

<sup>75</sup> Law on the Ratification of the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (*Official Gazette of RS - International Treaties No. 1/10*)

<sup>76</sup> At the time of drafting this report, the Government of the Republic of Serbia accepted one of the Protector of Citizens' initiatives for stipulating that the statute of limitations for criminal offences against sexual freedom committed against children shall run from their age of majority.



In 2011, another aspect of the exercise of the rights of this group of children emerged: their right to live with the family and the right to be taken care primarily by their parents. Many parents of children with disabilities, children with developmental challenges and children suffering from severe (even lethal) diseases addressed the Protector of Citizens asking how to avoid a painful choice between the work (and the necessary income) and the child who seeks 24h care and why they do not enjoy the state's assistance and support.

***FAMILY NEEDS ASSISTANCE NOW ...an excerpt from the complaint:***

“... I am a mother of a girl who suffers from a fatal, incurable and rare disease ... My little girl has been dying slowly and painfully every day. No one knows when our very last moment together will come ... According to the legislation of this country ... I am entitled to sick leave until the child turns five, and with this terrible disease the child will not recover, but her condition has been worsening and she can die every day. My princess is now five years old ... I should go to work, but then I cannot take care of my bed-ridden and seriously ill child.”

The Protector of Citizens has submitted to the National Assembly an Initiative for amending the Bill on Social Protection, proposing that the parent who provides care to his/her seriously ill or challenged child should be granted a status of "parent - caregiver" and entitled to financial compensation, which would contribute to the preservation of the family and initiated process of deinstitutionalisation and correct an absurd situation that the state stimulates the care for children accommodated in foster families, provides an increased compensation for the foster parent who provides care to a child with disabilities, while it does not offer a similar or the same kind of support to the biological parents, although the parents are usually the most competent and have the highest degree of motivation to care for the child. Unfortunately, the competent Committee of the National Assembly did not even consider the Protector of Citizens' Initiative, but adopted the provision of the Law on Social Protection (Article 94, paragraph 6 of the Law),<sup>77</sup> which is a kind of legal (and not only legal) cynicism.

U 2011, the level of achieved health care for children with psychophysiological disorders and speech pathology was reduced, compared to the previous year, despite the estimates that between 20% and 30% of children in Serbia have speech difficulties,

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<sup>77</sup> One of the parents who is not employed and at least 15 years has been providing direct care for his/her child, who is eligible for an increased allowance for care and assistance of another person within the meaning of paragraphs 1 and 2 of this Article, shall be entitled to receive a special financial compensation in the form of a life-long monthly income equalling the lowest amount of pension based on employee insurance, when he/she fulfils the general age requirement for pension eligibility in accordance with the regulations on pension and disability insurance, unless he/she has already become eligible for pension (Law on Social Protection, Official Gazette of RS, No. 24/2011, Article 96, paragraph 6).

which affects their education and socialisation, although in 2009 the Government of the Republic of Serbia adopted a *Decree on the National Programme of Preventive Health Care for Children with Psychophysiological Disorders and Speech Pathology*.<sup>78</sup> This brings into question the attainment of the goals set by the Government of the *National Programme of Preventive Health Care for Children with Psychophysiological Disorders and Speech Pathology*. There is no uniform professional opinion on the recommended number, frequency and duration of treatments applied for psychophysiological and speech disorders. It is particularly disconcerting that in 2011 the level of health services provided to children with psychophysiological disorders and speech pathology at the expense of the budget of the Republic of Serbia was lower than the year before.

The Protector of Citizens sent the opinion to the Ministry of Health, the Republic Health Insurance Fund and the Public Health Institute of Serbia "Dr Milan Jovanović Batut", with the recommendation to re-establish the previously achieved level of health care services for children with psychophysiological disorders and/or speech pathology, to establish accurate records of these children and the health services provided to them, as well as to initiate the process of including the capacities of other systems (education, social protection) in the detection, prevention and treatment of psychophysiological and speech disorders in children.

### *Children living and working in the street ("Street children")*

*"It was 6 years ago; I was 6 and we did not have any money at home."*

*A child, Belgrade*

In the first half of 2011, the Protector of Citizens conducted a research on child begging in the Republic of Serbia<sup>79</sup> - the first comprehensive study of this phenomenon in Serbia. The research has shown that the causes of child begging (and other activities of children in the street) are not sufficiently understood. The level of protection of these children is unsatisfactory, due to the difficulties with identification, lack of personal documents and failure to recognise the status of victims to these children. The legal system does not recognise adequately the fact that the phenomenon of child begging constitutes the exploitation of children and their abuse and neglect, which makes these children perpetrators of a criminal act once they have reached a certain age.

In referring the recommendations to the authorities, which are part of the *Protector of Citizens' Report Child Begging in the Republic of Serbia*<sup>80</sup>, the Protector of Citizens started from the fact that everybody except children is responsible for child labour and child begging, that the state's responsibility is multiple and that the children whose lives and/or work is connected with the street, are always and without exception, the victims of exploitation, abuse and neglect.

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<sup>78</sup> Official Gazette of RS, No. 15/2009

<sup>79</sup> The research was conducted in cooperation with the Association of Citizens Centre for Youth Integration from Belgrade.

<sup>80</sup> Jović, Nešić, Birčanin, Čolić, *Child Begging in the Republic of Serbia*, Protector of Citizens, 2011. Available at: <http://www.zastitnik.rs/> u <http://www.pravadeteta.rs/ci/aktivnosti/publikacije.html>

### *Education of children*

The Protector of Citizens is one of the most active advocates for inclusive education and supported the efforts of the Ministry of Education and Science to start inclusive education immediately in the school year 2010/2011, and was directly involved in the process of training the inter-municipal committee members for additional educational, social and health support for children, conducted by the relevant ministries in the first quarter of 2011. The Protector of Citizens consistently implemented this determination in the procedures initiated upon the complaints of the parents of children with difficulties and disabilities or with a developmental challenge. The Protector of Citizens deems that the Working Group on Child Rights of the National Assembly has greatly contributed to make inclusive education an irreversible process.

#### ***DOES SCHOOL ALWAYS UNDERSTAND WHAT THE BEST INTEREST OF THE CHILD IS?***

I am a seventh-grade pupil with excellent marks. Due to an injury, I was absent from classes during the entire second semester and therefore sent to a grade exam, and then to repeat a grade, although during home treatment I used to go to school and was examined in that period at least once from all the subjects. During the control procedure, the Protector of Citizens established a number of school failures, including the school's refusal to act according to the national education inspectorate. The Protector of Citizens referred to the school numerous recommendations aimed at ensuring adequate decision-making about the pupil's education status, by observing the law, having a constructive approach and taking into consideration the best interest of the child.

The child's right to quality education is not limited only to the issues concerning teaching methods, curriculum and textbooks, but it includes all activities organised by schools, the way schools take care about the pupils' interests, relationship between staff and pupils, legality of school work and observance of the school obligation to be guided by the best interests of the child in deciding on the rights, obligations and interests.

The Protector of Citizens condemned the practice of the organised referral of children to attend the events unsuitable for their age, at the regular class time, which are neither a part of the curriculum nor aimed at achieving educational goals, but used by educational institutions to ensure an adequate number of participants in the "socially desirable" events. This particularly referred to the MoI, which the Protector of Citizens on the earlier occasions warned that each activity and the celebration of the police or other authorities involving children in an organised manner must be fully adjusted to children and not the other way round.

The procedure of assessing the quality of textbooks and their approval is burdened by a series of irregularities and omissions, including the arbitrary, legally unregulated and illegal actions of the management of those administration authorities whose duty is to ensure that pupils have quality textbooks.

## 2.4. GENDER EQUALITY

### *2.4.1. Description of problems in the specialised area from the aspect of the Protector of Citizens' competence*

#### *Gender equality*

Although the regulatory framework is almost complete, the Protector of Citizens still notices the lack of capacity for the implementation of legislation and practical measures. We have reasons for both satisfaction and concern when we evaluate the achievements in the promotion of women's role in our society and the women's real position.

It is a positive trend and fully justified that we have more and more women in prominent positions in society in the legislative, executive and judicial authorities, increasingly more women in the Serbian Armed Forces, including among the officers. In 2011, the first generation of female lieutenants was promoted after their graduation from the Military Academy, but there are many women also in the so-called fourth branch of government - independent bodies. Women should be even more represented if we take into consideration their share in the population and their educational structure<sup>81</sup>.

The concept of gender equality is still very differently interpreted by the widest public. Most respondents chose: eradication of violence against women - 64%, equal financial strength of both sexes (47%), achieving equitable representation in leadership positions in politics and economy (44%), equal distribution of household work (41%). However, the percentage drastically drops for the following responses: eradication of prejudice against women in the population (37%), achieving equal representation of women in textbooks, school programmes and the media (10%), using language that respects female sex - gender-sensitive language (6%).<sup>82</sup>

Therefore, it is realistic to say that being a woman today in Serbia is not a privilege: women work in lower-paid positions in the same profession; caring for children is their primary mission; they sustain domestic violence, which often results in death, while the perpetrators are not adequately punished.

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<sup>81</sup> [http://www.gendernet.rs/files/RR\\_u\\_broj\\_kama/ZeneIMuskarci.pdf](http://www.gendernet.rs/files/RR_u_broj_kama/ZeneIMuskarci.pdf) p. 31

<sup>82</sup> Citizens of Serbia about Gender Equality, Centre for Politicology Studies and Public Opinion, Belgrade, 2010, p. 8

Public authorities, through the organisational structure and ways of working still often apply stereotypes about gender relations and treat domestic violence as a private issue in a relationship between men and women, or parents and children.

The procedures and methods of the so-called "standard procedure" have not been clearly defined yet and acting officers have a broad discretionary power to decide on procedure in a particular case. These problems should be gradually overcome by adopting specific sectoral protocols on the procedure of competent authorities, in accordance with the *General Protocol on the Procedure and Cooperation of Institutions, Bodies and Organisations in the Situations of Violence against Women in Families and Partner Relationships*.

The cases of domestic violence in Serbia were very distressing also in 2011. Namely, by November 2011, 44 women were murdered by their spouses, former spouses, current or former partners.<sup>83</sup>

The state is obliged to guarantee its citizens the right to life and a life free of violence, hence to provide protection to its female citizens when the family is not the safest place to live in.

The Protector of Citizens has noted that the authorities carry out their activities mainly from their offices. Hence, it is necessary to "relocate" the activities to the field. This is particularly important when working with multiply discriminated women, primarily Roma women, disabled women, elderly women and women in rural areas.

For example, the 2010 survey of the Roma Women's Center Bibija was carried out on a sample of 150 participants (aged 17 to 50) living mainly in four informal Roma settlements in Belgrade and Kruševac. The results showed that all participants in the survey were exposed to some form of domestic violence - mostly physical (which is a dominant form of violence against the examined women of all ages). The second most common form of violence was psychological, followed by economic violence (which is most acute in the age group 40-45) and sexual violence, while 90% of respondents said that children had witnessed or continued to witness violence. The experiences of the Association of Roma Women *Osvit* from Niš confirm the existence of prejudice and stereotypes about the Roma in society. The survey has revealed the reasons for which violence among Roma women is often not reported to competent authorities and services; namely 90% of respondents consider that Roma women, victims of violence, do not address the competent authorities and services for fear that they will not be adequately protected from the offender.<sup>84</sup> The findings of the survey indicate the need for the implementation of activities aimed at sensitising officials to work with victims of violence, especially women from minority groups.

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<sup>83</sup> Data taken from the presentation of Snežana Lakićević to the Gender Equality Committee of the National Assembly of RS, 25/11/ 2011.

<sup>84</sup> National Strategy for Preventing and Combating Violence against Women and Domestic Violence, page 14

The Autonomous Women's Center analysed the cost of budget users who act in accordance with their responsibilities in situations of domestic violence (direct measurable costs), and established that the budgetary costs of violence against women are minimal, and include only the costs of employees in the police, judicial system, social system and health care system (but not the organisational and administrative costs of these services); in 2009, they ranged between 204.8 and 535.9 million dinars. It is estimated that the actual costs of domestic violence are several times higher because they include the immeasurable hidden costs - loss of economic benefits, costs of mental pain and suffering, impairment of health, etc. Thus estimated costs of violence against women for the entire Serbian society would amount to between 1.6 and 4.1 billion dinars in 2009.<sup>85</sup>

The introduction of SOS hotline is important, but not available to all potential users. It is necessary to ensure equal access to authorities for all female citizens in accordance with their needs. For that purpose, the Protector of Citizens accepted the proposal of the Network *Women Against Violence* and referred the initiative to local self-governments to allocate the funds from their budgets for these types of support to women, which in addition to the SOS hotline include safe houses, since they unfortunately gradually stop working, and have not been introduced by the Law on Social Protection as a separate institute, which would create obligation for their establishment and sustainability.

*The Law on Social Protection* did not define precisely the establishment and operation of safe houses for accommodation of women and children victims of domestic violence, so that the issue of integrating the existing safe house into the social protection system and their funding from the budget remained open. It has been noted that a number of safe houses have ceased to work since the civil society organisations that established them face with the lack of funds for further work upon the completion of projects financed by donors.

The Protector of Citizens believe that special attention should be paid to the elderly, especially women, when they stay in social care institutions, because they account for two thirds of service users in social care institutions.

The Protector of Citizens has also noted the lack of interest of society to pay attention to convicted women during their sentence in prison and upon returning to the community after having served their sentence. The position of persons deprived of liberty equally points to systemic failures or improvements in their position, but without considering the specific effect of measures on men deprived of liberty on one side and women deprived of liberty on the other.

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<sup>85</sup>Available at:  
[http://www.womenngo.org.rs/images/publikacijedp/2011/Koliko\\_nas\\_kosta\\_nasilje\\_prema\\_zenama\\_u\\_porodici.pdf](http://www.womenngo.org.rs/images/publikacijedp/2011/Koliko_nas_kosta_nasilje_prema_zenama_u_porodici.pdf)

Health services are not equally available to all women. The facilities of primary health care/health centres, and in some places the facilities of secondary and tertiary health care, are not equally available to all groups of women. A small number of health care institutions have a gynaecological examination table adapted to the needs of women with disabilities; deaf women deliver in difficult conditions because a very small number of medical staff use sign language, etc.

### *Rights of sexual minorities*

Following the 2010 Pride Parade, Serbia went backwards in respecting the rights of LGBT population, denying them the freedom of assembly in 2011 and therefore the Protector of Citizens focused in 2011 on the problems of personal safety of Pride Parade organisers and members of LGBT population.

In 2011, the Protector of Citizens held a meeting with the representatives of 2011 Pride Parade discussing the challenges and obstacles in the organisation of that event in 2011 and reiterated his support to the organisers, monitoring at the same time the work of competent state authorities responsible for ensuring the conditions for the Parade. On several occasions, in communication with the state authorities and in public appearances in the media, the Protector of Citizens pointed out that the exercise of guaranteed rights of LGBT population was not to anyone else's disadvantage.

In the course of 2011, the amendments to the Law on Health Insurance<sup>86</sup> introduced the right to sex reassignment surgery at the expense of the Republic Health Insurance Fund, which improved the rights of transgender people.

Also, in 2011 the Protector of Citizens completed the activities, initiated in the previous period, of collecting data on the protection of human rights of LGBT people, which resulted in the drafting and publishing of a *Special Report on the Human Rights Situation of LGBT Population in Serbia*,<sup>87</sup> according to which the Protector of Citizens will propose measures and activities within his purview during the next reporting period.

The Protector of Citizens notices a lack of intersectoral collaboration and multidisciplinary approach in every area of social life, in the case when it is necessary to ensure the exercise and protection of the rights of women and LGBT people. The attitude towards LGBT people is additionally burdened by the high degree of intolerance, strong stereotypes and widespread homophobia.<sup>88</sup>

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<sup>86</sup> *Official Gazette of RS*, No. 57/2011

<sup>87</sup> <http://www.ombudsman.rs/attachments/Izvestaj%20LGBT.doc>

<sup>88</sup> The Gay-Straight Alliance, "Step-by-step - Report on the Human Rights of LGBT Persons in Serbia 2010", Belgrade, 2011, available at [www.gsa.org.rs](http://www.gsa.org.rs). According to a survey conducted in 2010 by GSA and CeSID, the public opinion keeps "ignoring" the fact that homosexuality was removed from the official list of diseases a long time ago, and even 67% of citizens claim that homosexuality is a disease. It is very disconcerting, *inter alia*, that even half the people of Serbia claim that they would reject their close relatives if they learned about their homosexuality, and that 90% of people see a different sexual orientation as a major obstacle to socialisation.

The Protector of Citizens notes that education authorities are still not showing their full readiness to deal with peer violence and discrimination based on sexual orientation in educational institutions. There are a significant number of textbooks with homophobic views and it is not unusual that teachers continue reproducing such views in communication with students. Rare researches on this topic show a large degree of homophobia among secondary school students.<sup>89</sup> This is supported by the fact that the *Law on Fundamentals of Education System in the Republic of Serbia*<sup>90</sup> does not explicitly prohibit discrimination based on sexual orientation among students, but in Article 44 that relates to the prohibition of discrimination on various grounds, after specifying all usual grounds of discrimination, it says "and on other grounds established by the law that prohibits discrimination".<sup>91</sup>

On the basis of monitoring and analysing the respect for the human rights of women and the rights of LGBT population in 2011, the Protector of Citizens considers that a satisfactory level in the work of public authorities on improving the respect for the rights of women and LGBT population has not been achieved yet. Women and LGBT population are still marginalised groups of citizens, and therefore in a less favourable socio-economic position, which has a negative impact on all areas and at all levels of meeting their needs.

#### ***2.4.2. Statistical overview of citizen complaints concerning gender equality and LGBT rights***

In 2011, the Protector of Citizens received 34 complaints concerning gender equality, out of which 27 citizen complaints in writing and 7 procedures upon own initiative. The number of received complaints in 2011 is about 40% lower than in the previous year.

The complaints show that the most violated rights in the field of gender equality are labour and social protection rights, but there are also a great number of cases of domestic violence and special violations of rights related to marginalised groups: women and LGBT population.

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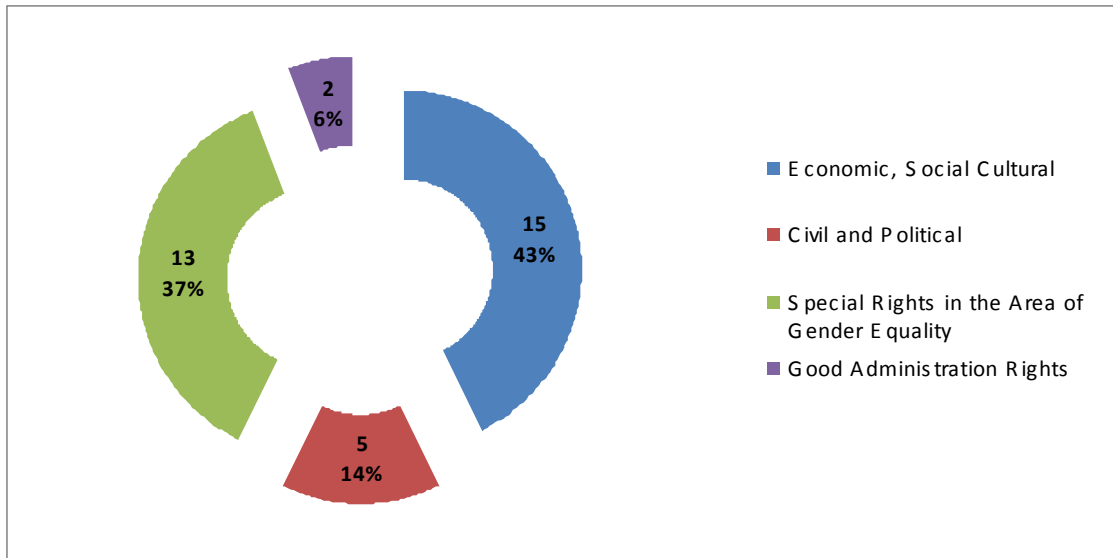
<sup>89</sup> Radoman, Marija, the Helsinki Committee for Human Rights in Serbia, Book No. 31, 2011. According to this survey, although conducted on the insufficiently representative sample of 630 secondary school students, 28.7% of respondents can be considered homophobic, 29.1% moderately homophobic and only 27.9% non-homophobic. In addition, 20% of respondents would expel their LGBT peers from school, while 21% are undecided on this issue. At the same time, this survey shows that in Serbia 20% of secondary school students have an extremely negative attitude on this matter, while less than 20% are liberal and girls are among the most liberal ones. [www.helsinki.org.rs](http://www.helsinki.org.rs)

<sup>90</sup> *Official Gazette of RS*, Nos 79/2005, 52/2011

<sup>91</sup> *Official Gazette of RS*, Nos 46/2010, 40/2011

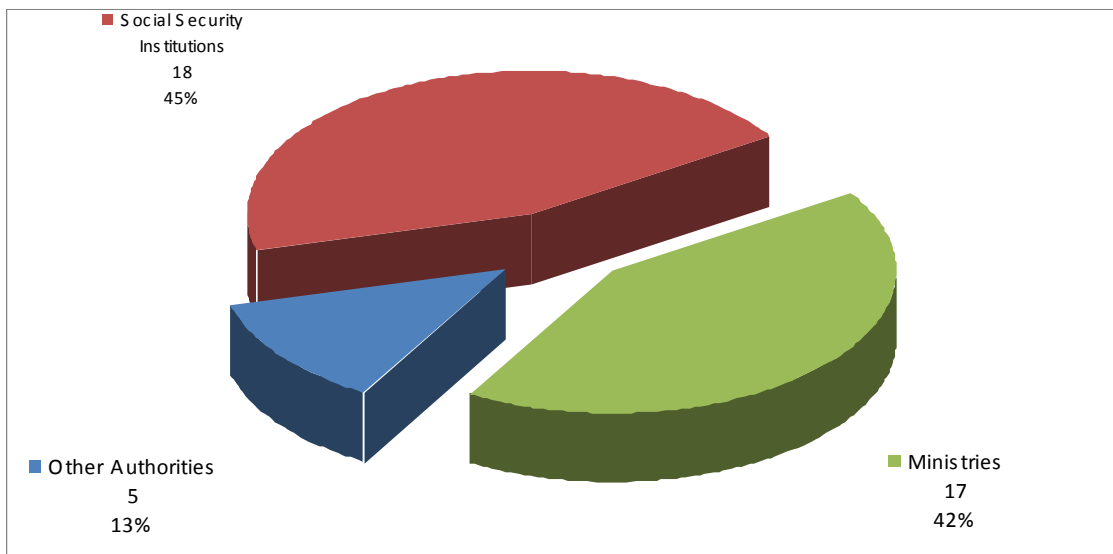


**Chart 8 - Complaints by the type of violated rights**



The complaints prevalently point to possible errors in the work of the Ministry of Internal Affairs and the Ministry of Labour and Social Policy (17) and social care institutions or social welfare centres (18), while other complaints refer to other bodies (5).

**Chart 8 - Complaints by the authorities to which they refer**



Out of 34 complaints in 2011 in the field of gender equality, the procedure was terminated in 15 cases. The procedures initiated upon the complaints filed in 2011 were terminated by rejection in 9 cases for the following reasons: complaints outside of the Protector of Citizen's competence (6), untimely complaints (1), incomplete complaints (1) and a complaint filed by an unauthorised person (1). The procedures were completed in 6 cases by the suspension of procedure (2), by the complainant's withdrawal (2), while in two cases there were no grounds for the continuation of procedure.

The procedures upon complaints filed in the previous two years (a total of 14 cases) were completed by suspension (7) since the authorities rectified by themselves the errors in work, which resulted in the violation of rights in this field; complaints were rejected as unfounded (4), i. e. after completed procedure no violations of rights were established, and 3 complaints were rejected for being outside of the Protector of Citizen's competence.

### ***2.4.3. Achievements in 2011 in the area of gender equality***

#### ***Violence against women***

During 2011, the problem of domestic, and primarily gender-based violence, remained the Protector of Citizens' priority in the field of gender equality.

Acting upon own initiative in cases of domestic violence in the previous reporting period, the Protector of Citizens investigated the actions of competent authorities in the protection and prevention of domestic or partner violence. The result of the performed activities is the *Special Report on the Situation of Domestic Violence against Women in Serbia*<sup>92</sup> published in mid-2011. The report points to a worrying trend of increased domestic violence. The absence of cooperation between the social welfare centres, police and health institutions was also noted. Moreover, experience has shown that violence is often justified and it is not given enough importance. All this confirms that the family is still "unsafe place to live in", especially for women. The earlier practice of the authorities has also been confirmed. More specifically, they carry out activities only upon the escalation of violence, i.e. when the consequences appear, and they end up with the sanctions against the offender. Preventive measures for protection from violence are sporadic, random, unplanned and often uncoordinated.

***SOCIAL WELFARE CENTRES AND POLICE ARE OBLIGED TO PROTECT  
WOMEN FROM DOMESTIC VIOLENCE IN THE WAY THAT DOES NOT  
THREATEN THEIR SECURITY***

The neighbours filed a complaint indicating that their neighbour was a victim of domestic violence from her husband. During the procedure, the Protector of Citizens established that the Social Welfare Centre informed the alleged perpetrator about the reported domestic violence. The Social Welfare Centre and the police failed to exchange information on the findings during the actions undertaken to protect the woman from violence due to the failure of the acting police officer. The disciplinary procedure against that police officer is ongoing, after which the Protector of Citizens will decide how to end the initiated procedure.

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<sup>92</sup> Available at: <http://www.ombudsman.rs/index.php/lang-sr/component/content/article/1563>

*The position of elderly women* is best illustrated by the following example:

**NO ONE HAS THE RIGHT TO DECIDE ON BEHALF OF ANOTHER PERSON  
ABOUT THE PLACEMENT IN THE HOME FOR ELDERLY PERSONS**

A complainant filed a complaint saying that she had been placed in the privately-owned home for elderly persons contrary to her wish and without her consent. The Protector of Citizens carried out a direct control, established that the complainant did not want to stay in the home and that at the time of her placement in the institution, the employees had not previously obtained her written consent.

***Use of gender-sensitive language***

The use of gender-sensitive language is not normatively regulated. However, its use is essential and represents an important step in achieving gender equality. Gender-sensitive language is primarily a question of social power and means greater visibility of women in language, and its consistent use in the media and in political discourse would significantly contribute to the increased visibility of women in the Serbian society.

The Inter-Parliamentary Union adopted a *Plan to Correct Present Imbalances in the Participation of Man and Women in Political Life*, which says: "The language used in legislation should put men and women on an equal basis and avoid any discrimination based on sex".

The Council of Europe Committee of Ministers adopted in 1990 the *Recommendations for states on the elimination of sexism from language*, which clearly expresses an opinion about the necessity of changing linguistic practices in the manner that ensures that women are socially visible in public and official use.

Back in 2009, the Protector of Citizens made an *Instruction on the use of standardised language*, intended for internal use, but the model has not come alive in practice. The male grammatical gender is still dominant in our language.

The Legislative Committee of the National Assembly of the Republic of Serbia adopted in 2010 the *Uniform Methodological Rules for Legislative Drafting*.<sup>93</sup> The Article 43 stipulates: "The terms used in regulations are of male gender, unless the nature of things requires otherwise" (Article 43), so that we cannot say that it is in compliance with the above documents about the use of gender-sensitive language.

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<sup>93</sup> *Official Gazette of RS*, No. 21/2010

**WHICH ONE IS CORRECT: FEMALE PROSECUTOR OR WOMAN  
PROSECUTOR?**

The complainant asked for an explanation whether the use of gender-sensitive language is allowed when a woman performs a certain job, and if the answer is yes, which regulation governs this matter. For example: When a woman performs the function of public prosecutor, is she a female public prosecutor and is it allowed to use this term in public documents. The Protector of Citizens pointed out that the use of gender-sensitive language was not regulated by the existing legislation, but that it contributed to the visibility of women in society.

***Prohibition of workplace mobbing***

In mid-2010, the Republic of Serbia adopted the *Law on Prevention of Workplace Mobbing*,<sup>94</sup> the implementation of which began in September of the same year. Since the Law provides for legal protection from possible abuse at work, the Protector of Citizens is not the competent authority to act on complaints suggesting the possible abuse in the workplace, and those who address the Protector of Citizens with this problem are advised on the procedures and authorities who are responsible for conducting these procedures. Unfortunately, there are no updated data on the number of people who are victims of workplace mobbing.

***FEMALE BOSS, PROTECT ME FROM MY MALE BOSS!***

Several female complainants pointed to the Protector of Citizens that their employers acted violently and they believed to be the victims of workplace mobbing. Their dignity was not respected; they were deprived of information; they were not given guidelines for work, which affected their state of health.

Using the right to contribute to the protection and promotion of citizen rights by giving advice within his competence, the Protector of Citizens informed the complainants on how to protect their rights, pointing to the important contribution of the civil society in the protection from workplace mobbing through court procedures and provision of legal aid.

## **2.5. RIGHTS OF PERSONS WITH DISABILITIES**

### ***2.5.1. Description of problems in the specialised area from the aspect of the Protector of Citizens' competence***

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<sup>94</sup> *Official Gazette of RS*, No. 36/2010

The normative basis for protecting the rights of persons with disabilities has been established, but the effective ways for implementing the legislation and practical measures have not been developed yet. Therefore, we can be only partially satisfied with the results achieved regarding the measures that encourage social equality for persons with disabilities.

In the 2011 Census of Population and Households, the data were collected on persons with disabilities, which should be the basis for planning a practical policy and developing the institutional support for implementing the social inclusion of citizens. Bearing in mind that there is no uniform database of persons with disabilities in the Republic of Serbia, the data collected by RZS in the 2011 Census, especially about their functioning and social integration, will contribute to better planning of measures and their efficient implementation.

Until the Census results are published, these measures are based on the research of associations according to which people with disabilities represent 6.5% of the total population of Serbia, or about half a million inhabitants, of whom about 300,000 of working age (15 - 64 years old).<sup>95</sup> The results of EAR research from 2006 indicate that there are between 700,000 and 800,000 persons with disabilities in Serbia, and it is estimated that about 330,000 of them are the working-age population.

The Law on Vocational Rehabilitation and Employment of Persons with Disabilities<sup>96</sup> follows, to a great extent, the provisions of the UN Convention on the Rights of Persons with Disabilities related to work and employment. The Law allows for the application of the principle of inclusiveness in employing persons with disabilities, by giving them priority in open market employment and using the quota system. This Law stipulates the employer's obligation to employ persons with disabilities.

The National Employment Service (hereinafter referred to as: NES) keeps records of unemployed persons with disabilities according to a single methodological principle, but due to the fact that it is not obligatory to register with this Service, the said records, kept primarily for the purpose of monitoring the situation and trends in the labour market, are not complete. It should be noted that the Ministry of Economy and Regional Development has a database of enterprises for professional rehabilitation and employment of persons with disabilities, as a special form of their employment and work engagement. Finally, the Tax Administration controls the duty of employing persons with disabilities. According to the Center for Society Orientation, since the beginning of implementation of the Law on Employment and Vocational Rehabilitation of Persons with Disabilities, the Tax Administration conducted 3,080 controls, issued 2,507 decisions on the payment of fines in the total amount of RSD

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<sup>95</sup> *Persons with Disabilities and their Environment* (2001), Handicap International and the Center for Research of Democratic Alternatives (CRDA), Belgrade

<sup>96</sup> *Official Gazette of RS*, No. 36/2009

953,739,237 and submitted 965 notifications about the initiation of misdemeanour procedures.<sup>97</sup>

According to the NES data, in the past year and a half 5,290 persons with disabilities found a job. Nevertheless, according to the NES data of 31 October 2011, additional 20,470 persons with disabilities, of whom 6,644 are women, are looking for a job. Almost half of people with disabilities registered by the NES have eight years of primary education, 349 have a high school diploma, while 259 persons have completed university.

According to the released data, in 2012, 800 million dinars from the budget fund for stimulating the employment of persons with disabilities will be allocated for various employment support measures and programmes, as well as other measures for employment and improvement of the position of persons with disabilities in the labour market.<sup>98</sup> The vocational rehabilitation measures and active employment policy measures implemented by the National Employment Service are important for persons with disabilities; they include services focused on their motivation, improvement of social skills, training for suitable jobs, employment, preservation of employment, promotion or career change.

The undeveloped policy of employment and lack of adequate vocational training lead many persons with disabilities to poverty and the necessity to rely on the social security system. However, they are often unable to exercise or protect these rights due to architectural barriers, which in a large number of cases prevent their access to social care institutions. Moreover, these institutions fail to provide them with the information about their recognised rights, how to exercise or protect them. On the other hand, social care institutions lack sufficient capacities and human resources to adapt their services to the user. The problem is also the fact that the budgets do not provide sufficient funds. Hence, the right to social allowance, one-off financial assistance, is limited and one user is entitled to receive it up to three times during one year.

The Protector of Citizens, on the basis of received complaints, has noticed significant differences in the position of persons with disabilities depending on the area in which they live. The citizens with disabilities who live in the urban areas are in a more favourable position compared to those living in smaller or rural areas remote from the major urban centres. This conclusion could not be drawn from the number of complaints in 2011, since about half of them were filed by the citizens of Belgrade District. However, the reason for fewer complaints of citizens with disabilities who live outside Belgrade is not their more favourable position, but the fact that in some areas persons with disabilities are not sufficiently aware of their rights; moreover, many of

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<sup>97</sup> Publication *Employment of Persons with Disabilities in the Republic of Serbia*, 2011, Centre for Society Orientation, p. 107

<sup>98</sup> Ministry of Labour and Social Policy on the occasion of marking the International Day of Persons with Disabilities – 3/12/2011

them have no knowledge that there are possibilities for claiming any right that would improve their quality of life.

The state must make legal aid available to everyone, especially to the citizens who face poverty and need social assistance. According to the data on social and economic situation of persons with disabilities, they need this kind of assistance more than other citizens due to their own disability, but also because they face more difficulties in accessing services. Nevertheless, the Republic of Serbia has not yet adopted a law on free legal aid, which is why persons with disabilities, particularly mental disabilities, cannot adequately protect their rights either in court procedures or in the procedures conducted by other state authorities. This fact is confirmed by more than two-thirds of complaints received in 2011, in which the complainants state that they did not seek adequate legal protection due to the lack of knowledge about regulations and the lack of resources to engage an attorney-at-law. The Protector of Citizens has noticed also that the authorities do not act satisfactorily in assisting and informing complainants about their rights and ways of their realisation and protection, and that citizens are not sufficiently informed about the work of legal aid services.

A serious deficiency in the practice of public authorities and legislation are the existing provisions and practices in relation to the establishment of legal capacity. More specifically, the inconsistency of the regulations and court practices concerning the deprivation of legal capacity with Article 12 of the Convention on the Rights of Persons with Disabilities causes problems in exercising other human rights. The main problem is that the full deprivation of legal capacity creates a situation where a huge number of adults with disabilities, mostly persons with mental and intellectual disabilities, are prevented from exercising their right to work and labour rights. Such approach suggests that despite the harmonisation of national legislation with the international standards for the protection of persons with disabilities, we still lack the practical measures and coordinated policies and practices, which would be improved by the intersectoral collaboration among policy implementers, and a multidisciplinary approach to solving the problems of persons with disabilities.

In their complaints filed with the Protector of Citizens, persons with mental or intellectual disabilities indicate that despite the undeniable fact of their disability, their condition must be confirmed by the opinion of the experts from the pension and disability insurance system, in order to be able to use the measures of affirmative action, which earlier was not the case. However, these complainants emphasise that unlike the establishment of physical impairment percentage, the mental disability/impairment is not established on the basis of the Rulebook. Due to this failure of the competent state authority, persons with this type of disability cannot exercise their rights on the grounds of disability (assistance and care of other person, increased allowance for assistance and care, employment) because the system does not recognise them as persons with disabilities.

Unlike in the previous years, in 2011 the Protector of Citizens received a number of complaints about the work of guardianship authority in the procedure of deprivation of legal capacity or determination of guardian, as well as in the cases of placement in social care institutions. The complaints were submitted both by guardians and persons with mental/intellectual disabilities.

The Protector of Citizens has noticed that the social welfare centres, when acting as a guardianship authority, do not allow the concerned persons to be involved in the procedure. Usually the relatives, future guardians, along with the expert staff, decide about their future. The expert staff of guardianship authority do not provide the guardians with complete information on the way of performing the guardian's role, but execute their control function solely by considering the reports that the guardians are required to submit. The Protector of Citizens has concluded that the guardianship authorities carry out their activities mainly formally, at the level of legally prescribed procedures for these cases, without the individualisation of possibilities and the necessary support measures that these persons need to realise themselves as social individuals. Such approach maintains the practice of legal capacity deprivation as the best way of protecting the rights and interests of individuals.

The access to public institutions and services is still difficult for persons with disabilities. The progress has been noticed, especially in Belgrade and other towns, in removing the architectural barriers for the purpose of enable persons with disabilities to access the buildings of public authorities and thus increase the level of service. For example, in the trollies on line 22 in Belgrade the controllers help persons in wheelchair to get on, settle in and get off the vehicle. The trollies have an adequate ramp enabling persons in wheelchair to enter and exit and an adequate space and mechanism for settling in and securing a disabled people during transportation. We should mention the example of the Belgrade Municipality Vračar that finances the installation of an elevator in the only swimming pool in Serbia that can be used independently by persons with disabilities.

However, the examples of good practice unfortunately are not regular processes concerning the improvement of access to public facilities and services for persons with disabilities. Moreover, the complaints point to the fact that public authorities have made no significant progress. In everyday life, persons with disabilities face the problem of access to information in public institutions because they have not placed tactile tables; they cannot submit requests independently because the forms are not available in Braille and cannot properly ask for assistance in protecting their rights because the persons with completely or partially impaired hearing are not allowed to request, for example, a police intervention through an SMS. Health workers are not sufficiently trained in sign language and not all institutions have sign language interpreters, which shows that equal opportunities to exercise and protection of rights have not been provided.

In the complaints filed with the Protector of Citizens, the individuals and civil



society organisations point to the existing differences in the exercise of the rights in the social protection system between the civilian and military, war and peacetime persons with disabilities. A number of civil society organisations organised a protest on 22 September 2011 in front of the Government of the Republic of Serbia, demanding the equalisation of the rights with war invalids. The Protector of Citizens supported the protest with his personal presence, as well as the previous activities of these organisations urging the Ministry of Labour and Social Policy to take measures for equalising rights.

During 2011, in addition to handling complaints, special attention was devoted to analysing the performance of public authorities. In order to improve their performance in relation to the exercise of the rights of persons with disabilities, it is important to properly understand the definition of disability given in the Convention on the Rights of Persons with Disabilities and the social model of disability that arises from that definition.

The Convention defines persons with disabilities as persons "who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." The Strategy for improving the situation of persons with disabilities in the Republic of Serbia establishes the following Overall Objective No. 3: "Make available the social and other services based on the rights and needs in accordance with internationally-accepted modern methods of assessment of disability and needs." Therefore, the Strategy sets a request for a gradual but mandatory transformation of assessment system in order to make it functional, in accordance with the system that provides opportunities and is based on the capabilities of persons with disabilities.

A transparent abandonment of the assessment system used in the process of exercising the right to social care or pension and the medical approach to disability in the area of labour would contribute to the reduction of certain human rights violations (right to work, employment) and the development of principles for the protection of persons with disabilities – non-discrimination and equal opportunities.

The Law on Pension and Disability Insurance defines that "physical impairment exists when the insured person has a loss, significant impairment or considerable disability of certain organs or body parts, which makes normal activity of the body more difficult and requires more efforts in achieving basic needs."

By comparing the above legal definition with the concept of disability under the Convention, we see that physical impairment and disability have in common a (long) duration and certain damage, but not each and every physical impairment must result in the prevention of full participation in society or participation on an equal basis with others. The reason for this is that physical damage, as the ground for exercising the rights in the field of pension insurance, was established and developed in the context of insurance in case of injury at work and occupational disease. The purpose of this approach was to ensure the compensation for employees in case of social risks related

to work and for the damage that such employees had suffered while working upon order and for the account of their employer. It has been noticed that in exercising pension rights the physical injury continues to be treated as a reason for indemnification, compensation for lost income due to disability.

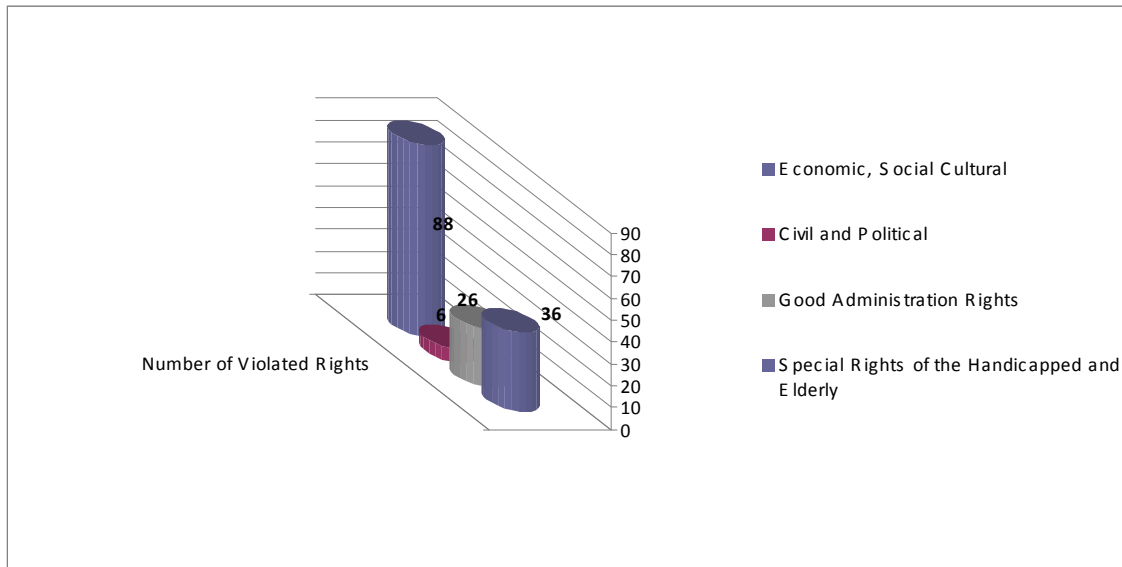
The Law on Vocational Rehabilitation and Employment of Persons with Disabilities, adopted in 2009, abandoned the above-mentioned concept of indemnification, and introduced a social model which insists on the inclusion of persons with disabilities in social life through work, according to their remaining work capacity. The practice shows that this difference in the definition indicates that there is no sufficient understanding by the authorities that provide expert opinion; medical expert witnesses were not trained at the same time and they usually conduct medical expertise through the examination of medical documentation and the evaluation of health condition, which directly results in preventing the statutory goal: employment of persons with disabilities or exercising their right to pension. This reveals one of the greatest deficiencies: the absence of a system for establishing the individual assessment of needs arising from damage.

### ***2.5.2. Statistical overview of citizen complaints concerning the rights of persons with disabilities***

In 2011, the Protector of Citizens carried out 151 procedures related to the violation of the rights of persons with disabilities. Out of that number, the citizens files 145 complaints, while in 6 cases the Protector of Citizens acted upon own initiative. The Protector of Citizens completed the procedures initiated upon 71 complaints (47%), while the procedures initiated upon 80 complaints (53%) are still ongoing.

The largest number of complaints (88) referred to economic, social and cultural rights, 66 of them were filed because the citizens believed that their pension and disability insurance rights were violated, 11 complaints referred to the violation of the right to allowance for assistance and care of other person, while 3 complaints pointed to the failure to recognise the right to increased allowance for assistance and care of other person.

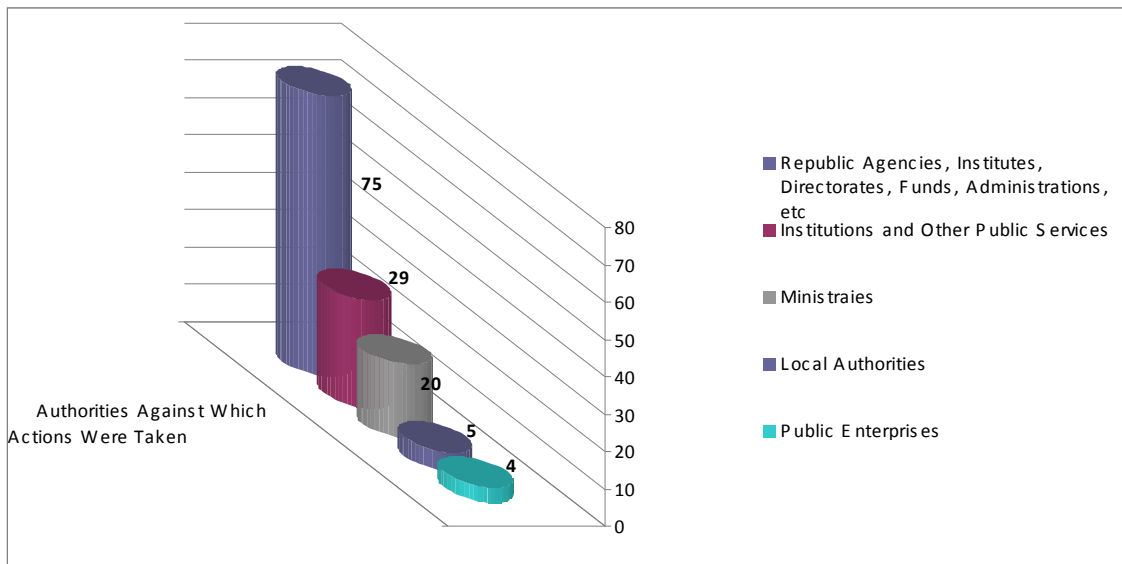
**Chart 10 - Types of violated rights**



*Note:* The number of authorities is always higher than the number of complaints since the individual complaints indicate multiple violations of rights.

The largest number of received complaints point to the failures in work of the Republic Fund for Pension and Disability Insurance (67), social care institutions (27), the Ministry of Health (3), while the rest of them refer to judicial authorities, medical institutions, educational institutions, the National Employment Service, the Ministry of Labour and Social Policy and other bodies.

**Chart 11 - Complaints by the authorities to which they refer**



*Note:* The number of authorities is always higher than the number of complaints since the individual complaints sometimes indicate a violation of citizens' rights by more than one authority.

In 2011, the Protector of Citizens initiated 56 procedures for controlling the work of administration authorities. After completed procedures of control and supervision, 40 cases were closed as follows: complaint was assessed as unfounded (25), authorities removed deficiencies (7), recommendations were given (7) and in one case the complainant withdrew the complaint.

In addition to handling complaints filed in 2011, the Protector of Citizens also acted upon the complaints submitted in the previous years. These 31 cases were solved as follows: complaint rejected as unfounded (12), authorities removed deficiencies (8), outside of the Protector of Citizens' competence (7), recommendations were given (2) and the complainant withdrew the complaint (2).

### ***2.5.3. Achievements in 2011***

In the first half of 2011, a *Special Report on the Situation in Social Care Institutions Accommodating Elderly Persons* was published. It was a result of monitoring the situation in 13 social care institutions, gerontology centres and homes for pensioners and the elderly. It was established that the issue of service prices is among the most sensitive ones, and the beneficiaries generally believe that the prices are too high for the standard and quality of offered services. In particular, they express dissatisfaction with the quality and quantity of food. The biggest problem is that one day of stay in the institutions for elderly persons is estimated to cost 947 dinars, while the price of one-day stay in general hospitals is 2900 dinars.<sup>99</sup> Nonetheless, the services provided by the homes for the elderly are very similar, which makes a drastic difference in available resources. Therefore, the future existence of gerontology centres will require the recognition of their costs at the level of one-day stay in general hospitals, because it is the only way to cover realistically the actual costs. In connection therewith, it is necessary that the Ministry of Health and the Ministry of Labour and Social Policy agree on that.

At the request of the UN High Commissioner for Human Rights, we prepared the answers to the questions about the legal and social status of persons with disabilities in Serbia.

One of the Protector of Citizens' achievements refers to the raised issue of the accessibility of banking and financial services to persons with disabilities. Specifically, after the NGOs pointed to the problem faced by persons with disabilities in the sector of banking and financial services, the Protector of Citizens initiated a debate on the actions of authorities that should contribute to solving these problems. It was found that these individuals were not able to independently use the funds from the accounts of commercial banks, either as natural persons or legal entity representatives. This refers to the blind, persons without upper limbs, people with cerebral palsy and others

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<sup>99</sup> Prices in 2010

who are not able to personally sign the bank documents. The Protector of Citizens held a meeting with the representatives of the Association of Commercial Banks, after which he addressed the Governor of the National Bank of Serbia, expecting him to take measures within his competence, which would eliminate the deficiencies in the banking business with customers with disabilities.

## 2.6. GOOD ADMINISTRATION<sup>100</sup>

### *2.6.1. Sector of human rights, public administration, local self-government, delegated tasks to local self-government and Kosovo and Metohija*

In the reporting period, the highest number of citizen complaints in this sector related to the failure of local self-government bodies to act in accordance with their own decisions, in some cases even after the intervention of the Protector of Citizens. Moreover, it was difficult to re-register in the births registry books covering the territory of Kosovo and Metohija. Citizens also expressed their dissatisfaction with the work of local utility companies.

#### *I Local self-government bodies do not implement their own decisions*

A number of complaints received by the Protector of Citizens in 2011 pointed to the failure of local authorities to act in accordance with their own decisions or to implement final and enforceable administrative decisions. These cases mostly related to the failure of local self-government inspection bodies to act in accordance with the decisions issued during the inspection control, which led to the violation of basic human rights, according to the complainants, in addition to the obvious violation of the principles of good administration and the rules of administrative procedure.

#### *Example 1: A local self-government removed deficiencies immediately after being addressed by the Protector of Citizens*

The complainant from Negotin addressed the Protector of Citizens with a complaint about the work of the Inspection for Environmental Protection of the Municipal Administration Negotin for the failure to implement its own decision by which a local utility company was prohibited to continue using the heating pumps until it undertook the measures of protection from noise to which the complainant had been subjected for years in his apartment. After initiated procedure by the Protector of Citizens, the Inspection for Environmental Protection of the Municipal Administration Negotin adopted necessary acts for the implementation of this decision and enforced a decision, and the entire problem was positively solved when the measures were taken to remove the source of noise, i. e. when the old heating pumps were replaced with the new noiseless ones. Thus, this procedure initiated by the Protector of Citizens was successfully completed, i. e. suspended.

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<sup>100</sup> In 2011, there were certain organisational changes in the functioning of the Protector of Citizens. The former department of "good administration" is now divided, according to the applicable Law on Ministries, to 15 administration sectors, according to which the complaints received from citizens concerning "good administration" are now handled.

The following example shows that a local self-government body did not inform the Protector of Citizens about the implementation of recommended actions, not even after a subsequent intervention.

***Example 2: A local self-government body was given a recommendation to remove deficiencies***

A complainant from Ćuprija addressed the Protector of Citizens complaining about the failure of the Municipal Administration of Ćuprija Municipality to act upon its own decision on removing concrete fence and transferring into possession, and upon the conclusion on permitting the execution of decision, passed in 1995 and 1997 respectively. The said failure prevented the complainant from having a necessary access to his house.

After the initiated procedure of controlling the regularity and legality of the work of the Municipal Administration of Ćuprija Municipality, the Protector of Citizens referred a recommendation to this authority to immediately undertake all necessary measures to execute the decision and the conclusion on permitting the execution of decision, or to pass another relevant administrative decision, in accordance with law, and to timely and efficiently execute or ensure the execution of decisions of its own bodies in its future work.

The deadline for acting upon the recommendation expired in 2011, but the Municipal Administration of Ćuprija Municipality has not informed the Protector of Citizens about its actions in line with the recommendation.

## ***II Difficult re-registration into the birth registry books for the territory of Kosovo and Metohija***

A certain number of citizens addressed the Protector of Citizens indicating a problem they faced in the process of re-registration in the birth registry books for the territory of Kosovo and Metohija, administered by the competent bodies (civil registry offices) of local self-government units. In some cases, the submitted requests had not been handled for more than a year, due to which citizens were prevented from exercising other rights (right to personal documents, permanent residence, financial aid, etc.).

After initiating the procedures of controlling the regularity and legality of the work of civil registry offices in local self-government units, on the basis of filed complaints, the authorities would rectify the committed errors and decide on submitted requests. One of such examples is the work of Jagodina City Administration that, after being addressed by the Protector of Citizens, informed this institution that the request had been decided upon and a decision delivered to the complainant.

### ***III Dissatisfaction of citizens with the work of local utility companies***

A certain number of citizens addressed the Protector of Citizens expressing their dissatisfaction with the work of public utility companies founded by local self-government units. In 2011, citizens complained about the companies established by municipalities or cities for the purpose of performing the activities related to heating supply and installations, water and gas supply, utilities, heating and power plants, parking service. The citizens were also very dissatisfied with illegally determined service prices, poor service, failure to perform contractual obligations, unlawful work, etc.

### ***IV Pointing out to the local self-government the need to solve the problems within the scope of their primary competences***

#### ***Example 1: Pointing out to the local self-government the need to solve the problem***

A complainant from Belgrade informed the Protector of Citizens about the problem faced by the inhabitants of Braća Grim Street in Belgrade, because this location did not have a defined system of parking – marked parking places, which caused damage to the citizens whose appeals to the competent bodies had remained unanswered.

In this case, the Protector of Citizens sent to the City of Belgrade Secretariat for Traffic a letter stressing the importance of solving the problem raised by the complainant, the interest of a growing number of inhabitants of this part of Belgrade and all fellow citizens using the mentioned roads.

#### ***Example 2: Sending an opinion to the local self-government body regarding the performance of tasks within its primary competence***

In certain cases, the Protector of Citizens sent an opinion to local self-government bodies pointing to the necessity of taking measures, independently or in cooperation with other state bodies, in order to enable citizens to realise and protect their rights. Such was the case of Ljig Municipality to which an opinion was sent because it allowed, by its actions, a multi-year unauthorised occupation of the unclassified road by private persons, which prevented the local inhabitants from using it.

### **CONCLUSIONS:**

The main problems in this sector that the Protector of Citizens was informed about relate to the failure to implement the decisions of local self-governments or failure to enforce final and enforceable administrative decisions by which natural persons or legal entities are ordered to take certain measures; difficulties in re-registration into the birth registry books for the territory of Kosovo and Metohija;



dissatisfaction with the actions of local utility companies, as well as the problems in performing the tasks within the primary competence of local self-governments.

In cases where the authorities did not identify and rectify errors in their work by themselves (implementation of decisions and re-registration into birth registry books), the Protector of Citizens, in accordance with his authority, referred a recommendation to the local self-government bodies on how the identified deficiencies should be removed or acted pre-emptively by issuing an opinion aimed at improving the work of the administration authorities and promoting human rights and freedoms.

As regards the failure of local self-government bodies to act in accordance with their own decisions and the problems identified in this area, the local self-government bodies were particularly reminded of the principles of good administration and the principles of administrative procedure according to which the administration authorities are obliged to assist the citizens, as much as possible, to protect their rights and interests, taking into account that the realisation of their rights and legal interests must not prejudice the rights and legal interests of others or be contrary to legally established public interest. The Protector of Citizens also pointed out that the purpose of administrative decisions and the entire administrative procedure was their enforcement, and that the final decisions by which the citizen acquired certain rights or obligations may be annulled, cancelled or altered only in cases provided by law.

In 2011, in cases where the Protector of Citizens was not able to initiate a procedure due to the lack of authority, he was sending letters and opinions to local self-government units pointing to the importance and urgency of solving problems within the scope of their competence, thus using his mediation powers and the right to act pre-emptively, through providing good services and counselling, in order to improve the work of administration authorities and promote and protect human rights.

In certain situations in which the Protector of Citizens' powers were limited, and this particularly refers to the citizens' complaints about the work of local utility companies, this institution used its advisory powers to instruct the complainants which competent authorities they should address.

### ***2.6.2. Sector of education and science, youth and sports, culture, information and information society and intellectual property***

#### **SECTOR OF EDUCATION AND SCIENCE**

The largest number of citizen complaints refers to the acting of higher education institutions when announcing open competitions for scholarships, student loans, to scoring and ranking, and admission to the first and second level academic and vocational studies. A number of complaints refer to the harmonisation of acquired academic, professional or scientific titles, then the process of accreditation and licensing for universities, as well as the recognition of foreign higher education

documents.

Bearing in mind that the Ministry of Education and Science performs administrative supervision over higher education institutions, the Protector of Citizens controlled the work of the competent Ministry to establish whether it acted in accordance with law and took measures envisaged by law to protect the rights of students. In certain cases, when it is urgent and a large number of complaints indicate the irregular and illegal work of an institution, and when there is a possibility of irreparable harm, the Protector of Citizens initiates the procedure of controlling the legality and regularity of the work of concerned institutions.

### *Right to observing laws and principles of good administration*

*Example 1:* The students of the Faculty of Electrical Engineering of the University of Belgrade, filed a complaint to the Protector of Citizens for, as they said, the violation of the Law on Administrative Procedure, violation of the principle of good administration, the Faculty's failure to respect its own notifications posted on the official webpage in accordance with the Statute of the University. The complaint was supported by a document issued by the University Ombudsman who conducted a procedure and established an error in the work of the Faculty of Electrical Engineering and ordered the said institution to rectify the established violation of complainants' rights, but the concerned Faculty failed to act accordingly. Bearing in mind all this, the Protector of Citizens initiated the procedure of controlling the legality and regularity of the work of the Faculty of Electrical Engineering of the University of Belgrade and requested its statement about the allegations of the complaint. The procedure is ongoing.

The number of student complaints regarding the work of higher education institutions increased in 2011. It is evident that citizens often file complaints to this body even before addressing the bodies responsible for controlling educational institutions, so that the actions of the Protector of Citizens are limited, except in exceptional cases where allowed by the Law, to data collection on the situation in the said sector for the purpose of possible consideration and taking action at a general level. The complainants are referred to the body responsible for controlling educational institutions. Moreover, it seems that the role of the University Ombudsman, which controls the work of the University of Belgrade, higher education units within the University, other subsidiaries and organisational units of the University or its structures, bodies and services, has still not been understood and accepted in the right way in accordance with applicable regulations.

### **SECTOR OF YOUTH AND SPORTS**

The complaints received by the Protector of Citizens relating to the work of the Ministry of Youth and Sports refer to the silence of administration and the Ministry's

failure to decide upon the requests of citizens within the legally prescribed deadline. Upon establishing the fulfillment of statutory requirements, the Protector of Citizens initiates the procedure of controlling the regularity and legality of the Ministry's work, after which, in most cases, the administration authority remedies the failure and the procedure is suspended.

### ***Right to receive a decision in the legally prescribed deadline***

*Example:* The Protector of Citizens received a complaint where it was stated, and the claim supported with the attached documents, that the Ministry of Youth and Sports had brought a decision cancelling its previous decision, issued in the administrative procedure, on changing the person authorised to represent the football club "Jedinstvo" from Stara Pazova. At the same time, the Ministry of Youth and Sports failed to, *ex officio*, in accordance with the Law on General Administrative Procedure, undo the consequences of cancelling that decision, i. e. to cancel the two Ministry's decisions passed on the basis of the challenged decision. It is expressly stated that the complainant sent to the Ministry of Youth and Sport a request for announcing the said decisions void, but until the day of addressing the Protector of Citizens, despite interventions, the Ministry of Youth and Sports, did not decide on that request.

Upon the procedure initiated by the Protector of Citizens, the Ministry cancelled the said decisions and the procedure was suspended when the complainant sent a letter to the Protector of Citizens informing this institution on being satisfied with its actions.

### ***A state body fails to act upon citizen requests consistently and to respect the rights of citizens to be informed***

*Example:* The complainants addressed the Protector of Citizens with the complaints about the failure of the Ministry of Youth and Sports (hereinafter referred to as: MoYS) to act upon their requests for being granted national sports awards or to send them a written notification and explanation of further actions.

During 2007, through the competent national sports federation branches, the complainants addressed the MoYS with the letters and requests to be granted national sports awards as athletes who had achieved outstanding sports results. At the same time, the complainants subsequently directly addressed the MoYS with the requests to receive notifications on procedures upon their requests for being granted national sports awards, in 2008 and 2009. However, they have not received any notification from the MoYS, either on their rights or on the procedure initiated upon their requests.

After conducted procedure, the Protector of Citizens established that the MoYS committed an error in its work thus violating the rights of complainants, because, contrary to the principles of good administration, it failed to respond to the requests of the competent national sports federation branches for granting national sports awards to the complainants, and to the letters sent by the complainants in connection therewith.

On the basis of established failures in work, the Protector of Citizens sent a

recommendation to the MoYS prompting it to immediately send justified responses, within its legal powers, to the requests of the competent national sports federation branches for granting national sports awards to the complainants and to the letters sent by the complainants in connection therewith.

The deadline for acting in accordance with the recommendation expired in March 2011, but not even after the intervention did the MoYS inform the Protector of Citizens about acting in accordance with the recommendation.

## ***SECTOR OF CULTURE***

The Protector of Citizens received a certain number of complaints about the work of the Ministry of Culture, Media and Information Society in the procedure of issuing decisions on awarding recognitions for outstanding contribution to the national culture or national minority culture. Acting upon these complaints, the Protector of Citizens requested from the Ministry to give a statement on the allegations of the complaint in order collect all information for further actions and possible measures within the Protector of Citizens' competence. The procedure is ongoing.

### ***2.6.3. Sector of labour***

Within the labour sector, in the reporting period, like in the previous years, the most numerous citizen complaints refer to their right to work, employers' evasion to register engaged employees for compulsory social insurance, duration of fixed-term contracts, non-payment of salaries, etc.

#### ***Exercising the right to work***

In 2011, citizens filed a large number of complaints with the Protector of Citizens pointing to the problems in the exercise of the right to work and labour rights. The majority of complaints related to the non-compliance with the provisions of the Law on Labour by private employers, and in a somewhat smaller number of cases citizens expressed their dissatisfaction with the violation of their labour rights in public administration bodies, civil service and bodies of local self-government units.

The citizens still prevalently believe that a job in Serbia is obtained and kept due to a party affiliation, kinship or similar relationship. As regards the finding of a suitable job, a number of complaints referred to incorrect or unlawful employment competition procedures, where the complainant, in addition to expressed dissatisfaction with the choice of candidates, often pointed to formal flaws, such as that the body did not send a notification about the selected candidate or did not decide on the objection or appeal of the candidate who participated in the competition.

#### ***"Black-market" employment***

The Protector of Citizens' attention was often drawn to an increasingly broad issue of "black-market" employment or evasion of registering the engaged employees to compulsory social insurance. In these cases, the engaged employees do not receive regular salaries; their taxes and contributions are not paid; they do not enjoy

elementary rights based on labour; they face a dilemma in deciding whether to report the employer and risk the loss of job, regardless of its disadvantages, or keep working unregistered, without almost any rights.

### *Fix-term employment*

A large number of complaints referred to the duration of fix-term employment. Although the Law on Labour limits the duration of fix-term employment to one year, employees are kept in this status for several years. It has been noted that employers, in their attempts to avoid the application of these provisions, conclude employment contracts with employees assigning them to different jobs, while in fact they continue to perform the same duties.

### *Non-payment of salaries and other benefits and contribution evasion*

The existence of a large number of citizens is threatened by the non-payment and irregular payment of salaries. A great number of complaints emphasise the violations of employees' rights to other benefits, such as salary compensation during temporary inability to work, compensation for overtime, for night work, non-payment of anniversary awards, severance, etc. Although the law obligates employers to register employees for mandatory social security insurance and pay contributions, they often fail to fulfil their legal obligations, and for that reason many citizens do not have fully regulated insurance and cannot achieve full pension rights.

*Example:* Acting upon the complaint filed by a complainant from Vršac because the Ministry of Defence had failed to act upon his request for the calculation and payment of pension and disability insurance contributions, the Protector of Citizens established that the Ministry of Defence committed an error in its work that resulted in the violation of the complainant's right related to labour and pension and disability insurance, because it did not act efficiently and take adequate measures to calculate and pay the contributions for one part of the years of service that the complainant acquired as a civilian assigned to work abroad. The Protector of Citizens recommended to the Ministry to take all necessary measures, without delay, to rectify the error committed by the administration authority to the complainant's detriment.

The Ministry of Defence acted entirely in accordance with the Protector of Citizens' recommendation, after which it was possible to terminate the procedure.

### *Labour Inspectorate*

A large number of complaints refer to the activities of the Labour Inspectorate, mostly because, as they state, the insufficient engagement of that body or its failure to take appropriate legal measures in inspection procedures. The complainants often

address the Protector of Citizens when the Labour Inspectorate declines its competence over their notifications (often due to the fact that at the time of filing a notification the complainant is no longer employed), or when this body rejects their request for postponing the execution of the decision on employment contract termination, and in cases where the Inspectorate sends a notice to the submitter of notification or complainant that the conducted inspection procedure has not revealed any irregularities of the employer, when the complainant expects from the Protector of Citizens to evaluate the correctness of the content of such decision, which does not fall within the competence of this body.

By analysing the powers of the Labour Inspectorate, the Protector of Citizens has established that the powers and measures that a labour inspector may pronounce should be broadened, in order to be able to provide more effective protection of workers. In cooperation with the Labour Inspectorate, the Protector of Citizens will submit the proposed measures to the Government of the Republic of Serbia in the form of initiative.

### *Deciding on the rights of employees in the administrative procedure*

Bearing in mind the Protector of Citizens' competences, at this point we should mention the complaints about public administration authorities and other holders of public powers.

Such complaints point to incorrect or unlawful administrative procedures conducted in order to decide about the rights and obligations of employees, initiation and conduct of disciplinary procedures, failure to act upon second-instance decisions of authorities or to take adequate measures to improve the status of employees towards which the state has certain obligations.

*Example:* A complainant from Užice states and supports the statement with the attached documents, that the Republic Geodetic Authority (hereinafter referred to as: RGA), deciding about the complainant's rights and obligations arising from employment, since the beginning of the current year has several times brought a decision on her assignment within the authority and the coefficient for calculation and payment of salary. Dissatisfied with the authority's actions, the complainant states that she filed an appeal against every decision with the Appeals Commission of the Government, which in the appellate procedures annulled the first instance decisions and remanded the case for reconsideration. However, the allegations of the complaint and the attached documentation further indicate that the RGA in the renewed procedures failed to comply with the instructions and opinions of the Appeals Commission, passing on each occasion the decisions for which the complainant claims to be of identical or similar content to those previously annulled in the second-instance procedure, which unreasonably prolongs the procedure and the complainant suffers damage. The Protector of Citizens initiated the procedure of controlling the legality and regularity of the RGA's work. The procedure is still

ongoing.

### *Failure to comply with court decisions*

On the other hand, in a situation where complainants are trying to protect their labour rights in court procedures, the non-compliance with final and enforceable decisions passed in favour of (former) employees creates fully justifiable feeling of legal uncertainty, which gives the impression that the violations of law may go unpunished without major difficulties. We should point out that a particular problem is the impossibility of the execution of final court decisions due to the blocked accounts of employers.

*Example:* The Protector of Citizens acted upon the complaint filed by a complainant from Banovci - Dunav who was not satisfied with the failure of her employer, the Local Community Banovci - Dunav, Stara Pazova Municipality, to comply with a court decision passed in a labour dispute, and established that the Local Community Banovci - Dunav, Stara Pazova Municipality, did not comply with the final and enforceable decision of the Appellate Court in Novi Sad, according to which the Local Community Banovci - Dunav was obliged to assign the duties and tasks to the complainant in accordance with her education, expertise and competences, compensate damages for unpaid salaries, pay the outstanding contributions for compulsory social insurance and cover the litigation costs.

After the conducted procedure of controlling the legality and regularity of the work of Local Community Banovci - Dunav, the Protector of Citizens addressed the Local Community Banovci - Dunav with the recommendation prompting it to take appropriate measures to execute the final and enforceable decision of the Appellate Court in Novi Sad. Within the given deadline to act upon the recommendation, the Local Community Banovci - Dunav informed the Protector of Citizens on the measures taken in line with the received recommendation and in order to solve the complainant's labour status. In this particular case, the complainant was offered to sign an annex to the employment contract.

### *Termination of employment*

Citizens often complain about the unlawful termination of employment. We have to mention that citizens often believe that they have been dismissed or that their fix-term employment contract has not been extended due to certain type of discrimination, which should be determined in a procedure before the competent court.

## *Conclusions*

Based on the experience and information obtained by the Protector of Citizens in analysing the complaints relating to the violations of labour rights and based on the statements of controlled authorities, it can be concluded that the amendments to certain regulations could contribute to creating better conditions for controlling the legality of employers' work and fulfillment of contractual obligations with respect to employees; it is also necessary to achieve greater efficiency in conducting misdemeanour procedures in order to punish offenders quickly and appropriately. In order to enhance the efficiency of labour inspections, it would be desirable to increase the number of inspectors, improve technical conditions for work, change regulations, with special emphasis on the need to change regulations in order to allow easier establishment and punishment of "black market" work (keeping employment contracts in the employer's business premises, registering concluded employment contracts with the competent state authority), and to give the inspectors broader powers, such as the power of requesting to see identification documents.

It should be noted that the failure to apply or misapplication of the regulations governing employment, labour and labour relations have a direct impact on the livelihood of citizens and therefore we need a constant and timely control of the application of these regulations. We also need to apply appropriate measures to prevent any kind of their misuse and to enhance sanctions for each type of violation.

### ***2.6.4. Sector of social protection***

In 2011, the citizen complaints in the field of social protection related to the so-called silence of administration or failure of first instance bodies to decide upon citizen requests for exercising their rights in the field of social protection, as well as the failure of second-instance bodies to decide upon citizen appeals within the legally prescribed deadline.

In most of these cases, the Protector of Citizens initiated the procedure of controlling the legality and regularity of the second instance body, the Ministry of Labour and Social Policy, for its failure to decide upon the appeals against the work of first instance bodies, while the complaints against first instance bodies referring to their failure to decide upon the requests for exercising the rights in the field of social protection were usually rejected as premature and the citizens were referred to the competent authorities.

#### **Failure to decide upon appeal within the legally prescribed deadline**

*Example:* The Protector of Citizens received a complaint about the work of the Ministry of Labour and Social Policy, which failed to decide on the appeal filed against the decision of the Social Welfare Centre in Preševu, within the legally prescribed deadline. Acting upon the said complaint, the Protector of Citizens initiated a procedure of controlling the legality and regularity of the work of the Ministry of Labour and Social Policy, after which the competent Ministry decided on the



complainant's appeal and brought an appropriate decision. The complainant informed the Protector of Citizens that the Ministry of Labour and Social Policy rectified the errors pointed out in the complaint, after which the procedure of control was suspended.

### *Pension and Disability Insurance*

In April 2011, the Protector of Citizens referred to the Republic Fund for Pension and Disability Insurance (hereinafter referred to as: the Fund) the recommendations for removing the identified deficiencies in its work. More specifically, based on the conducted procedure of controlling the legality and regularity of the work of the Fund, certain deficiencies were identified, which, due to their frequency, could not be considered the failures of individual organisational units.

The following deficiencies have been established:

#### *Duration of procedures before the Fund's first and second instance bodies is unreasonably long*

The Protector of Citizens has established that the complainants wait for several months or even years for decisions on their requests for exercising the rights from pension and disability insurance, as well as on filed appeals. Upon the initiated procedure by the Protector of Citizens, the Fund often acted on the request and brought a decision, for which the complainant began to see the Protector of Citizens as someone who "urges" the Fund to issue a decision on retirement, which is unacceptable given the competence of the Protector of Citizens as an independent state body that protects the rights of citizens and controls the work of state administration authorities and other bodies and organisations, enterprises and institutions vested with public powers (Article 1 paragraph 1 of the Law on the Protector of Citizens).

In order to remedy the said deficiencies, the recommendation was sent to the Fund to ensure that a decision on any request or complaint is made within a reasonable time, without delay and in any event not after the legally prescribed deadline. The same rule should apply to responding to citizen letters or to official correspondence. If for objective reasons, due to the complexity of the procedure or issues raised, a decision cannot be made within the prescribed deadline, the Fund will be obliged to inform the citizen thereof and take all available measures to pass a decision as soon as possible.

#### **DIFFICULTIES IN EXERCISING THE RIGHTS TO FAMILY PENSION**

*Example:* A complainant filed a complaint about the impossibility of exercising the right to a survivor's pension for her daughter, after her father's death. The complainant noted that the foreign social insurance administration addressed the Republic Fund for Pension and Disability Insurance several times for not deciding upon the submitted request for survivor's pension, but without success. After the

initiated procedure of controlling the legality and regularity of the Fund's work, we received a statement indicating that the procedure for exercising the right to family pension had been initiated by the Czech social insurance authority in 2007 through submitting the international forms that were forwarded to the Fund's Department for Pension and Disability Insurance as prescribed by international treaties. Since not all the required documentation had been submitted, the Fund requested from the Czech social insurance authority to send the missing documentation. At the same time, the Czech social insurance authority requested a certificate of the years of service acquired by the deceased in Serbia, which was delivered to them. Since the required evidence was not received from the Czech Republic, it was requested again by the conclusion on the provision of evidence dated 17 June 2010.

Given that the procedure was initiated in 2007 and was not completed by 2010, when the complainant addressed the Protector of Citizens, the Fund was requested to comply with the received recommendation and to complete the procedure.

The Fund subsequently informed the Protector of Citizens that after the submission of incomplete evidence from the Czech authorities, on 18 October 2011 it issued a temporary decision establishing the child's right to family pension and the payment as of 27 December 2006. The decision was temporary until the Fund received the late person's military booklet and school certificates for the child who was entitled to a family pension. Thus, the procedure initiated upon the request submitted in 2007 was terminated in 2011.

***Inaccurate registry evidence results in a situation where the Fund often passes to citizens the obligation to submit data and/or re-pay contributions and thus conceals the lack of records it should administer***

Based on the allegations from the complaints and conducted procedures, the Protector of Citizens has established that the competent authorities do not have correct records of paid contributions, date of beginning and termination of insurance, insurance period, amount of paid contributions, due to which the Fund passes to citizens the obligation to submit the required data or indebts citizens with already paid contributions. In light of the identified deficiencies, it was recommended to the Fund to keep accurate and updated records of the insured persons, contribution payers and right beneficiaries and to check the accuracy of data entered in the registry records, as envisaged by law.

Furthermore, one of the big problems occurs when the contributions are not paid by the employer and the insured person is required to pay them, because the bodies responsible for controlling the payment of contributions (the Fund before 2003 and the Tax Administration since 2003) failed to act in accordance with the Law.

There is a common problem with the certificate of the years of service acquired in other republics or in other countries and the certificate of the years of service

acquired in Serbia. Some procedures last long because a foreign insurer fails to confirm the acquired years of service, in which case the Pension Fund can only send rush notes and requests to the foreign authority. In such cases not even the Protector of Citizens can terminate the procedure, because the complainant cannot be satisfied with the actions of authorities, since he/she has not received a decision on pension.

***Fund obligates citizens to repay the overpaid amounts of pension that were paid due to the Fund's omissions***

It has been noticed that the Fund's omissions lead to the situations where the complainant receives a decision replacing the temporary decision, but for the smaller amount than determined by the temporary decision. In such situations, the Fund informs the complainants that they are obliged to pay the incurred debt. In cases where the Fund's officials committed an error, which had a negative impact on the rights and interests of citizens, the Fund was advised to apologise and remedy the consequences promptly, and to inform the citizen about the right to an adequate legal remedy.

***Example: Wrongly determined pension amount by a temporary decision, complainant obligated to repay the overpaid amount***

A complainant addressed the Protector of Citizens with the complaint in which she stated that in the final decision on her pension, the determined amount was lower than in the temporary decision, for which she was obligated to repay the overpayment. The complainant further stated that she had addressed the Branch in Kruševac asking for assistance, because she was not able to repay the incurred debt, but was told that the debt must be repaid. She points out that the Branch officer explained that she should not complain because she got a "real amount of pension", and therefore she did not file an appeal.

Since Article 25 paragraph 5 of the Law on the Protector of Citizens provides that the Protector of Citizens, exceptionally, may initiate procedures even before all legal remedies have been exhausted if the complainant would sustain irreparable damage or if the complaint is related to violation of the principle of good administration, particularly incorrect attitude of administrative authorities towards the complainant, untimely actions or other violations of the rules of ethical conduct committed by the employees of administrative authorities, the procedure of controlling the legality and regularity of the Fund's work was initiated.

The Branch in Kruševac again carried out the procedure of determining, repaying and recording the overpaid amount of pension. It was established that the amount of pension had been incorrectly determined in the temporary decision as a result of erroneously determined much larger amounts of earnings in 1986 and entered as such into the registry records of active insured persons.

Bearing in mind that this complaint points to the Fund's failure, which has

already been established and for which the Protector of Citizens has sent a recommendation, the Fund was requested to comply with the received recommendation. The Fund informed the Protector of Citizens that the Branch in Kruševac had filed a lawsuit with the Municipal Court in Kruševac against the concerned person on the grounds of unjust enrichment. However, the complainant later informed the Protector of Citizens that the claim had been rejected, which has not yet been confirmed by the Fund.

The case is still pending and requires further attention and monitoring, given that the Fund, although it was found that the error had been made by the Fund's employee, has not yet informed the Protector of Citizens on the suspension of repayment.

***Fund's documents on the citizens' rights and obligations have deficiencies or do not include all elements envisaged by legal provisions***

Since Article 199 of the Law on General Administrative Procedure stipulates which elements a ruling must include, a recommendation was referred to the Fund to ensure to include all relevant facts and circumstances and concrete reasons for making a particular decision in each decision that may have a negative impact on the citizens' rights, obligations and legally based interests. The Fund should refrain from making any decision without solid grounds or individualised reasons.

***Fund officials often do not provide uneducated clients with all necessary professional assistance, behave incorrectly and discourteously, thus acting contrary to the principles of good administration***

Thus the Fund violates the provisions of the Law on Pension and Disability Insurance, which stipulate that the Fund shall provide insured persons and beneficiaries with professional assistance in the procedure of exercising the rights from pension and disability insurance and determining the years of service. Therefore, the Fund was advised to improve and enhance the work of legal aid services and to train the employees that provide citizens with professional assistance regarding the pension and disability insurance. The Fund officials should instruct the staff of organisational units on their obligation to be helpful, correct, courteous and accessible in their communication with citizens, and that they must provide citizens with information, upon their request, about the procedures they conduct.

***Citizens that addressed the Protector of Citizens to complain about the Fund experienced inconveniences for that***

Some complainants claimed that the Fund officers expressed their discontent with the fact that the citizens filed complaints with Protector of Citizens against the Fund, and in some cases they were even told that their rights would have been realised

before if they had not addressed the Protector of Citizens. In order to overcome the aforementioned failures in work, the Fund Director will send a written notice to all organisational units reminding them that citizens must neither suffer any consequences nor be reproached for using their legal right to address the Protector of Citizens or for providing information relevant to the procedure conducted by the Protector of Citizens. It is necessary to impose disciplinary sanctions for any conduct contravening the obligation to protect and respect the rights of citizens.

***Cases where decisions were issued on determining the capacity of an insured person based on self-employment and the Fund initiated ex officio revision procedures or renewal of individual procedures, requiring evidence on self-employment***

Bearing in mind that the revision and renewal of procedure are regulated by the provisions of the Law on Pension and Disability Insurance and the Law on General Administrative Procedure, and that those procedures are still pending, the complaints were rejected as premature. The rejection is supported by an explanation that the Protector of Citizens expects that the Republic Fund for Pension and Disability Insurance will carry out the initiated revision and renewal procedures entirely in accordance with its legal powers and competences and adopt adequate, legally based decisions, and that only after the completion of procedures conducted by the competent Fund's bodies and possible use of available legal remedies can the possibility of filing a complaint with the Protector of Citizens be used in accordance with law.

***Actions of the Republic Fund for Pensions and Disability Insurance according to the Protector of Citizens' recommendations***

The Republic Fund for Pension and Disability Insurance submitted, within the deadline for acting upon recommendations, a Notification on taken measures and actions according to the recommendations. The said Notification states that all the Fund's activities were aimed at achieving as good results as possible in terms of issuing timely decisions upon submitted requests. It is further stated that the first instance authority's performance in 2010 and the first five months of 2011 indicate that the number of cases solved within the legally prescribed deadline was on the increase, while the number of unsolved cases dropped.

In order to inform the citizens, in a timely fashion, about the impossibility of solving their requests within the legally prescribed deadline, the following instructions were issued: the Instruction of the Fund's Directorate on Obligatory Information of Clients, upon received interventions, regarding the issuance of a legal act upon submitted requests for exercising the right of pension and invalidity insurance dated 14 June 2011, which refers to the first-instance authority, and the Instruction of the Fund's Directorate on Obligatory Information of Clients, upon received interventions, regarding the issuance of a legal act upon submitted requests for exercising the right of pension and invalidity insurance dated 14 June 2011, which refers to the second-instance authority.

In the submitted Notification, the Republic Fund for Pension and Disability Insurance mentioned that in the period 1 July 2011 – 3 December 2011 it would conduct the activities of correcting and supplementing the explanations in the templates used for issuing decisions on the rights from pension and disability insurance.

As regards the failure to provide uneducated clients with professional assistance and the incorrect treatment of clients by the Fund's staff, the Fund also performed activities aimed at improving and advancing the work of legal aid services and their staff who provide professional assistance and who are in direct contact with citizens; in this regards the Fund's Directorate continues to insist on already undertaken measures and disciplinary procedures against the employees who fail to fulfil their duties in a proper manner.

After giving the recommendations, the Protector of Citizens would inform the Fund about the received complaints concerning the established failures. The Protector of Citizens submitted to the Fund a list of 40 complaints received in the period from the referral of recommendations (April 2011) to 30 September 2011, so that the Fund could provide notifications about the phase of procedure in each individual case. Out of these 40 complaints, 7 refer to imposing an obligation on the citizens to repay the overpaid amount of pension, which was the result of a Fund's error, while the remaining 33 refer to the unreasonably long duration of procedure. The actions upon these complaints are being monitored.

### ***2.6.5. Sector of health***

#### ***Special report of the Protector of Citizens on health sector***

The Protector of Citizens would like to contribute to the understanding of the situation concerning the exercise of citizens' rights to health insurance and adequate health care, on one hand, and the difficulties and problems faced by medical institutions in their work, on the other hand, by sharing the experience acquired during the procedures conducted upon citizen complaints. Also, the Protector of Citizens would like to present the facts obtained by conducting his own research through the procedures of controlling medical institutions and to recommend measures that would prevent, today and in the future, the cases that would deprive citizens/patients and/or medical doctors of certain rights or that would render their realisation difficult.

In 2011, the number of received citizen complaints concerning the rights from health insurance was on the increase, as well as the number of citizen complaints regarding the exercise or deprivation of the right to medical care by health care institutions, and also by the Ministry of Health. Health care providers addressed us for the impossibility of exercising their labour rights, multi-year work on a fix-term contract, lack of approval for specialisation, etc. The trade unions of health care providers have filed the complaints claiming that the regulations of medical institutions, employment contracts and annexes to employment contracts are not in accordance with the laws and regulations as regards the salaries of health care providers, while the chosen general practitioners are overloaded with the imposed

duties of keeping administrative records, which directly reduces the quality of health services provided to patients.

The Protector of Citizens, civil society and associations of patients point to the problems faced by citizens in the exercise of the rights to health insurance and health care. Moreover, citizens emphasise an inappropriately long duration of court procedures initiated upon the claims for determining the responsibility of health care providers for allegedly committed diagnostic or medical errors that resulted in the death of patients.

In 2011, the citizens addressed the Protector of Citizens also with the complaints related to the work and actions of medical chambers.

The general impression is that the Protector of Citizens has established satisfactory cooperation with the line ministry and the Minister of Health, for the purpose of contributing to the improvement of work of this authority towards more complete, proper and efficient exercise of the citizens' rights and freedoms, and strengthening public confidence in state institutions.

### *I. Health insurance rights*

In their complaints, citizens point out that they have been denied certain rights to health insurance or that these rights have been limited by the actions of competent RZZO<sup>101</sup> branches, especially concerning the registration for health insurance, referral to treatment in an institution of secondary or tertiary level, reimbursement of travel and other expenses incurred by treatment in the facilities outside the place of residence.

#### *1. Difficulties in exercising the right to health insurance*

*Example:* Having acquired the employment status, the complainant tried to submit an application for health insurance with the corresponding documentation to the Republic Health Insurance Institute, Branch in Novi Sad. However, he was told that his documentation was incomplete after which he unsuccessfully kept trying to obtain his health card. During that period, he had never been informed what exactly he had to submit along with the insurance application. Some of the Branch staff treated him in an extremely impolite manner.

When the Protector of Citizens addresses the Republic Health Insurance Institute, the complainant exercised his right to health insurance and obtained his health card, after which the Protector of Citizens suspended the procedure.

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<sup>101</sup> By the Law on the Amendments to the Law on Health Insurance (*Official Gazette of RS*, No. 57/11), which entered into force on 9 August 2011, the name of the Republic Health Insurance Institute (RZZO) was changed into the Republic Health Insurance Fund (RFPIO), and therefore both names are used in this report, depending on when a complaint was received.

## ***2. Certification of health cards with stamps***

The number of citizens addressing the Protector of Citizens increased particularly in late 2011 at the time of certification of health cards for the following period, after the information had been published in the media that in order to certify health cards it was necessary to have previously chosen their general practitioner. In their submissions, the citizens emphasised that such action of RZZO branches was unlawful.

The Protector of Citizens sent written notifications to the complainants explaining that there were no grounds to act upon the filed complaints and pointing to the fact that the amended Law on Health Insurance<sup>102</sup> changed the procedure of insurance document certification. The Law stipulates that the certification of health cards shall be carried out by the branches on the basis of available data and evidence on paid due contributions in accordance with law, and that the subsequent certification of documents can be made *provided that the insured person opted for a general practitioner* in accordance with this Law and regulations adopted to implement this Law. All by-laws regulating health insurance had to be aligned with the said Law within the prescribed deadline, which was done by the RZZO by modifying the Rulebook on health insurance document and separate document for using health care. At the same time, the complainants were instructed that if they found that these regulations, the Law and by-laws, were inconsistent with the Constitution of the RS, they could submit to the Constitutional Court an initiative for assessment of their constitutionality.

## ***3. Uneven practice of first-instance medical commissions of the Republic Health Insurance Fund in approving the referral for treatment at tertiary level institutions***

*Example:* The complainants claim that their right to treatment has been violated because the first-instance medical commissions of territorially competent branches in late 2011 gave negative opinions for referral to inpatient treatment in the Clinical Center Niš. They also claim that the patients with identical medical conditions, multiple sclerosis, were referred previously, without any problems, to treatment in this medical institution, with the prior consent of a competent medical commission. The complainants point out that the branches informed them orally that *patients were no longer sent to medical intervention in the Clinical Center Niš*.

The complaint allegations indicate that the RZZO branches in these particular cases may have been inconsistent with the previous practice and restrictive in terms of the rights of citizens to health care, and taking into consideration the circumstances of complaint (the law qualifies the said disease as a disease of particular socio-medical significance), the Protector of Citizens has considered it reasonable to apply Article 25 paragraph 5 of the Law on the Protector of Citizens and initiate the procedure of controlling the legality and regularity of work concerning the respect for citizen rights and adherence to the principles of good administration in the work of medical

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<sup>102</sup> Official Gazette of RS, No. 107/05, 57/11.



commissions or acting city branches of the Republic Health Insurance Fund, even before all legal remedies have been exhausted.

The procedure is ongoing. Special attention will be devoted to the consideration of whether the medical commissions in these particular cases acted in the same way as they act or have acted in similar legal and factual situations, and if not, whether they gave substantial and legally based reasons for different treatment. Hence, it will be crucial to establish whether the complainants have been treated in accordance with the principle of equality of citizens in the exercise of rights guaranteed by the national legislation.

#### ***4. Failure to decide upon appeal in the procedure of reimbursement of travel costs incurred during treatment***

*Example:* A complainant filed the complaint pointing to the problems faced in the procedure of reimbursement for travel expenses incurred during the treatment of his minor son. He states and proves with supporting documentation that he filed an appeal against the decision of the Pomoravlje District Branch in Jagodina with the Director of the Republic Health Insurance Institute, but received no response by the date of filing the complaint.

The complaint was rejected as premature because the complainant, before addressing the Protector of Citizens, had not used all available legal remedies to protect his rights. At the same time, the complainant was informed that in case that the second-instance authority failed to issue a decision in the period of seven days after his subsequent request filed with the second-instance authority, after the expiry of that period, he had the possibility of filing a complaint with the Administrative Court for the failure to issue a requested decision, thus instigating an administrative dispute.

#### ***5. Failure to refer to rehabilitation***

*Example:* A complainant was dissatisfied with the actions of first and second instance medical commissions of the RZZO Branch for Srem Administrative District, and with the manner and procedure of exercising the right from compulsory health insurance and the right to health care in general, and therefore filed a complaint with the Protector of Citizens expecting a solution to the problems faced after a complicated surgery.

Having considered the complaint allegations, submitted documentation and positive legislation, the Protector of Citizens found no failures in the work of the acting authority. The complainant was informed that her complaint was rejected as unfounded and it was also pointed out that the Protector of Citizens was not authorised to give opinions from the competence of other bodies, in this particular case, of a professional medical body, and that the Protector of Citizens was not a specialised body with necessary expertise.

## ***II. Health care rights***

In 2011, the Protector of Citizens received a large number of complaints by the citizens claiming to have been denied some of the health care rights or believing not to have been enabled to exercise these rights in the appropriate extent and manner. Some complaints pointed to an extremely incorrect attitude of health care providers towards complainants. Moreover, an increased number of complaints were received in which the citizens claimed that the failures in treatment, diagnostic and/or medical errors had resulted in certain consequences or even death of patients. A number of complainants sought advice from the Protector of Citizens on whom to address to protect their rights, while others expected the Protector of Citizens to initiate appropriate court procedures to determine the liability of acting health care providers. The complainants also complained about the work and actions of medical chambers, while the employees of medical institutions, as well as trade unions, addressed the Protector of Citizens seeking the protection of labour rights.

### ***1. Denial of health services and inaction of the protector of patients' rights***

*Example:* The Protector of Citizens received a complaint, by which the complainant expressed his dissatisfaction with the inaction of the protector of patients' rights as well as the inaction of medical doctors in the Institute for Cardiovascular Diseases "Dedinje", in Belgrade.

After examining the complaint and supporting documentation, it was established that the complainant, dissatisfied with the conduct of medical doctors in this medical institution, had filed a complaint with the protector of patients' rights and at the same time, a complaint with the Protector of Citizens.

Given the fact that, in this particular case, before filing a complaint with the Protector of Citizens, the complainant had not tried to realise and/or protect the rights before the competent administration authorities - the protector of patients' rights and the Ministry of Health, he was notified that his complaint was premature.

### ***2. Extremely incorrect conduct of health care providers***

*Example:* The Protector of Citizens received a complaint, by which the complainant was seeking protection from this state body, or realisation of the rights and freedoms guaranteed by the legal system of the Republic of Serbia. The complainant states that when she brought her underage daughter to an ophthalmologic examination in the Health Centre "Dr Simo Milošević" in Belgrade, she was subjected to harassment by a nurse from that department, while the medical doctor, who was present all the time, did not react at all.

Considering the complaint allegations, the Protector of Citizens found that it indicated the particularly unfair treatment of the complainant and her minor daughter, and the denial of the citizen right to receive health care whilst respecting the highest possible standards of human rights and values, as guaranteed by the national legislation.

The Protector of Citizens took into account that the allegations of the complaint indicated a substantially unlawful manner of work of the medical institution that on a daily basis violated the rights of a large number of citizens/patients, and found it reasonable to apply Article 25 paragraph 5 Law on the Protector of Citizens and initiate the procedure of controlling the legality and regularity of work in terms of respecting citizen rights even before the exhaustion of all available legal remedies.

The Health Centre submitted a statement informing the Protector of Citizens that the Director of this medical institution, immediately upon learning of the case, had held a meeting with the staff of the Ophthalmology Department and explained that the employees must treat all users of health services with respect and that she had apologised to the complainant in a phone conversation and ensured her that this or similar event would not happen again in this medical institution. The same statement noted that the nurse had been fined.

### *3. Diagnostic / medical error*

Complainants often address the Protector of Citizens with the opinion that during their treatment or treatment of their family members a wrong diagnosis or committed medical error resulted in certain consequences (worsening of the state of health and the like), or even in patient's death.

#### **WRONG DIAGNOSIS**

*Example:* A complainant filed a complaint pointing to the failures in the work of medical doctors in the Emergency Centre of the Clinical Centre of Serbia, and the Clinical Hospital Center Zvezdara, in establishing the diagnosis and treatment of her mother, now deceased. At the same time, she pointed out that before filing the complaint, she had not addressed any other authority in order to exercise or protect her rights (either within the medical institutions or outside of them) because, as she said, she doubted their objectivity. She said that she had seen the Protector of Citizens as the authority of confidence which, according to her belief, could make a difference in the health system in Serbia.

A written notice was sent to the complainant pointing out that the Protector of Citizens could only perform duties within his competences by acting in accordance with the constitutional and legal power, and that it was necessary to first try to protect her rights by initiating appropriate procedures before the protector of patients' rights and then possibly by addressing the health inspection of the Ministry of Health.

Since the complaint shows that in her opinion during her mother's treatment the health problem was not promptly diagnosed or that a mistake was made, the complainant was informed that the Law on Health Care stipulated that the professional error involved unconscientious treatment or neglect of professional duties in providing health care or non-compliance with or lack of knowledge about the established rules and professional skills in providing health care, leading to impairment, deterioration, injury, loss or damage to the patient's health or body parts.

It was also pointed out that the medical doctor was liable for medical

errors arising from his/her unconscientious conduct, that is - the errors resulting from the violation of due diligence standards or the lack of necessary knowledge and skills. There are several types of liability for a medical error - civil, criminal, misdemeanour or disciplinary. The responsibility for the professional error committed by a medical doctor can be determined in the procedures before different authorities - judicial and/or professional or guild associations, and depending on the competences of different authorities, they can determine different forms of liability, which entail different sanctions. The complainant was informed in this regard.

#### ***4. Complaints concerning the protection of labour rights***

The employees in health institutions filed complaints with the Protector of Citizens, indicating the deprivation or limitation of certain labour rights.

##### ***LACK OF APPROVAL FOR SPECIALISATION OF EMPLOYEE***

*Example 1:* A complainant addressed the Protector of Citizens expressing her dissatisfaction with the actions of the Health Centre Dr Jovan Jovanović Zmaj in Stara Pazova, where she was permanently employed as medical doctor, because despite numerous applications, she did not obtain an approval for specialisation in clinical biochemistry. She requested from the Protector of Citizens to help her, "in cooperation with the Ministry of Health, to be sent to specialisation and to change the decision on rejecting her application". The complainant was informed that the Protector of Citizens was not authorised to represent citizens before other bodies or to draft proposals or other legal acts on their behalf, and did not have the power to change decisions of competent bodies.

##### ***ARBITRARINESS OF HEALTH CARE PROVIDERS***

*Example 2:* A complainant addressed the Protector of Citizens indicating that the improper conduct and arbitrariness of certain health care providers in the Institute for Orthopaedic Surgical Diseases Banjica violated the rights of employees and that his employment had been terminated unlawfully. The complainant was informed that, in order to protect his right to work and labour rights, he had the possibility to file a claim to the competent court for cancelling the decision of employment contract termination, and to address the Labour Inspectorate with the request to postpone the execution of the decision in question.

The unions of health care providers addressed the Protector of Citizens several times in 2011, indicating to the problems faced by the employees of medical institutions, primarily in exercising their labour rights (multi-year engagement on a fix-term contract, inconsistency of employment contracts with laws and by-laws, overloading of chosen general practitioners with administrative duties, etc.).

In 2011, the Protector of Citizens paid special attention to the control of regularity and legality of medical institutions in providing health care services during their additional work. The Protector of Citizens carried out the procedures of controlling the regularity and legality of the work of medical institutions by acting upon received complaints, but also upon own initiative.

***Providing health care services in the Health Centre Voždovac in Belgrade as part of additional work***

*Example:* In early 2011, the Protector of Citizens received a complaint pointing to the allegedly extremely incorrect conduct of the Health Centre Voždovac when the complainant tried to exercise her rights from health insurance. The complainant stated that she had noticed certain changes in her breast and had gone for an examination to her chosen general practitioner in the Health Centre Voždovac where she had a medical record. After examination, the chosen general practitioner referred her to a specialised examination - breast ultrasound. Based on the referral for specialised examination, issued in December 2010, her examination was scheduled in the Service for Radiological and Ultrasound Diagnostics almost in six months' time. When the patient asked whether it was possible to do the examination sooner due to the nature of disease, she was informed that a breast ultrasound examination could be done within a few days, but during the additional work, "outside normal working hours of medical doctors", in the same medical institutions, as a separately charged service.

The complainant believes that, given all the circumstances, she was in fact forced to schedule an examination within the additional work, in order to avoid waiting for 6 months. A health care provider from the Service for Radiological and Ultrasound Diagnostics informed her that she could be examined at a particular time. In a new phone conversation, the health care provider changed her examination time. The patient went that day to the scheduled examination, and after having received the service, she was charged and given both invoice and fiscal receipt indicating the originally scheduled time of examination.

Acting upon the received complaint, the Protector of Citizens initiated the control of regularity and legality of the work of the Health Centre Voždovac in Belgrade and established failures in the work of this medical institution violating the rights of citizens, both of the complainant and other citizens, as well as the rights of employees in this medical institution.

The violations of citizen rights are the consequences of illegal and improper manner of organising the additional work for providing health services - X-rays and ultrasound examinations. In this medical institution, the patients with a doctor's referral were neither provided, within the prescribed period of 30 days, with the services of specialist/consultative and diagnostic/ultrasound examinations, nor were the patients properly informed of their rights in case the examination could not be done within 30 days, but the examinations were scheduled in up to 8 months' time, while at the same

time the patients were offered to be examined during the additional work of medical doctors and other medical staff, within a few days, and to pay for that service separately. The additional work was performed during normal working hours of the institution. It was also performed without the legally prescribed approval of the Ministry of Health, while the contracts on additional work were concluded with the radiologists, who normally work part time because the working conditions are detrimental to their health.

In order to remedy the identified deficiencies, the recommendations were sent to the Health Centre to immediately cease the additional work without the required formal approval from the Ministry of Health. And even after obtaining the approval, the Health Centre Voždovac should suspend the additional work if and when it determined that any of the requirements for approval no longer existed, especially if the Health Centre formed a scheduling list with the scheduling time longer than 30 days for the patients with compulsory health insurance, and it should inform the Ministry of Health thereof.

It was also recommended that the Health Centre should reimburse to the citizens/patients the amount of money they paid for medical services covered by compulsory health insurance, which were provided within the additional work since 1 June 2010 (when the Health Center introduced the additional work without the required approval of the Ministry of Health). The Director was recommended to send a written instruction to all organisational units that performed diagnostic examinations - laboratory tests, x-ray examinations and ultrasound examinations, explaining to the employees the obligation to provide verbal information to patients about their rights in the case that the required medical services could not be provided within 30 days.

The Health Centre implemented all the recommendations received from the Protector of Citizens.

### *Procedures of controlling medical institutions upon own initiative*

The information obtained by the Protector of Citizens during the procedure of controlling the work of the Health Center Voždovac in Belgrade and the Oncology Institute of Vojvodina in Sremska Kamenica indicates a breach of regulations in certain medical institutions. This information drew much attention from the public and from the professional associations.

The Protector of Citizens obtained the baseline information from the Ministry of Health of the Republic of Serbia.<sup>103</sup> More specifically, in order to determine whether the Ministry of Health acted in accordance with the statutory obligations in respect of supervision over the work of medical institutions that organise and perform additional work, the Protector of Citizens requested information on the number of cases in which the Ministry of Health in the previous year carried out the supervisory control of the medical institutions covered by the Network Plan, i. e. the control of organising and carrying out additional work, as well as precise data on these medical institutions. At the same time, the Protector of Citizens requested information on the outcome of the

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<sup>103</sup> 117-370/11 - Protector of Citizens - Ministry of Health of RS.

conducted procedures and appropriate relevant documentation. It also requested information on the medical institutions whose requests for determining eligibility to perform additional work were approved by the Ministry after 1 August 2010 by giving a positive opinion, and the periods to which the given opinions referred.

The act of the Ministry of Health No. 072-00-00145/2011-02 of 14 March 2011 states that *the targeted controls related to additional work were conducted in 2008 and 2009 for investigating whether and in which institutions the additional work was organised and for which medical services, and that in 2010 the inspectors did not carry out any targeted controls. At the same time, the act was supported with "... some of the measures that the health inspectors have taken..."*. However, the precise information on the required data was not provided.

Taking into consideration that the required information clearly indicates that the Ministry of Health, as the authority responsible for exercising supervision over the legality of the work of medical institutions within the meaning of the Law on Health Care<sup>104</sup>, did not take necessary actions within its purview, the Protector of Citizens paid special attention to data collection concerning the organisation of extra work and managing the scheduling and waiting lists for the provision of health services, as well as the work of the protector of patients' rights.

Starting from the Constitution and legally established obligations and duties of the Protector of Citizens to protect and promote human rights and freedoms,<sup>105</sup> in February/March 2011 the Protector of Citizens conducted the procedures of controlling the work of five medical institutions. The primary purpose of the conducted procedures was to determine whether they committed errors in providing patients with medical services in these medical institutions, which resulted in violations of the rights of citizens. The Protector of Citizens thereby particularly had in mind that the Law on Health Care stipulates that every citizen has the right to health care whilst respecting the highest possible standards of human rights and values, or has the right to physical and mental integrity and security of his/her person, and the appreciation of his/her moral, cultural, religious and philosophical beliefs,<sup>106</sup> and also took into account the patients' right to all kinds of information regardless of their health status, health care service or the way of using it, as well as to any information available on the basis of scientific research and technological innovation (Article 27).

The criteria for the selection of medical institutions to be controlled were different levels of health care activity - from primary to tertiary level, and various administrative districts. The procedures of controlling the regularity and legality of work were carried out in the following medical institutions:

1. Clinical Centre Niš<sup>107</sup>,

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<sup>104</sup> Article 242 of the Law on Health Care (*Official Gazette of RS*, Nos 107/05 ... 99/10).

<sup>105</sup> The Law on the Protector of Citizens (*Official Gazette of RS*, Nos 79/2005 and 54/2007), Article 1, paragraph 2.

<sup>106</sup> Article 25 paragraph 1 of the Law on Health Care

<sup>107</sup> 117- 225/11 - Protector of Citizens - Clinical Centre Niš

2. Health Centre Šabac<sup>108</sup>,
3. General Hospital Užice<sup>109</sup>,
4. Health Centre Sveti Luka Smederevo<sup>110</sup> and
5. Health Centre Kladovo<sup>111</sup>.

The procedure of controlling the regularity and legality of the work of medical institutions included:

- Informing the medical institutions about the initiated procedure;
- Visiting the medical institution and holding a meeting between the representatives of the Protector of Citizens' Secretariat and the Director of the institution;
  - Accessing the documentation and data that the medical institution holds and which is relevant to the procedure conducted by the Protector of Citizens and the achievement of the goal of preventive action;
  - Making a note on the conducted control of the medical institution and delivering it to the medical institution;
  - Reviewing the collected documents and requesting for subsequent submission of additional documentation;
  - Assessing the regularity of the work of medical institution in organising and carrying out additional work, as well as managing the waiting/scheduling lists for the provision of medical services;
  - Notifying the medical institution of the outcome of procedure.

The obtained information:

*Additional work* - The Clinical Center Niš and the General Hospital Užice perform additional work. The Clinical Center Niš provides health services within the additional work without the previously obtained approval of the Ministry of Health for the Centre's Additional Work Plan. By its act No. 130-01-0046/2010-02 of 15 July 2010, the Ministry of Health established that the General Hospital Užice fulfilled the requirements for the organisation of additional work in the Orthopaedics and Traumatology Service and the Ophthalmology Service.

The remaining three medical institutions, the Health Centre Šabac, the Health Centre Sveti Luka Smederevo and the Health Centre Kladovo, provided health services only within normal business hours. The Directors or Assistant Directors mentioned that they had not organised additional work because they thought it would cause many difficulties and could not be done entirely in accordance with the legislation.

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<sup>108</sup> 117-371/11 - Protector of Citizens- Health Centre Šabac.

<sup>109</sup> 117-519/11 - Protector of Citizens - General Hospital Užice.

<sup>110</sup> 117-520/11 - Protector of Citizens - Health Centre Sveti Luka Smederevo.

<sup>111</sup> 117-646/11- Protector of Citizens - Health Centre Kladovo.



*Waiting lists/scheduling lists* – The examinations do not have to be scheduled in the HC Kladovo and the HC Šabac, while in the HC Sveti Luka patients do not wait longer than 30 days either for first or control medical examinations. In the General Hospital Užice, if it is not possible to provide a health service within the next 30 days, certificates are issued to patients and relevant records are neatly kept.

The Clinical Centre Niš keeps the *waiting lists* for the provision of health services in the Radiology Centre, and the patients wait for magnetic resonance imaging for about two and a half months, for a neck CT about 20 days and nearly 2 months for a CT of the whole body.

*Human resources* – All medical institutions emphasised the lack of medical doctors of all specialties, mostly radiologists, but also general practitioners, pathologists, gynaecologists and others.

Moreover, in all health facilities we obtained identical information regarding the referral of medical doctors to specialisations, provision of adequate replacement during medical specialisation and return after completed specialisation. To be exact, the specialisation of certain profile is approved to a medical institution only because that particular medical institution needs a particular specialty. The professional development plan is adopted by the medical institution on the basis of human resources development plan for health care providers adopted by the Minister. The medical institution passes a decision on referring medical doctors to specialisation, which is to be approved by the Minister, usually after conducting an internal competition. The medical institution and the specialising medical doctor conclude a contract on the referral to specialisation. The duration of doctor's absence from the medical institution depends on the type of specialisation. The Staff Rationalisation Commission of the Ministry of Health does not recognise the doctor's absence due to specialisation as a reason for increasing the number of employees (the specialising doctor remains employed in the medical institution and is included in the number of employees, even though physically absent). During his/her absence, the medical institution often concludes a fix-term employment contract with another doctor. The Republic Health Insurance Institute does not approve the funds for the payment of salaries for the doctors replacing the absent specialising doctors, so that the medical institutions provide the funds for their salaries from own sources.

The representatives of medical institutions state that a particular problem arises when the doctor, after completed specialisation does not comply with the contractual obligation and fails to return to the medical institution that referred him/her to specialisation, despite being referred to a particular specialisation exclusively for the needs of that medical institution.

*Cooperation with the line ministry* – the representatives of medical institutions, except the HC Kladovo, stressed that the Ministry of Health did not show the understanding for solving their understaffing problem. They wait very long for the Staff Rationalisation Commission to respond to their requests for staff increase approval, and they usually receive negative responses.

According to the representatives of medical institutions, the civil servants of the Ministry of Health were giving them oral explanations contrary to law. In the immediate supervision, the representatives of several medical institutions, such as the HC Voždovac, were given verbal recommendations on the performance of additional work. Specifically, the information about the possibility of unhindered continuation of additional work after the expiry of previously obtained approval was received "*from a person from the Ministry who is responsible for additional work*" at the meeting of the representatives of the Ministry of Health with the representatives of medical institutions held in April or May 2010 in the Institute for Public Health Dr Milan Jovanović Batut.

The Ministry fails to respond to the requests of medical institutions for approving their Additional Work Plans, even after several months. For example, the request of the Clinical Center Niš and the General Hospital Užice (for MRI), submitted in November 2010, were not answered to the date of supervisory control.

The Health Inspectorate carried out a supervisory control of all medical institutions, but additional work was not the object of any control.

*Cooperation with the Republic Health Insurance Institute* – The medical institutions did not mention the insufficient cooperation with the RZZO. However, by reviewing the documents obtained from the Clinical Center Niš, it was found that the RZZO signed a contract with this medical institution on providing health services covered by compulsory health insurance, for which the waiting lists were established, although at the time of signing the contract the medical institution did not meet the basic requirements for the performance of additional work.

*Protector of patients' rights* – In all medical institutions, the lawyer handles patients' complaints in addition to other activities. In the HC Kladovo, the protector of patients' rights is the only lawyer in that medical institution.

The method of handling complaints and the responses sent to patients vary substantially, both in terms of form and content. The actions of some protectors of patients' rights, upon received complaints, such as in the Clinical Centre Niš, are limited to forwarding a copy of the complaint to the medical doctor or other health care provider to whom it refers, and the response sent to the patient without any findings.

The examples of good practice are the actions of the protectors of patient's rights in the HC Šabac, the HC Sveti Luka Smedrevo and the HC Kladovo, where the procedure is initiated upon received complaints in which the relevant facts are established to determine the grounds for complaint and the patient is informed about the findings and instructed on legal remedy.

The number of received patients' complaints in 2010 varies from 7 (Health Centres Kladovo and Smederevo) to 50 (Clinical Centre Niš).

All of them regularly submit periodic reports, six-month and annual reports, to the Ministry of Health. The contents of annual reports vary, but all of them include the

number of written complaints received from patients in the reporting period. However, only the reports of the protectors of patients' rights from the HC Kladovo and the HC Sveti Luka Smederevo contain clearly presented data on the registration number of complaint, date of receipt, name of patient, subject matter, undertaken measures and date of response.

We were informed in all medical institutions that they had never received any feedback, nor did they know whether the Ministry processed or systematised these data in any way or for which purpose they were used.

Since the moment of establishing the protector of patients' rights, first in 2002 by the decision of the Minister of Health, and later when the obligation of establishing a protector of patients' rights in all medical institutions was prescribed by law, the Ministry of Health has organised only two instructive meetings with them.

The Protector of Citizens' Secretariat carefully reviewed the documentation obtained during the procedure of direct supervisory control of medical institutions. The compliance of obtained documents with the positive legal regulations governing the right to health insurance and health care was particularly assessed. After examining the received information and reviewing the submitted documentation, in order to assess the regularity and legality of the work of Clinical Centre Niš, the Protector of Citizens still needed clarification of certain issues related to the performance of additional work in this medical institution, and therefore requested additional documentation. Upon receiving complete documentation, it was observed that the Republic Health Insurance Institute signed a contract with this medical institution for providing health services covered by the compulsory health insurance, for which the waiting lists were established, within the additional work, although at the time of signing the contract the medical institution was not meeting the basic requirements for starting to perform additional work. The RZZO was requested to give a statement on these circumstances.

*Assessing the regularity of the work of medical institutions* - As mentioned above, during the procedure for controlling the regularity of the work of medical institutions, special attention was paid to investigating the organisation and performance of additional work, and administering the waiting/scheduling lists for the provision of medical services.

In order to be able to examine the regularity of the work of medical institutions in organising and performing additional work, the Protector of Citizens also reviewed the laws and by-laws regulating these fields.

The provisions of Article 199 (applied as of 1 December 2010) and Article 200 (applied as of 1 December 2010) *of the Law on Health Care stipulate that* the health care providers employed in a medical institution or private practice, working full time, shall be allowed to perform certain health activity in their profession with their employer, or with other employers, outside normal working hours, based on the signed contract on additional work with the director of medical institution or founder

of private practice. At the same time, it is stipulated that the contract for additional work may be concluded, *inter alia*, for the provision of health care services that are provided by the medical institution and covered by the compulsory health insurance, for which the qualified staff cannot be provided otherwise, as well as for the provision of health services that the medical institution provides for the persons who do not have the status of insured persons in accordance with the law governing health insurance. The employed health care providers who perform additional work under the contract are allowed to perform these tasks in the total time that cannot exceed one-third of the full-time.

Article 25 of the same Law prescribes that every citizen has the right to be provided with health care whilst respecting the highest possible standards of human rights and values, and has the right to physical and mental integrity and security of his/her person, and the appreciation of his/her moral, cultural, religious and philosophical convictions. At the same time, the Law provides for the patients' right to all kinds of information regardless of their health status, health care service or the way of using it, as well as to any information available on the basis of scientific research and technological innovation (Article 27).

The Rulebook on the way, procedure and requirements for performing additional work by health care providers in medical institutions or private practice regulates way, procedure and requirements, as well as other issues relevant to the organisation and performance of additional work of health care providers in medical institutions or private practice. The health care providers employed in medical institutions or private practice, who work full time, may perform certain tasks in their profession with their employer or other employers, outside normal business hours – additional work, on the basis of contract on additional work concluded with the director of medical institution or the founder of private practice (Article 2 of the Rulebook). The Rulebook provides, in the same way as the Law on Health Care, which types of health care services may be included in a contract on additional work, which are not covered by the compulsory health insurance in terms of substance, volume and standards, or which are not provided in accordance with the ways and procedures envisaged by the compulsory health insurance; which health services are provided by a medical institution within the compulsory health insurance, for which the qualified staff cannot be provided otherwise and for the provision of health care services that a medical institution provides to the persons without the status of insured person in accordance with the law governing health insurance (Article 2, paragraph 2). The medical institution or private practice is obliged to organise additional work in accordance with the law governing health insurance and this Rulebook (Article 2, paragraph 3).

The Ministry determines whether the medical institution from the Medical Institutions Network Plan fulfils the requirements for organising additional work, established by the Law and this Rulebook, *or the requirements for attaining the goals and tasks of additional work. The medical institution may commence the performance*

*of additional work when the Ministry establishes that it meets the prescribed requirements (Article 5 of the Rulebook). The Rulebook provides that the medical institution may provide those health care services within the additional work that are not covered by the compulsory health insurance funds in accordance with the Law on Health Care (Article 9).*

*The Law on Health Care* establishes a circle of natural persons covered by obligatory insurance – insured persons (Articles 17 – 22), and the health care services covered from the funds of compulsory health insurance. The provisions of Article 45 of this Law determine the percentages of health service prices covered from the funds of compulsory health insurance for the specified rights to which the insured persons are entitled. The same Law prescribes that the order of providing services/waiting lists may be established for certain types of health care services, which are provided from the funds of obligatory medical insurance and which are not urgent, depending on medical indications and the insured person's state of health, as well as the date of contacting a medical institution, whereas the waiting time must not be such as to endanger health or life of an insured person. The Republic Institute issues a general act establishing the types of health care institutions for which the waiting lists are established, as well as the criteria and standardised measures for the assessment of patient's state of health and placing on the waiting list, the longest time of waiting for a health care service, necessary data and methodology of establishing waiting lists (Article 56, paragraphs 1 and 2).

*The Rulebook on the way and procedure of exercising the rights from the compulsory health insurance* provides the list of health care services for which the waiting list may be established (Article 64, paragraph 3).

The organisation of health insurance is regulated by the *Law on Health Insurance*, which stipulates that the Republic Health Insurance Fund shall ensure and implement the compulsory health insurance. The Republic Health Insurance Fund shall execute public powers in providing and implementing health insurance, as well as in deciding about the rights and obligations under the compulsory health insurance, in accordance with this Law (Article 208). In order to ensure the implementation of health insurance, the branches and Provincial Institute shall be established in the territory of the Republic of Serbia (Article 210, paragraph 1). The Law and the statute of the Republic Institute shall regulate the powers and responsibilities of branches, territorial organisation of branch offices, powers and responsibilities of the Provincial Institute, and other issues relevant to the work of the branches and the Provincial Institute (Article 210, paragraph 4).

The provisions of Article 186 of the Law on Health Insurance stipulates the obligation of the Republic Health Insurance Institute to organise and carry out the control of the implementation of contracts concluded with health care providers and the implementation of contracts concluded between the branches and health care providers. *The Rulebook on controlling the implementation of contracts concluded with health*

*care providers* regulates the organisation, method and procedure for the implementation of contracts concluded between the Republic Institute and the health care providers.

*The Law on Health Care* guarantees the right to complaint to the patient who has been denied a health care service or who is not satisfied with the provided health care service or actions of health care providers or other employees of medical institutions. The complaint may be submitted to the managing health care provider or the person employed in a medical institution in charge of protecting patients' rights - the protector of patients' rights. The medical institution is obliged to organise the work of the protector of patients' rights and the director of medical institution appoints the protector of patients' rights. The protector submits monthly reports on received complaints to the director of medical institution, as well as semi-annual and annual reports to the institution's board of directors and the Ministry. The protector of patients' rights works autonomously and the director of medical institution or other health care provider cannot affect his/her work and decisions (Article 39).

Having conducted the procedures of controlling the legality and regularity of the said medical institutions (collecting information in direct conversation with the representatives of medical institutions and reviewing documents related to the performance of additional work and administering the scheduling and waiting lists for the provision of health services), the Protector of Citizens did not identify any irregularities in the Health Centre Šabac, the General Hospital Užice, the Health Centre Sveti Luka Smederevo and the Health Centre Kladovo - the procedures of controlling the regularity and legality of the remaining four medical institutions revealed no irregularities.

The irregularities were identified in the work of the Clinical Centre Niš (CC Niš) and the Republic Health Insurance Institute (RZZO):

1. The CC Niš performs additional work unlawfully and improperly to the detriment of the rights of patients and staff. It started and continued to perform additional work without an act of the Ministry of Health confirming that the CC Niš meets the requirements to perform additional work, which is a precondition for carrying out such work in accordance with the legally based regulation.

2. In 2011, the CC Niš engaged its employees for additional work outside their regular working hours, but without any contract on the performance of additional work, while in 2010 the employees were engaged to perform additional work under the contract for the conclusion of which there were no prescribed conditions. In 2010, the CC Niš concluded two concurrent contracts on additional work with three employees for the same period of time, thus doubling their additional work. In the course of 2010, the CC Niš concluded the contracts on additional work also with the employees who work part time due to the working conditions harmful to their health.

3. The RZZO unlawfully concluded a contract with the CC Niš on the provision of certain health care services covered by the compulsory health insurance in additional work, although the Ministry of Health had not previously established the

fulfillment of requirements for the performance of additional work, which is the legally prescribed precondition for concluding this type of contract with the RZZO.

The Protector of Citizens referred recommendations to the CC Niš and RZZO for removing the identified deficiencies in work, and for the purpose of improving the exercise of citizens' rights and preventing similar failures in the future. The following was recommended to the *Clinical Centre*:

1) To immediately cease to organise and perform additional work for which the legally prescribed requirements are not fulfilled as established by the Ministry of Health.

2) To repay to the RZZO the funds received for provided health care services covered by the compulsory health insurance within the additional work in the period from 17 June 2010 to the day of receiving the act of the Ministry of Health on confirming the fulfillment of requirements for the performance of additional work.

3) The Board of Directors of the CC Niš will consider the degree of individual liability of the Centre's management for the identified failures and adopt necessary measures, including the dismissal of responsible individuals, and, if appropriate, initiate other legally envisaged procedures and inform the Protector of Citizens thereof.

4) In the future, even after possible obtaining of approval from the Ministry of Health, the CC Niš will not conclude contracts on additional work with those employees who work part time due to the working conditions harmful to their health.

The Protector of Citizens recommended to the *RZZO* to identify the official of the Institute responsible for concluding the contract with the CC Niš on the provision of health care services covered by the compulsory health insurance for 2010 through the organisation of the additional work of health care providers, for the conclusion of which the legally prescribed requirements were not fulfilled. The Institute will pronounce appropriate disciplinary sanctions against the liable person or persons, depending on the degree of established liability, and inform the Protector of Citizens thereof.

*Acting upon referred recommendations* – the CC Niš acted as recommended, while the RZZO acted partly as recommended.

### *General assessment*

The collected data, conducted immediate supervisory control and information received from public authorities constitute a sufficient basis to conclude that the exercise of certain rights of patients is rendered more difficult, on one hand, and that health care providers are deprived of certain rights, on the other hand. The denial or hindered exercise of certain rights related to health care and health insurance, as well as labour rights, are caused by the conduct of competent administration authorities contrary to the norms of positive law.

It was noticed that the medical institutions that provide health care services at the primary and secondary levels, and the medical institutions in smaller inland towns take more care about the fulfillment of legal requirements for providing certain health

services, which is directly related to the respect for the rights of citizens, both patients and health care providers.

Regarding the mechanism for the protection of patients' rights, the protectors of patients' rights play a crucial role. The lawyers employed in medical institutions are engaged for this function, and they handle complaints of dissatisfied patients in addition to other "regular" jobs. We should bear in mind that this is actually a modification of the ombudsman institution, which has a built-in "deficiency" by which this institution *a priori* brings into question its own purpose. In fact, the problem is their objectivity when representing the patient's interests because as employees of the institutions against whose work the patients complain to them, they are not independent. Moreover, the problem is also rather undefined job description of the protectors of patients' rights and their duties. Hence, the engagement of the patient's protector depends solely on personal discretion.

The Ministry of Health is rather passive, indifferent to introducing the uniformity of practice of the protectors of patients' rights in medical institutions.

The mandatory indicators of the satisfaction of health service users include also the specific data related to patients' objections and complaints,<sup>112</sup> which medical institutions once a year submit, through the competent public health institute, to the Public Health Institute established for the territory of the state and the competent branch of the Republic Health Insurance Institute, and the Public Health Institute forwards them to the Ministry of Health. However, it remains unclear whether this is a mere obligation of medical institutions. The protectors of patients' rights in all medical institutions that have been controlled, in addition to the obligation of providing data specified by the Rulebook on health care quality indicators, regularly fulfill their legally prescribed obligation and submit to the Ministry semi-annual and annual reports on received complaints. However, they usually do not receive any feedback from the Ministry of Health.

The information obtained by all medical institutions controlled by the Protector of Citizens suggests that the standards in terms of structure and number of employed medical doctors of certain specialties, as defined by the Rulebook on detailed requirements for providing health services in medical institutions and other forms of health care facilities,<sup>113</sup> do not meet the actual needs of medical institutions.

The regulations governing the procedure of harmonising the needs with the factual situation regarding the number of employees in medical institutions prevent the rapid and effective response of medical institutions. Specifically, the medical institution, which at the beginning of the calendar year needs to recruit additional doctors of a certain specialisation due to the increased workload, is allowed to submit a request for approval to the line ministry in November of that year, and wait for a

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<sup>112</sup> Rulebook on health care quality indicators – *Official Gazette of RS*, Nos 57/07, 49/10.

<sup>113</sup> *Official Gazette of RS*, Nos 43/06... 50/10.



decision until the beginning of the following year. The Protector of Citizens is aware that budgetary rules obligate the Ministry of Health to comply with certain procedures when developing a staffing plan, but also believes that reviewing the real needs of the number of employees only once a year is an insufficiently quick adaptation to the actual situation.

***Existing deficiencies in the work of administration authorities or institutions:***

- The medical institutions organise and provide health care services within the additional work without the previously acquired approval from the Ministry of Health.

- The medical institutions conclude contracts on additional work with the health care staff who work part time due to the working conditions harmful to their health.

- The medical institutions do not pay enough attention to providing the patients with the possibilities of exercising the rights to diagnostic examination within the prescribed period.

- The Ministry of Health does not handle efficiently the medical institutions' requests for confirming the fulfillment of requirements for organising additional work.

- The state officials of the Ministry of Health were giving verbal recommendations to the medical institutions regarding the performance of additional work, which are contrary to the regulations governing this field.

- The Ministry of Health did not harmonise the by-laws with the Law on the Amendments to the Law on Health Care<sup>114</sup> within the legally prescribed deadline (Article 8).

- The Ministry of Health does not undertake any activities in order to achieve the uniform practice of the protectors of patients' rights in medical institutions.

- The Ministry of Health does not undertake activities within its competence in order to control the harmonisation of the individual acts of medical institutions with the laws and by-laws.

- The Republic Health Insurance Institute concluded contracts with the medical institutions on the provision of certain health services covered by the compulsory health insurance for the insured persons through the organisation of additional work, even when the medical institutions did not fulfil the legal requirements for the performance of additional work.

- The Ministry of Health, the Republic Health Insurance Institute and the Public Health Institute of Serbia do not consider sufficiently the real needs of medical institutions for providing the optimal required number of medical doctors of certain specialties, which is the basis for developing a staffing plan for the budget year.

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<sup>114</sup> Official Gazette of RS, No. 88/10.

Based on the information gathered during the investigation, for the purpose of improving the work of administration authorities and ensuring the exercise of citizens' legally prescribed right to health care whilst respecting the highest possible standards of human rights and values, and pursuant to Article 31 paragraph 2 of the Law on the Protector of Citizens, the Protector of Citizens gives the following recommendations to the Ministry of Health, the Republic Health Insurance Fund and all medical institutions:

### **RECOMMENDATIONS**

The Ministry of Health will undertake all available activities and measures in order to establish the complete protection of patient rights, as well as the labour rights of health care providers. In the future, it will particularly:

- Handle efficiently the medical institutions' requests for obtaining certain legally prescribed approvals or consents;
- Send a written instruction to all state officials employed in the Ministry to refrain from giving verbal recommendations to medical institutions about certain issues related to their work, which are contrary to the positive regulations;
- Harmonise the by-laws, without delay, with the Law on the Amendments to the Law on Health Care, within the legally prescribed deadline (Article 8.);
- Prepare a Rulebook on the work of protectors of patients' rights and ensure their continuous education;
- Control the harmonisation of individual acts of medical institutions from the Medical Institutions Network Plan with the laws and by-laws.

Before concluding contracts with medical institutions, which directly or indirectly affect the rights of patients and health care providers, as well as the budget of the Republic of Serbia, the Republic Health Insurance Fund will check whether a particular medical institution fulfils the envisaged requirements.

#### ***2.6.6. Sector of internal affairs***

The following problems were identified in 2011 in the sector of internal affairs:

##### ***Difficulties in exercising the right to citizenship of the Republic of Serbia***

A number of citizens addressed the Protector of Citizens in 2011 pointing to the problem they faced in the procedure of acquisition, termination or admission to the citizenship of the Republic of Serbia, i.e. in the procedure of regulating the citizenship status, conducted in the Ministry of Internal Affairs. In some cases, the competent Ministry did not decide for more than a year which prevented citizens from exercising other rights.

After the initiation of the procedure of controlling the legality and regularity of the work of the Ministry of Internal Affairs, based on the filed complaints, the authority would remove the committed errors in work and decide on the complainants' requests (for re-acquisition of citizenship, admission to citizenship and release from RS citizenship).

#### ***APPLICATION FOR ADMISSION TO CITIZENSHIP***

***Example:*** A citizen addressed the Protector of Citizens expressing his dissatisfaction with the inaction of the Directorate for Administrative Affairs of the Ministry of Foreign Affairs regarding his application for admission to RS citizenship. The complainant emphasised that even after having submitted the requested additional documentation, the competent authority failed to act upon his application for months, which prevented him from exercising other rights he would have been entitled to as a citizen of the Republic of Serbia. After the initiation of the procedure of controlling the legality and regularity of the work of the Ministry of Internal Affairs, the authority informed the Protector of Citizens, within the given deadline, that the submitted application was decided upon and that a decision on granting the citizenship of the Republic of Serbia was delivered to the complainant.

#### ***Conclusion:***

The main problem indicated to the Protector of Citizens in the complaints is the failure to act upon submitted applications within a reasonable time, regardless of whether they are the applications for admission, acquisition or release from RS citizenship. It is characteristic that in most cases the administrative authority (the Ministry of Internal Affairs) was rectifying the errors committed in its work immediately after the initiation of the procedure for controlling the legality and regularity of its work.

#### ***Long hours of queuing at the counters of police administrations of the Ministry of Internal Affairs***

In 2011, 4 complaints were filed regarding the actions of MoI (the Police Administrations for the City of Belgrade, Novi Sad and Kikinda) in terms of congestions and long hours of queuing for submitting a request for the issuance of documents. The citizens complained about having to queue for hours to submit a request for vehicle registration, ID card or passport, and about being forced to take these documents several months later due to congestions.

On the basis of complaints, the Protector of Citizens initiated a procedure for controlling the legality and regularity of the work of the Ministry of Internal Affairs. The representatives of the Secretariat held meetings with the representatives of the said Ministry in September and October 2011 in order to discuss the allegations of citizen complaints in particular cases and the Ministry's reporting on taken measures

regarding the citizen complaints about the procedures of submitting requests for documents and issuing documents.

On those occasions, the representatives of the Ministry informed us about the measures undertaken within their authority to improve the work and ensure the respect for citizens' rights and freedoms taking into account the recommendations of the Protector of Citizens received in 2008 and 2009, which included the measures to be undertaken for a more efficient implementation of the procedures of receiving and processing citizen requests for the issuance of personal documents. They also informed us about the relevant actions of the MoI's Internal Control Sector, stating that this body undertook a field investigation to establish the situation and find the cause of congestion when issuing documents, and found out that certain citizen complaints were grounded. They also informed us that in the territory of the PA of the City of Belgrade they had introduced a system of scheduling appointments via SMS, and also through E-government; that they had informed the public via the website and notice boards about having introduced work shifts on Saturdays and even on Sundays in one police station, and that in the previous period the Law on Identity Cards had been amended, extending the period of validity of that document, among other things, and that they had taken appropriate actions to amend the Rulebook on job classification.

In specific cases, the complainants were informed that the Protector of Citizens in 2008 and 2009 sent a recommendation to the Ministry of Internal Affairs, and that in the course of this year the meetings were held with the Ministry's representatives for the purpose of taking appropriate measures to improve the work of administration authorities in particular cases, and that the Protector of Citizens in his future work, bearing in mind the citizen complaints, would monitor the activities of the Ministry in particular cases.

### ***Conclusion:***

The Ministry of Internal Affairs, aware of the problems faced by the citizens of Serbia, to which the Protector of Citizens pointed also in 2010 and referred a recommendation to the MoI in connection therewith, undertook certain measures to overcome the problems and facilitate the issuance of documents to citizens.

### ***2.6.7. Sector of justice***

In 2011, as in the previous years, many citizens addressed the Protector of Citizens for the violation of the right to trial within a reasonable time and the violation of the right to a fair trial. Similarly, the reporting period was marked by the complaints of non-(re)elected candidate for judicial function. For the first time, the Protector of Citizens received the complaints of employees in courts and prosecution offices for the violations of their labour rights.

### *Violation of the right to trial within a reasonable time*

The most common reasons for the citizens' dissatisfaction are frequent postponement of hearings, unjustified absences of judges, inappropriate delivery of summons and documents, inefficient preparation of decisions and failure to decide on appeals within the prescribed deadlines. Based on the review of complaints received, it is evident that a small number of citizens used appropriate legal means available in accordance with the regulations governing the organisation of courts (previously addressing the presidents of competent courts or the Ministry of Justice), while the far greater number of citizens did not address any institution because they did not know whom they should address. Therefore, the Protector of Citizens instructed them on the existing legal procedures and means at their disposal.

The first group of citizens is evidently dissatisfied with the way that the Ministry of Justice handles their complaints about the work of courts in the field of judicial administration. The first reason for discontent is the failure of the Ministry of Justice to consider citizen complaints and petitions and for that reason the Protector of Citizens on several occasions initiated the procedures of controlling the legality and regularity of the work of that Ministry. In most cases, the Ministry of Justice, after being informed by the Protector of Citizens on the complaints about its work, would remedy the deficiencies, by additionally drafting and sending written responses to the citizens.

In contrast, in order to remedy the deficiencies identified in the procedure regarding the complaint that the Ministry of Justice did not respond to the citizens' petition, the Protector of Citizens sent a recommendation to the Ministry of Justice and pointed to the necessity of keeping up-to-date records of complaints received and considering in a timely manner all those submitted in the future. The recommendation highlighted the need to examine all submissions and to inform the submitters, in accordance with applicable regulations, about the Ministry's view in connection with the subject of their complaints/petitions, as well as about possible further actions of the competent authorities, if the prescribed conditions were fulfilled. At the same time, the Ministry was recommended to fulfill the said obligations in the future continuously and consistently, with proper record-keeping and application of rules on office activities, in order to make it possible to determine, at any time, who and when addressed the Ministry in writing and how the Ministry handled the citizens' petitions.

The Ministry of Justice implemented the Protector of Citizens' recommendation and informed that authority about having taken appropriate technical measures (installation of software) in order to improve the recording and tracking of actions regarding the petitions and complaints of citizens. The result of all this is reflected in a significantly reduced number of complaints related to the so-called "silence" of that administration authority in 2011.

At the same time, citizens were not satisfied with the responses received from the Ministry of Justice, regarding them as useless, since they expected the said Ministry to

control the work of the authorities they complained about. In considering these complaints, it was observed that the Ministry of Justice did not act or implement properly the legally prescribed measure of the supervisory control of judicial administration, but forwarded the received complaints to the president of the concerned court for consideration and response, and then delivered to the complainant a received response. Such actions lead to the failing of justified citizens' expectations, stultifying the legally envisaged legal means and procedures for the protection of guaranteed rights and freedoms.

As regards the violation of the right to trial within a reasonable time, in 2011 the Protector of Citizens, within his powers and in accordance with the fact that he is not competent to supervise the work of the courts, repeatedly pointed to the occurrence and frequency of these violations, and the need for an adequate solution. In addition, the complainants were informed about the possibility of addressing the Constitutional Court, by filing a constitutional complaint, which, exceptionally in the cases of violation of this right, may be filed even without previously exhausting all legal remedies.

### *Violation of the right to a fair trial*

In 2011, the Protector of Citizens received a large number of complaints indicating the citizens' dissatisfaction with the actions of judges of courts, namely with the content of court decisions, and the expectation that the Protector of Citizens would help change these decisions. Given that the Protector of Citizens has no constitutional or legal powers to control the legality and regularity of the work of courts, despite the understanding for the problem indicated in these complaints, there was no basis to act upon them. However, the Protector of Citizens was instructing the complainants on the remedies and procedures available for the protection of their rights and legally based interests.

### *Violation of other rights outside the competence of the Protector of Citizens*

Like in the previous years, in 2011 the Protector of Citizens continued, when it was possible, to instruct the complainants on the legal procedures in which they can exercise their rights or legally based interests. Accordingly, the Protector of Citizens' Secretariat handled the citizens' complaints outside the Protector of Citizens' competence given that they related to the work of authorities and other entities whose legality and regularity the Protector of Citizens has no power to control.

During the reporting period, many citizens addressed the Protector of Citizens with the requests that did not have the nature of complaints. Those were the requests for legal assistance (drafting submissions, representation before courts and other state bodies, legal interpretation of the situation and applicable regulations, etc.). This problem is particularly noticeable among the citizens of poor economic conditions, who cannot afford the services of legal practitioners, while the legal aid services in the local self-government units impose too complex requirements for the provision of their services, which the large number of citizens cannot fulfill. The same problem torments

the citizens who are not in a financially adverse situation, but in the situation that even after addressing various bodies and institutions, they do not have the answer to the question which authority, procedure and deadline are envisaged for the exercise and protection of their rights.

Given that the Protector of Citizens is not authorised to represent citizens in the procedures before courts and other state bodies or to draw up proposals, submissions, and other legal acts on their behalf, the complainants were referred to address the legal aid services in their municipalities of residence or a legal practitioner in order to obtain legal advice on the further use of available legal remedies.

### *Violation of the right of non-(re)elected candidates for judicial function<sup>115</sup>*

Acting upon the complaint filed by the Judges Association of Serbia in 2010, which stated that the High Judicial Council (hereinafter referred to as: HJC) requested from that association the information about its work, referring to the Law on Free Access to Information of Public Importance<sup>116</sup>, despite the fact that the Judges Association of Serbia was not among the entities (administration authorities) having such an obligation, the Protector of Citizens referred to the HJC the Recommendation No. 17-2094/10 dated 14 January 2011, establishing the deficiency in its work, since the said request contravened the obligation of respecting the constitutionally and legally guaranteed freedom of association. It was recommended to the HJC to send a written apology to the Judges Association of Serbia for the committed error. In the course of 2011, the HJC informed the Protector of Citizens on having acted as recommended.

Furthermore, the Law on Judges and the Law on Public Prosecution Offices, adopted in late 2010, provide that constitutional complaints and appeals against the termination of the function of non-(re)elected candidates should be converted into objections, whereas the permanent compositions of the High Judicial Council and the State Prosecutor Council would decide on the validity of their grounds, i. e. review the decisions of the first compositions of the said bodies<sup>117</sup>. In 2010, the Protector of Citizens timely pointed to some identified deficiencies in the HJC work, acting upon the complaints of 178 non-(re)elected candidates for judicial function, and on that basis sent to the said body the Recommendation 17-32/10 dated 3 August 2010. Unfortunately, even a year and a half after sending the recommendation, the Protector of Citizens did not receive the HJC's statement or opinion concerning the recommendation.

After the election of elective members of the permanent HJC composition, a review procedure of the general election of judges was initiated, criticised from the very beginning by experts and the general public. The Judges Association of Serbia

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<sup>115</sup> Official opinion of the Protector of Citizens issued at the beginning of 2011, the entire procedure was conducted in 2011.

<sup>116</sup> *Official Gazette of RS*, Nos 120/2004, 54/2007, 104/2009 and 36/2010.

<sup>117</sup> Article 5 of the Law on the Amendments to the Law on Judges and Article 6 of the Law on the Amendments to the Law on Public Prosecution Offices (*Official Gazette of RS*, No. 101/2010).

filed a complaint challenging the legality and legitimacy of the HJC's work based on the fact that the said body decided in its full composition only in 16 sessions, and continued to work after the detention of one member, the dismissal of another and the final establishment of the Anti-Corruption Agency stating that the third member was in the conflict of interest. It was also pointed that in the revision procedure the HJC remained without the majority of six votes for decision making (unless the members of the first composition voted about the regularity of their previous decisions, which constitutes the violation of the rights to a fair trial), and that the HJC no longer had the majority of judges in its composition, as prescribed by the Constitution. In addition, the public, including the candidates, was unlawfully excluded from the Council's sessions held for considering the decisions of its commissions and making a final decision on the validity of complaint grounds. The HJC also continued not to execute the orders of the Commissioner for Information of Public Importance and Personal Data Protection.

The Protector of Citizens established that there was an efficient legal remedy against the HJC's decisions on objections – a complaint to the Constitutional Court, available to all the candidates whose objections were refused, and that the remarks referring to the work of HJC were primarily of general character and referred to its composition, legitimacy and legality of its work. Starting from the right to act preventively<sup>118</sup> in order to improve the work of administration authorities,<sup>119</sup> through the provision of good services, mediation and giving advice and opinions on the matters within his competence, the Protector of Citizens sent to the HJC an Opinion 19-3635/11 of 11 January 2012 and informed the National Assembly, the Government and the public about its content, in order to take a position on the problems explained in the Opinion and in a timely manner take the proposed and other appropriate measures within their competences for the purpose of solving these problems.

The Opinion expresses the Protector of Citizens' view that the HJC in the long period of time has been operating in the way that raises serious doubts about the legality and regularity/legitimacy of its work for the following reasons: it has failed to provide the majority representation of judges in its composition; the members of the first composition of HJC, who participated in decision-making of the first composition, participate in all the phases of review procedure, and one of them even in voting; the HJC does not work in public when it considers the proposals of its commissions, which contravenes the explicit legal provision stipulating that the HCJ sessions shall be public; the HJC does not allow the candidates in the review procedure, in all cases equally, access to all information that they are entitled to as participants in the procedure.

Therefore, the Protector of Citizens has expressed the view that in the best interest of the lawful and proper exercise of the rights and interests of candidates, and

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<sup>118</sup> Article 24, paragraph 2 of the Law on the Protector of Citizens (*Official Gazette of RS*, Nos 79/2005 and 54/2007).

<sup>119</sup> The High Judicial Council is one of those bodies and organisations referred to in the Law on the Protector of Citizens (Article 1), for easier reference, though imprecisely, as "administration authorities".



the preservation of the authority and legitimacy of HJC's work, and in the interest of the citizens of the Republic of Serbia, the HJC should discontinue operating in the current composition, promptly take all measures and actions within its purview in order to complete its composition in accordance with the provisions of the Constitution and the Law, continue its work in its full composition and repeal the decisions made in the period in which permanent judges did not constitute the majority in that body and/or to recognise the merits of possible appeals.

It has also been emphasised that judges, court and the HJC exist in order to enable citizens to exercise their rights to a fair trial and effective access to justice, the precondition of which is legitimate, entirely lawful and proper work of the body that, according to the Constitution, provides and guarantees the independence and autonomy of courts and judges.

### *Violation of the labour rights of court employees*

The novelty is the complaint of the Union of employees in the judicial authorities of Serbia, which points to the failures of the Ministry of Justice in the organisation and work of judicial authorities. According to its allegations, there are a number of court employees engaged on a fix-term contract for a long time (the provisions of the Law on Labour limits a fix-term employment to one year), some of them even longer than ten years, whereas after the expiry of statutory deadline for a fix-term employment, they receive a decision on employment termination for a certain period, during which the employees go to work but without getting paid. Moreover, some of them perform the tasks of record keeping and signing during the court procedures, which may result in certain legal consequences relating to the legality and regularity of conducting these procedures. When checking the allegations of the said complaint, the Ministry of Justice informed the Protector of Citizens that it was acquainted with the above situation and the reasons for its occurrence.

### *Achieved results in 2011*

In the reporting period, the Protector of Citizens' relationship with the Ministry of Justice improved in the way that cooperation was established in a growing number of cases. Thus, it was much easier to obtain information on handling complaints and petitions of citizens, usually in direct telephone contact and by providing requested documentation. It was noted that the Department for Supervision in Judicial and Misdemeanour Authorities was able to provide, at any time, the reliable information on who and when addressed the Ministry in writing or how the Ministry handled the citizens' petitions.

Certainly the most important achievement is the fact that the Ministry of Justice, after accepting the recommendations referred by the Protector of Citizens, took the appropriate measures to improve regular record-keeping of complaints of the citizens addressing that Ministry.

### ***2.6.8. Sector of foreign affairs***

We have not received a large number of complaints against the Ministry of Foreign Affairs to date. Citizens usually complain about the violation of the principles of good administration, resulting in the secondary violation of rights - the violation of universal civil rights, the violation of minority rights, the violation of child rights, etc.

#### ***VIOLATION OF THE RIGHT OF PERSONS EMPLOYED IN DIPLOMATIC MISSIONS TO BE INCLUDED IN POPULATION CENSUS DATA***

*Example:* The Protector of Citizens received a complaint from the citizens of the Republic of Serbia who performed a function of the head of mission of an international organisation abroad. The complaint was submitted because the Ministry of Foreign Affairs, by its instruction on 2011 Population Census, prevented the implementation of applicable regulations, i.e. the registration of the citizens of the Republic of Serbia working abroad in the diplomatic missions of international organisations, without being seconded by the Republic of Serbia.

The Protector of Citizens established that the existing instruction of the Ministry of Foreign Affairs, referred to the diplomatic and consular representation offices, according to which only those citizens that the Republic of Serbia had seconded to work in diplomatic and consular representation offices should be included in the 2011 Population Census, excluding those who had not been seconded by the Republic of Serbia, constituted the failure that violated the right of a large number of citizens. The Protector of Citizens acted upon this complaint in line with its urgency and directly contacted the Secretary General of the Ministry of Foreign Affairs, recommending to the Ministry to rectify the existing error.

The Ministry of Foreign Affairs accepted the recommendation and sent new instruction to diplomatic and consular representation offices based on which all citizens of the Republic of Serbia were included in the Census, both the seconded and non-seconded ones.

#### ***Achieved results in 2011***

In the reporting period, the Protector of Citizens established a relationship with the Ministry of Foreign Affairs based on which it can reasonably be expected that the citizens' complaints would be efficiently solved since the Ministry expressed willingness and invested efforts in rectifying the errors, in the shortest time possible, identified by the Protector of Citizens.

### ***2.6.9. Sector of defence***

Throughout the reporting period, citizens expressed their dissatisfaction with the work of the Ministry of Defence by filing numerous complaints, with special emphasis on the violation of the rights of active personnel of the Serbian Armed Forces

on one hand, and the violation of the rights of military pension beneficiaries, on the other hand. As regards the former, their dissatisfaction refers to the irregularities in terms of regulating the status issues of the Serbian Armed Forces active personnel, while the latter are dissatisfied with the deficiencies in exercising their right to a pension in the amount prescribed by laws and corresponding regulations.

### ***Inability to exercise the right to official conversation***

*Example:* A complainant addressed the Protector of Citizens stating that he had not been enabled to have an official conversation with a superior officer, as prescribed by the Rules of Service of the Serbian Armed Forces, even though he repeatedly requested it. He did not receive any reply either. At the same time, the complainant indicated that the Rules of Service of the Serbian Armed Forces did not provide the possibility of using legal remedies in case where a request for an official conversation was not answered.

During the procedure of controlling the regularity and legality of the work of the Ministry of Defence, the General Staff of the Serbian Armed Forces informed the Protector of Citizens that they had considered that the complaint allegations and that the Rules of Service of the Serbian Armed Forces were being changed, and that they would be performing activities to improve the by-law for the purpose of enabling the personnel of the Serbian Armed Forces to exercise their right to an official conversation. After that, the Protector of Citizens was informed that for the purpose of resolving the disputed circumstances of the complaint, the official conversation had been conducted with the complainant, with the attendance of five other senior officers, whose presence had been necessary due to their command and professional function.

### ***Failure to act in accordance with own final and enforceable decisions***

The Protector of Citizens was addressed by a large number of citizens, military pension beneficiaries, stressing that the Military Social Insurance Fund of the Ministry of Defence had not acted in accordance with its own decisions on adjusting the pensions for the period 1 August 2004 – 30 November 2007. On the basis of complaint allegations that the said decisions had not been implemented for four years and that the military pension beneficiaries were instructed to exercise their decisions in a court procedure, the Protector of Citizens initiated the procedure of controlling the regularity and legality of the work of the said authority.

*Based on the evidence submitted by the complainants, the Protector of Citizens has learned that the competent courts have been deciding on the right of military pension beneficiaries to material damage compensation, within the legally prescribed deadlines, and pronouncing the judgments by which they accepted the claims of military pension beneficiaries and at the same time determined the obligation of the Military Social Insurance Fund to pay the underpaid monthly amounts of the determined pension for the period August 2004 – November 2007.*

*Having reviewed the submitted judgments, the Protector of Citizens has established that the Military Social Insurance Fund during the court procedure justified its failure to pay the unpaid pensions with the fact that the Military Social Insurance Fund could not influence the approval of funds for the payment of adjusted pensions since the funds had to be provided from the budget of the Republic of Serbia, which was denied by the Ministry of Finance.*

Based on the above-mentioned, the Protector of Citizens referred the recommendation to the Ministry of Defence, i. e. the Military Social Insurance Fund of the Tradition, Standard and Veterans Department of the Human Resources Sector, to execute without delay the decisions, by which the pensions were adjusted for the period 1 August 2004 – 30 November 2007, and to pay the difference between the pension determined by the decision on adjustment of military pensions and the underpaid monthly amounts of the determined pensions.

After referred recommendation, the said authority informed the Protector of Citizens that it did not dispute the merits of the complaints, but was not able to pay the determined military pensions due to the lack of funds. The letter also states that the legal service of the Military Social Insurance Fund, in order to solve this issue, had drafted laws and by-laws prescribing the way of settling the debt to the military pension beneficiaries.

The Protector of Citizens continued to monitor the activities of the Ministry of defence concerning the exercise of the military pension beneficiaries' right to the outstanding pension amounts. Based on the publicly available information, the Protector of Citizens has learned that the Government of the Republic of Serbia submitted to the National Assembly the Bill on converting the unpaid due military pensions into the Republic of Serbia's public debt, proposing its adoption in an urgent procedure.

### ***Inconsistent and unequal treatment of citizens in the same or similar situation***

The Protector of Citizens received a large number of complaints from the military pension beneficiaries against the work of the Ministry of Defence, i. e. the Military Social Insurance Fund of the Tradition, Standard and Veterans Department of the Human Resources Sector, indicating the failures in handling the requests for adjusting the pensions according to the *Decision on extraordinary adjustment of pensions, value of general point and monetary compensations since January 2008*, because it acted differently in the same legal and factual situation.

Judging that such conduct violated the rights of a large number of citizens, the Protector of Citizens initiated the procedure of controlling the legality and regularity of work of the said authority.

During the procedure, the Protector of Citizens *was informed that* the Military Social Insurance Fund, on the basis of the decision of the Fund's Board of Directors, adjusted military pensions as of 1 April 2008 by 6.97% and as of 1 October 2008 by

14.13%, which equalled the adjustment of the pensions covered by the Republic Fund for Pension and Disability Insurance; that the 11.06% adjustment of pensions referred to the persons insured by the Republic Fund for Pension and Disability Insurance; that the military pension beneficiaries in that period were not in the system of the Republic of Serbia's pension and disability insurance and therefore they were not entitled to the adjustment of pensions on the basis of the mentioned *Decision*.

*Having reviewed the submitted judgements, the Protector of Citizens realised that the courts had been accepting the claims and determining the obligation of the Military Social Insurance Fund, by final and enforceable judgments, to pay damage compensation for the underpaid monthly amounts up to the amount of adjusted pension for the period from 1 January 2008 on.*

*Taking into consideration the legal provisions and by-laws regulating the right of military pension beneficiaries to pension adjustments, and the fact that the mentioned Decision of the Republic Fund for Pension and Disability Insurance is of general character and refers to all pension beneficiaries, the Protector of Citizens referred a recommendation to the Military Social Insurance Fund, to draft and send an explained decision to the military pension beneficiaries to whom it had not sent written decisions upon their requests, and to review its own decisions in accordance with legal possibilities and align them with the mentioned Decision. The Protector of Citizens also pointed to the need of reviewing the issued decisions, particularly bearing in mind that the courts passed decisions on determining the obligation of the Military Social Insurance Fund to pay the underpaid monthly amounts of the determined pension to those beneficiaries who achieved that right in a court procedure, which put the military pension beneficiaries who had not achieved that right in a court procedure into an unequal position because, despite being in the same legal and factual situation, they were not enabled to receive the full amount of adjusted pension. The Ministry of Defence has not acted as recommended.*

***Inefficient acting and failure to undertake measures for calculation and payment of contributions for one part of years of service***

*Example:* A complainant stated that, over a certain period of time, he was sent to work abroad as a civilian in the armed forces. After being declared redundant, he contacted a branch of the Republic Fund for Pension and Disability Insurance and found out that for that period his contributions for pension and disability insurance had not been paid, and that his years of services had not been registered. Even after addressing repeatedly the Ministry of Defence, his request was not answered.

Upon this complaint, the Protector of Citizens initiated a procedure of controlling the legality and regularity of the work of the Ministry of Defence, which lasted relatively long due to the silence of that authority after being addressed by the Protector of Citizens. Only by the letter of the General Staff of the Serbian Armed Forces, the Protector of Citizens was informed that there was a failure in determining which service within the Ministry of Defence was responsible primarily for the payment of contributions, and then for the issuance of necessary data, and that the

measures had been taken to rectify the error. However, in the period of more than two and a half years from the complaint, the authority did not take the necessary measures to rectify the identified error, and the only result was the delay of procedure and the deprivation of complainant's rights.

A recommendation was sent to the Ministry of Defence to identify, within its internal organisation, the organisational unit responsible for the calculation and payment of contributions for the period of service that people acquire by working abroad and to take all necessary measures to ensure that the competent organisational unit, without delay, calculated and paid the omitted contributions and issued the forms necessary for the registration of years of service that the complainant acquired by working abroad. The Protector of Citizens also pointed to the obligation of the Ministry of Defence to apologise to the complainant for the delay in handling his complaint.

Following the recommendation, the Ministry of Defence informed the Protector of Citizens that the competent bodies of the Ministry of Defence and the Serbian Armed Forces, in cooperation with the Republic Fund for Pension and Disability Insurance, had removed the irregularities, performed the calculation and prepared the necessary forms (M-4) in connection with the contributions for the pension and disability insurance in the disputed period, and informed the complainant thereof.

### *Achieved results in 2011*

The Protector of Citizens improved the relationship with the Ministry of Defence not only due to the fact that in a large number of cases the Ministry of Defence has not challenged the grounds of complaints and informed the Protector of Citizens on having remedied the deficiencies in the work of that authority during the procedure, but also because in a large number of cases, the Ministry has recognised the problem pointed by the Protector of Citizens and informed him about the planned measures and activities aimed at improving its work and promoting the protection of human rights and freedoms.

### *2.6.10. Sector of urban planning, construction and cadastre, natural disasters and restitution*

#### *I Real estate cadastre*

Similarly to the previous years, in 2011 the Protector of Citizens received many complaints about the work of real estate cadastre services within the Republic Geodetic Authority. The complaints against the Ministry of Environment, Mining and Spatial Planning constitute a novelty, as that authority since 1 January 2010 has been

responsible for handling appeals against the first instance decisions of competent real estate cadastre services.

As regards the complaints about the work of real estate cadastre services, there is a problem that has been observed also in the practice of other administration authorities, i. e. the complaints indicate that the competent real estate cadastre services issue, upon the requests of citizens, neither the copies of real estate possession sheets according to the land cadastre data administered by this authority nor any suitable administrative acts, despite the legally prescribed obligation of state authorities to respond to any citizen petition containing a certain request, by issuing an administrative act, a decision or conclusion, with the instruction on legal remedy. Thus, it deprives citizens of their right to appeal or initiate a mechanism of control and review of the decision that they may not be satisfied with, which is among the fundamental rights of citizens guaranteed by the Constitution.

### *Acting untimely*

Untimely acting refers both to untimely issuance of decisions by competent real estate cadastre services upon citizens' requests and untimely issuance of decisions by the Ministry of Environment, Mining and Spatial Planning upon citizens' complaints.

*Example 1:* A complainant filed a complaint pointing to the untimely issuance of decision by the real estate cadastre service, which failed to act upon the second-instance decision, i. e. failed to decide within the legally prescribed deadline in a renewed first-instance procedure. After initiating the procedure of controlling the legality and regularity of its work, the said service issued a new decision in accordance with the remarks from the second-instance decision. The service sent to the Protector of Citizens a photocopy of the issued decision along with the evidence on its regular delivery to the complainant.

*Example 2:* A complainant addressed the Protector of Citizens stating that he timely appealed against the decision of the real estate cadastre service. However, although the deadline for issuing a decision upon appeal expired a long time ago, despite a number of verbal interventions, the Ministry of Environment, Mining and Spatial Planning failed to issue a second-instance decision.

After initiating the procedure, the Ministry informed the Protector of Citizens that a decision had been issued upon the complainant's appeal, rejecting it as ungrounded.

### *Acting out of turn upon the payment of fees*

**Example:** Based on a large number of complaints, it was observed that the competent real estate cadastre services, as a rule, did not act on citizen requests within the prescribed deadlines. However, although their work is not efficient as required, the competent authorities handle out of turn and as priority the requests of citizens for which the increased fees have been paid, 100% higher than the regular ones, as prescribed by Article 8a of the Decree on the amount of fees for using the data of survey and cadastre and providing services of the Republic Geodetic Authority, which leads to even less efficient handling of those requests for which such fees have not been paid.

Bearing in mind that this way of working infringes the rights of many citizens, the Protector of Citizens sent a recommendation to the Republic Geodetic Authority, the Department of Real Estate Cadastre Novi Sad, prompting it to act without delay upon citizens' requests, within the prescribed deadline, and to handle requests out of turn only after achieving complete efficiency and handling all requests in order of receiving them, within the prescribed deadline.

The Protector of Citizens was informed that the Service charged the increased amount of fees only when explicitly requested by clients and when possible to handle such requests within five days from the date of being submitted. At the same time, it was emphasised that this authority had an obligation to apply the specified provision of the Decree, and therefore could not refuse to handle requests out of turn when such requests were received and the increased fees paid. To overcome the problem of inefficiency, the organisational changes were introduced by dividing the authority into two departments with different territorial competence.

### *Initiating procedure upon the request of long deceased persons*

Some complainants inform the Protector of Citizens about possible abuses of the powers of competent officials.



***Inappropriate acting upon a request for the correction of the error that occurred as a result of the responsible official's failure***

***Example 1:*** The Protector of Citizens received a complaint stating that the Real Estate Cadastre Service had requested from the complainant to submit a request and pay the fee in order to correct an error in the official records regarding the personal name, which occurred without his fault. Considering such conduct to be incorrect, the complainant requested the receiving of his submission for the correction of error without the payment of fee, which was refused. On that occasion, the Head of Service behaved rather inappropriately and he felt humiliated. Since he had no choice, he submitted a request for the correction of error, paid the specified fee and filed a complaint with the Protector of Citizens.

Based on the established facts and circumstances, the Protector of Citizens sent a recommendation to the Republic Geodetic Authority, the Real Estate Cadastre Service, prompting it not to commit errors in its work, and if the errors did occur, to correct them in the most efficient way, apologising to the citizens and in the way requiring their least possible engagement. The Protector of Citizens pointed to the Service that it was necessary to undertake required measures to reimburse the paid amount to the complainant, as well as all other citizens who happened to find themselves in the same legal and factual situation, directly in the authorities' official premises or through the bank account provided by the damaged party. The deadline for the implementation of recommendation is ongoing.

***RB KOLUBARA LAZAREVAC - RECOMMENDATIONS***

***Recommendation concerning the expropriation of illegal buildings***

Bearing in mind that the site of spreading the open pit coal mine of the Mining Basin Kolubara is located in a rural area where a small number of buildings have a construction and occupancy permit, the Government of the Republic of Serbia, on 17 December 2009, made a Conclusion 05 No. 465-8001/2009-3 on approving the expropriation of all buildings registered on the orthoimage of 15 January 2007, regardless of whether they are registered in the public records of real estate property with corresponding rights, if the expropriation is necessary for the implementation of the Energy Development Strategy of the Republic of Serbia for the period until 2015.

However, in accordance with point 3 of the aforementioned conclusion, the expropriation procedure could not be initiated for the buildings which had previously been the object of supervisory control procedure aimed at their removal. This resulted in an unequal treatment of the citizens of this area, because the buildings of some citizens were destroyed, regardless of their evident existence as shown on the orthoimage of 15 January 2007, while the buildings of other citizens were expropriated with compensation.

Since the initiation of supervisory control procedure depended on the discretion of PD RB Kolubara, in order to provide an equal treatment and legal security of citizens, the Protector of Citizens on 23 March 2011 recommended to the management of the City Municipality Lazarevac that a decisive fact for the decision on the right to expropriation should be whether a particular building had been recorded on the orthoimage, and not whether the supervisory control procedure had been instituted.

Given that, by adopting the above conclusion, the government stepped beyond the legislative framework regulating expropriation, its implementation must not be based upon the concept of discretionary decision-making in determining expropriation beneficiaries, but must provide a fair, equal and impartial treatment of all citizens in the same or similar situation.

Bearing in mind that the selective expropriation and demolition of buildings constructed without permits are still going on in this area, which stultifies point 1 of the Conclusion, the government should take measures within its competence, in order to clarify the existing and prevent future disputable situations.

In this regard, the government will be asked to specify whether, within the meaning of point 3 of the Conclusion, it should allow the expropriation of the buildings for which the supervisory control procedure aimed at their removal was initiated, and which were recorded on the orthoimage of 15 January 2007.

#### ***Recommendation for the relocation of local cemetery in the settlement Vreoci***

On 23 March 2011, the Protector of Citizens recommended to the Administration of City Municipality Lazarevac that it was necessary that this authority and the expropriation user PD RB Kolubara d.o.o. Lazarevac relocated the local cemetery and the entire village Vreoci in the way to comprehensively and fundamentally solve the problems encountered by the residents in the process of expanding the open pit coal mine. In this sense, an agreement should be reached with the grave right holders on how to solve the problems concerning the transfer of the remains of their ancestors and relocation of graves.

It was recommended to the Administration of City Municipality Lazarevac that the relocation of the cemetery and the settlement in general should not be viewed solely through the achievement of established public interest, but it should be ensured at all times that the achievement of public interest should not be to the detriment of the citizens' rights guaranteed by the Constitution and laws. In solving the problem, they should strive to achieve the consent of those concerned, bearing in mind that no solution can be good enough if it was issued without the consent of the citizens, whose guaranteed human rights it concerns.

The Protector of Citizens was informed that the Administrative Court of the Republic of Serbia, Department in Kragujevac, passed a judgment I-1 U. 8047/10 (2009) of 4 August 2011 annulling the decision of the Government of the Republic of Serbia 05 No. 465-865/2009 of 19 February 2009, that determined the public interest for expropriation or administrative transfer of real estate, land and buildings, for the purpose of further exploitation of surface coal mine "Field D", construction of infrastructure corridor through the settlement Vreoci and opening a pit and exploitation of coal on the surface area of "Južno polje", according to the legal documents referred to in the decision.

Considering this fact, the Protector of Citizens recommended that the Administration of City Municipality Lazarevac in Belgrade, in accordance with the said judgment of the Administrative Court of the Republic of Serbia, should stop issuing decisions and taking actions in the procedures of the expropriation of land and other real estates covered by the annulled decision of the Government of the Republic of Serbia on determining the public interest.

At the same time, it was pointed out that until the government made a proper and legally based solution of general interest, the undertaking of measures and activities for further expropriation, the vesting of expropriated land, as well as the exhumation and relocation of the local cemetery in Vreoci constituted illegal acts, the violation of basic principles of administrative procedures and principles of good administration.

On 21 September 2011, the Protector of Citizens gave a public statement on the aforementioned circumstances and on the letter sent to the competent authorities in connection with further actions regarding this matter.

The Head of the City Municipality Lazarevac informed the Protector of Citizens that they had stopped taking actions in the expropriation cases in the Cadastral Municipality Vreoci immediately upon learning about the annulment of the said decision of the Government of the RS.

### *Outcomes:*

In the largest number of cases, when the Protector of Citizens initiated the procedure of controlling the regularity and legality of work, the competent authority would issue an appropriate legal act and thus remove the identified deficiency.

## **II . NATURAL DISASTERS**

Despite the fact that the Law on Using Funds for Restoration and Protection from Natural Disasters is in force in the Republic of Serbia, people who are affected by natural disasters face many problems. As regards large-scale damages, for which the state and/or local self-government has allocated a certain amount of funds to help the citizens, the following problems occur: the lack of regulations setting the terms, procedures and criteria for determining the order for awarding the funds for restoration of damage (ranking), the absence of a body authorised to decide on

objections/appeals filed against the decisions of competent authorities (which raises a doubt of whether this is a possible deprivation of the right to two-instance decision-making, which is one of the fundamental citizens' rights guaranteed by the Constitution); the absence of a body authorised to control the use of funds allocated for the elimination of consequences of natural disasters.

#### ***REJECTION OF OBJECTION WITHOUT EXPLANATION***

*Example 1:* A complainant stated that the Damage Assessment Commission had reviewed his property damaged in the earthquake and performed damage assessment. The citizen filed an objection orally for the Commission's record, which was rejected as unfounded by the conclusion of the City Headquarters for Emergency Situations of the town of Kraljevo. Given that the conclusion did not have an explanation, he submitted a petition requesting to be provided an explanation to the conclusion, referring to the fact that he had the constitutionally guaranteed right to appeal or use other legal remedy against a decision on his right.

The Protector of Citizens received a statement of the City Administration with the criteria (a total of three) that the City Headquarters for Emergency Situations determined as conditions for exercising the right to the compensation for damage caused by the earthquake. It was concluded that the complainant did not meet all of these criteria, which was the reason for rejecting his damage compensation application as unfounded.

However, the statement did not provide the information whether the explanation of conclusion was delivered to the complainant by the City Headquarters for Emergency Situations of the town of Kraljevo, nor whether he was informed, and if yes, in which way, before which authority he could protect his rights if he was not satisfied with the said decision, i. e. whether an appeal was allowed against the conclusion in question. The procedure initiated upon this complaint is still pending.

The citizens who have suffered smaller scale damages face different problems. According to the views of the competent judicial and administrative authorities, they usually cannot expect the state to participate in restoring the damage caused by natural disasters.<sup>120</sup> When they receive a decision from the relevant city or municipal

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<sup>120</sup> In the procedure of citizen complaints, the Ministry of Environment, Mining and Spatial Planning expressed its view that the mere fact of the damage caused by natural disasters and its assessment by the authorised commission did not produce an obligation of a public authority to compensate for and restore the damage, bearing in mind that the damage had been the result of the circumstances that could not be predicted. This attitude was also articulated in the decision of the Supreme Court of Serbia Rev. No. 2241/2007 of 11 September 2008, stating that when the damage was caused by the so-called *force majeure*, the effects of which could not be predicted, the rule on exemption from liability was generally applicable. However, when the *force majeure* causes large scale damage affecting more people, then the state intervenes and commits itself and its institutions to secure all or part of the funds for eliminating the harmful consequences according to the principle of solidarity.

inspection on the prohibition of using the damaged residential building, in practice they are often provided with temporary accommodation in a short period, and then the local self-government informs them that there are no funds in its budget earmarked for repairing the damaged or constructing a new residential building, after which they are left on their own.

### *LANDSLIDE*

*Example:* A complainant addressed the Protector of Citizens because of the problems faced by her family after the landslide activation. The construction inspector issued a decision prohibiting the use of their residential building because the landslide activation could endanger human life and health, neighbouring buildings and safety of the environment.

Shortly after moving out of the building, the City Assembly of the Belgrade City provided them with temporary accommodation in a hotel, after which they were instructed to address the competent authorities of the City Municipality of Grocka for further assistance and they received from them the financial support which was sufficient to pay an apartment rent for one year. Since a permanent solution was not found, the complainant addressed various bodies. They received the responses from the Ministry of Public Administration and Local Self-Government, the Mayor of Belgrade and the Secretariat of Finance of the Belgrade City Administration instructing them to contact the City Municipality of Grocka because the said entities were not authorised to act in this case. On the other hand, the Belgrade Land Development Public Agency informed the complainant that the 2011 Programme did not include the activities aimed at the construction and reconstruction of roads and utility infrastructure at the specified location, which is why this authority could not perform the landslide restoration. The complainant was instructed to contact the City Administration of Grocka for the financing of works on the said location.

The Protector of Citizens' Secretariat faced the similar situation in acting upon the said complaint, since the Headquarters for Emergency Situations of the City Municipality of Grocka stressed that the municipal budget did not include the funds for this purpose, while also indicating that the Statute of the Belgrade City (Article 25, point 24), stipulated that one of the city competences was to provide the protection from natural and other major disasters and create conditions for their elimination or mitigation of their consequences and therefore the complainant should contact the relevant city services (without specifying them). In addition, the Public Company Construction Directorate of the City Municipality of Grocka declined its competence to proceed in this case and forwarded the complainant's letter to the Headquarters for Emergency Situations of the City Municipality of Grocka. Although the Protector of Citizens' Secretariat investigated, it failed to establish which city body should be addressed for the completion of procedure initiated upon this complaint.

The complaint procedure is in progress.

The situation in this field is additionally complicated by the fact that the Government of the Republic of Serbia and the competent minister were obliged to adopt more detailed regulations for the implementation of the said Law within six months of its entry into force, which, according to the available information, has not been done.

However, the Protector of Citizens encountered also different approaches and views of competent authorities in conducting procedures upon complaints.

#### UNTIMELY HANDLING OF DAMAGE COMPENSATION REQUESTS

*Example:* A complainant expressed his dissatisfaction with the work of the City Administration Loznica, the Commission for assessment and determination of damage caused by natural disasters, due to the untimely handling of a request for the compensation of damage caused by the floods on his agricultural land.

Upon receiving the letter from the Protector of Citizens, the City Council approved the funds for financial aid, so that the complainant was paid a certain amount of money and given 500 kg of corn, which was the assistance for repairing damage caused by the flooding of the river Jadar in June 2010. The complainant confirmed to the Protector of Citizens to have received the assistance after which the procedure initiated upon his complaint was suspended.

### III RESTITUTION

In the reporting period, there were an increased number of citizen complaints that pointed to numerous problems in exercising the rights to the restitution of confiscated property or indemnification.

*Example:* The Law on Restitution of Confiscated Property or Indemnification entered into force on 6 October 2011. According to its provisions, at the beginning of February 2012, the Agency for Restitution announced a public call for property restitution, and in December 2011, published a form of request for the restitution of confiscated property or indemnification (ZVIO). The Protector of Citizens has received so far several citizen complaints indicating certain problems that occur in the application of the said Law.

Most of them stress that the Republic Geodetic Authority and the competent real estate cadastre services refuse to issue to the former owners of confiscated property a certificate on identification of cadastral parcels of old and new survey, which is required to be submitted along with the request for property restitution. During the process of legality and regularity of work, the Protector of Citizens was informed about the opinion of the Republic Geodetic Authority, according to which the

competent real estate cadastre services were obliged to issue documents with the information specified by legal provisions to the person who had submitted a property restitution or indemnification request to the Agency for Restitution, at his/her request, free of charge, while the person was required to provide the competent service with the proof of having submitted a request for the restitution of confiscated property to the Agency for Restitution, after the entry into force of this Law, on the basis of announced public call, (the proof is a copy of request with the receipt stamp of the said Agency or its certificate on submitted request by that person). However, based on the evidence submitted by the complainants, the Protector of Citizens learned that the Director of the Republic Geodetic Authority had sent a letter of different content to the real estate cadastre services. He instructed them on how to act upon citizen requests for the issuance of real estate register excerpts, saying that the competent real estate cadastre services were obliged to issue the said documents, free of charge, to any person requesting them for the purpose of exercising the right to the restitution of confiscated property or indemnification, and to affix a stamp on each document issued for the said purpose, in the upper right corner, reading the following: "This document may be used only for the purpose of exercising the right to the restitution of confiscated property and indemnification, according to the Law on Restitution of Confiscated Property and Indemnification".

Therefore, the Protector of Citizens requested from the Director of the Republic Geodetic Authority to give, as soon as possible, a statement of the reasons for two concurrent document of different content and their mutual relation (especially given the fact that the statement sent to the Protector of Citizens was not repealed), and all other facts and circumstances relevant to the assessment of the merits of complaints.

### **CONCLUSIONS:**

Based on the available information, the received complaints and the meetings with the National Authority for Property and the representatives of citizens' association "Network for Restitution", the Protector of Citizens' increased activity can be expected in the future as regards reinstatement, i. e. the control of respecting the rights of citizens, as well as legality and regularity of the work of competent administration authorities.

#### ***2.6.11. Sector of tax administration***

In 2011, the Protector of Citizens received, compared to the previous years, an increased number of citizen complaints about the work of Tax Administration, indicating various violations of the rights of citizens.

***Problem of taxation of entrepreneurs on maternity leave/child care leave/ leave for special child care that perform business activities through an authorised manager and are entitled to fringe benefits***

The Serbian Employers Association<sup>121</sup> filed a complaint with the Protector of Citizens, together with 15 female entrepreneurs or their family members, expressing their dissatisfaction with the fact that the Tax Administration was charging the self-employed female entrepreneurs with the contributions for compulsory social insurance for self-employment, in the period when they were entitled to fringe benefits for maternity leave, child care leave or leave for special child care, while performing business activities through an authorised manager. An official notification on the observed problem was received also from the Provincial Ombudsman of the Autonomous Province of Vojvodina.

The complaints particularly emphasise that the Tax Administration acts inconsistently, since in the past period it did not impose the obligation on the same basis, although it applied the same regulations. After conducted control procedure, the Protector of Citizens established an error consisting in the changed interpretation of regulations - interpretation less favourable to citizens, although they could and had been interpreted otherwise, thereby betraying the citizens' justified legal expectations. It was recommended to the Tax Administration that, based on the official supervision, it should annul all decisions issued as of 2010, and refund the paid amounts within 60 days, and in the future it should not charge women entrepreneurs in such position with the contributions and, if it considered that the previous practice was improper, it should take measures within its competence to change the regulations governing the system of compulsory social insurance.

The Tax Administration informed the Protector of Citizens that it was unable to comply with the received recommendation, maintaining its interpretation of regulations and referring to the obligation of administration authorities to respect the principle of legality in their work.

The problem of taxable women entrepreneurs attracted considerable media attention and opened a public discussion, after which the Government of the Republic of Serbia adopted a Conclusion 05 No. 553-5034/2011 of 30 June 2011, agreeing that the Republic of Serbia would pay due contributions for compulsory social security of self-employed women entrepreneurs. Unfortunately, the entrepreneurs who had already fulfilled the obligation did not get the possibility of refund, which put them in a disadvantageous position compared to the entrepreneurs whose obligation was assumed by the Republic of Serbia.

Several months later, Article 4 of the Law on the Amendments to the Law on Compulsory Social Insurance<sup>122</sup>, which became effective on 7 January 2012, stipulated that the women entrepreneurs who continued to conduct business through an authorised manager were not obliged to pay contributions, whereas the contributions were calculated and paid in accordance with the amount of fringe benefits to which the

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<sup>121</sup> The Serbian Employers Association submitted to the Protector of Citizens the data on double taxation of private entrepreneurs on maternity leave.

<sup>122</sup> *Official Gazette of RS*, No. 101/11



entrepreneur was entitled according to the regulations governing the financial support for the families with children.

The amendments to the existing regulations governed the issue of future taxation of entrepreneurs on maternity leave in the manner that it did not leave any room for different interpretations. However, the female citizens who did meet the established obligation (either voluntarily or through enforced collection), keep filing complaints with the Protector of Citizens, reasonably pointing to their unequal position compared to the entrepreneurs whose obligation was fulfilled by the Republic of Serbia.

***Denial of the right to appeal in the decision-making process on temporary withdrawal of tax identification number***

The Protector of Citizens received a complaint from a company dissatisfied with the first-instance decision of the Tax Administration on temporary withdrawal of tax identification number. The company was instructed to immediately initiate an administrative dispute, without the possibility of using the constitutional and legal rights to appeal. In the procedure initiated by the Protector of Citizens, the Tax Administration challenged the grounds of the complaint, noting that the two-instance decision-making was not possible in this case because the Director of Tax Administration was issuing first-instance decisions and if the taxpayers had been allowed to appeal to the Finance Minister, he would have authorised the Director of Tax Administration, as he usually did, so that in such case the Director would have been deciding both in the first-instance procedure and the appellate procedure.

The Protector of Citizens sent a recommendation to the Tax Administration advising it to ensure in its future work a two-instance decision-making in the procedure of temporary withdrawal of tax identification number, to instruct citizens on possible legal remedy, that is - the possibility of appealing to the Minister of Finance, and to remedy the consequences of violating the complaining company's rights.

The Tax Administration informed the Protector of Citizens that it was unable to act upon the recommendation because the tax identification numbers were assigned in the main office of Tax Administration, which, in order to simplify and speed up the process of company registration, established direct contact with the Serbian Business Registers Agency and the National Bank of Serbia. For this reason, the Tax Administration considered that it would be inappropriate to change the existing system of assignment and withdrawal of tax identification numbers. The violation of the complainant's right was not remedied either, with the explanation that the complainant had initiated an administrative dispute against the first-instance decision, and that the competent court would examine the grounds and, if appropriate, penalise the possible unlawfulness of the first-instance decision.

The Protector of Citizens believes that the reasons of organisational and technical nature cannot, in any case, be a justification for denying or restricting the

right to appeal, since this right is recognised by the applicable national and international legal documents and constitutes an achievement of legal civilization.

***Violation of principles of good administration and proper administrative conduct in carrying out a field control, as a result of incorrect treatment of citizens, violations of law and alcohol consumption by the tax inspector***

The Protector of Citizens received a complaint by a citizen dissatisfied with the conduct of the authorised persons of the Tax Administration, during a field control of recording transactions through the cash register of the store where she was a manager. The complaint states that the tax inspectors did not treat her with courtesy and respecting her personality, that they dictated to her and her employee what to write on the form *Taxpayer's statement record*, that her husband as proxy was unreasonably ordered to leave the room where the control was carried out, and that the tax inspector asked for a bottle of beer and then drank it, without the issuance of a fiscal receipt or any record on the fiscal tape for the sold item.

After completed control procedure, the Protector of Citizens determined the validity of complaint grounds and recommended to the Tax Administration to send a written apology to the complainant for the unlawful and improper field control procedure, and to carry out its procedures in the future work solely in accordance with the rules established by the applicable regulations.

The Protector of Citizens pointed that a document written and signed by a taxpayer, but dictated by an official, was not a statement of its signatory, and as such it was not legally relevant, though not disputing that public officials often helped clients in drafting statements in the procedure.

It was particularly emphasised that civil servants were obliged to behave in a manner that contributed to the maintenance and encouragement of public confidence in the integrity, impartiality and efficiency of authorities. Drinking alcohol in the workplace by a public official does not fit the standards of behaviour that contribute to maintaining the reputation and dignity of the civil service.

The deadline for acting upon the recommendation sent to the Tax Administration Office did not expire by the end of the reporting period.

In 2011, the Protector of Citizens received 47 complaints about the work of Tax Administration, but there were also 3 requests for information or advice about its work, and one association approached this authority with the proposal to amend the existing regulations in this area.

The most common violations were those related to the right to good administration – 46. Out of these, most citizens complained about the violation of law in tax procedures (26), inefficiency of tax authorities (6), non-compliance with created legal expectations (5), improper conduct of tax authorities (4), unequal treatment of citizens (2), and failure to issue a decision within the legally prescribed deadline (1),

lack of proportionality in the work of authorities (1) and abuse of power (1). Ten complaints pointed to the so-called "silence of administration", alone or in combination with the violation of one of the above-specified rights.

### ***3) Achieved results in 2011***

On the basis of control procedures carried out by the Protector of Citizens in 2011, it can be assessed that cooperation with the Tax Administration was not satisfactory.

In a certain number of cases the Tax Administration did not challenge the grounds of filed complaints, but after the initiation of the Protector of Citizens' procedure it would eliminate the deficiencies pointed out by the citizens. Although the so-called "silence of administration" cases are solved in a relatively short period of time following the initiation of procedure of the Protector of Citizens, the influx of complaints which indicate the untimely action of Tax Administration is continuous, which suggests that the tax authorities solve the backlogs *ad hoc*, i.e. without the established system that would allow for the efficiency in deciding on the rights and duties of citizens.

However, in the cases where the Protector of Citizens established errors in the work of Tax Administration and sent a recommendation for rectifying them, in the course of 2011 the Tax Administration showed to be completely unwilling to accept the arguments of the Protector of Citizens and to remedy the violations of rights as recommended. For these reasons, we can conclude that the Protector of Citizens' activities aimed at improving the legality and regularity of Tax Administration in 2011 were only partially successful, and that in the future the quality of cooperation should be significantly improved, primarily in order to accept the recommendations of this authority and implement them. Cooperation achieved through the delivery of statements, information and data requested by the Protector of Citizens proceeded without major problems.

#### ***2.6.12. Sector of agriculture, trade, forestry and water management, environment, infrastructure, energy and mining, traffic, hydrometeorology and commodity reserves***

The common characteristic of the complaints received in the field of this versatile sector is that all of them point out to various violations of good administration in the work of competent authorities.

#### ***Inconsistent or unequal treatment of citizens in the same or similar legal and factual situation***

The Protector of Citizens was contacted by several citizens complaining about the work of the Electricity Distribution Company, related to the problems encountered when requesting the approval to pay their debts for consumed electricity in instalments. The first problem consists in the fact that there is no binding document which regulates the terms of payment in instalments, but it is a matter of the Director's

discretionary power, for which there are no prescribed criteria, conditions and procedures of decision making, which means that the request for debt payment in instalments does not have to be approved. In addition, the problem is the fact that the Director's discretionary decision on whether and in which number of instalments the debt payment will be approved to the complainant, who possesses a certificate of the competent social welfare centre on being a user of financial family support which is not being paid on time, substantially reduces the meaning and importance of the recognition of that right, and all the more, before the body that is not professionally competent or authorised for such an action. Nothing less of a problem is the fact that some complainants were sued for the debt after they were told they would be notified in writing of the possibility of concluding a contract on the payment of debt in instalments.

In its statement, the Public Company *Elektroprivreda Srbije* informed the Protector of Citizens that it would adopt a document regulating, in a uniform manner, the issue of possible debt discharge or debt rescheduling, which would be applied by all subsidiary companies. Regarding that, the Protector of Citizens sent an opinion to the Public Company *Elektroprivreda Srbije* saying that "the document regulating the rescheduling of debt for tariff customers should define the following: persons entitled to pay in instalments, conditions for approval of payment in instalments, ways and deadlines for companies to act upon request, as well as evidence required to be submitted along with a request". After that, the Public Company *Elektroprivreda Srbije* Belgrade issued a Decision laying down uniformly for all the electricity distribution companies the conditions for regulating the old debt of tariff customers from the broad consumption category - the *household* group of electricity consumption.

### ***Inefficient handling of citizen requests for the connection of buildings to the electricity distribution system***

The Protector of Citizens received the complaints concerning the work of the Electricity Distribution Company related to the action or inaction upon the requests for connecting a building to the distribution system, by failing to issue decisions, within a reasonable time, regarding the said requests and to clearly and accurately provide information about the consequences of the citizens' failure to respond to the "invitation for submission correction".

In its statement, the Electricity Distribution Company informed the Protector of Citizens that the decisions upon requests were not made due to the fact that the complainants did not, within the given deadline, provide a certificate of the competent authority that the facility could be legalised, or that it was legalised, for the reason of which the requests could not be approved.

The Protector of Citizens established that in the particular case the said authority had not issued decisions upon requests, thus denying the complainants' right to understand the legal situation regarding the submitted requests and take appropriate actions, based on the explained decisions of the authorities with the clearly

specified key facts and circumstances and the instruction on legal remedy. Therefore, the Protector of Citizens referred a recommendation to the Electricity Distribution Company to promptly issue decisions on the requests for connecting to the distribution system, as well as to further on adjust the “invitation of submission correction” so that it contained clear and precise warning of the consequences of failure to act accordingly. The Electricity Distribution Company issued decisions upon the submitted requests.

In 2011, the following problem was noticed: there was no document on the criteria, protection, conditions, terms and procedure for determining the status of vulnerable energy customer. The Law on Energy, which entered into force in 2011 provided that the Ministry of Energy and Infrastructure should, within one year of entry into force of the Law, prepare a proposal of such document to the Government, but it has not been adopted yet.

On the basis of control procedures carried out by the Protector of Citizens during 2011, it can be assessed that cooperation established by the electricity distribution companies with the Protector of Citizens was not satisfactory. In many cases, the companies did not recognise and eliminate flaws in their work (making a decision on the request to connect a building to the distribution system), which is why the Protector of Citizens sent recommendations on how to correct the identified errors.

***2.6.13. Sector of finances, economy and regional development,  
privatisation, property directorate, National Employment Service,  
bankruptcy and Public Procurement Office***

***Providing incorrect information to citizens about their right to compensation  
and failure to correct omissions in work***

***Example:*** The Protector of Citizens received a complaint against the work and actions of the National Employment Service from a group of former employees of the company M....., whose employment contract was terminated and who received the one-off compensation payment under the Option 1 of the Redundancy Programme. The complainant’s request for the recognition of the right to unemployment compensation was rejected by a decision of the competent branch, and the Department for Unemployment Insurance and Legal Affairs rejected the appeal against the said decision, explaining that the Option 1, for which he had opted, did not envisage the possibility of exercising the right to compensation, i.e. that he had not been paid a severance pay in accordance with the Law on Labour, but the one-off payment of compensation.

Acting on the complaint, the Protector of Citizens learned that the Supreme Court of Serbia upheld in its judgments the claims against the second-instance decisions of the NEP, with the explanation that in the event of the termination of employment on the basis of a written agreement concluded with the employer on the employer’s initiative, the employee shall be entitled to financial compensation, regardless of the chosen option. The NEP stated that the problem arose due to different judgments of the Supreme Court of Serbia in the administrative disputes initiated by employees’ claims, with the same factual and legal

grounds for which the following initiative was submitted to the Supreme Court of Serbia: the *Initiative for Harmonisation of Court Practice regarding the Right to Financial Compensation of Redundant Employees* that have acquired some of the rights set forth in the *Decision on establishing the programme for solving the redundancy in the process of rationalisation, restructuring and preparation for privatisation of the Government of RS* and on other grounds.

The Protector of Citizens sent a recommendation to the NES to implement the procedures of annulment or alteration of final decisions issued upon the requests of former employees of the company M....., whose right to compensation in case of unemployment was not recognised, due to the wrong application of substantive law, in accordance with the legal opinion of the Supreme Court of Serbia. In addition, it was recommended to refrain in the future from issuing notifications and similar documents restricting the rights of citizens and not providing clear and understandable information about the procedures and actions to be taken in order to exercise the rights and interests. The NES did not comply with the recommendation.

## 2.7. STATISTICAL OVERVIEW OF CITIZEN COMPLAINTS CONCERNING MALADMINISTRATION

The sectors of good administration generally coincide with the line ministries in the Government of the Republic of Serbia, and the complaints recorded in these sectors account for almost two thirds of the total complaints received in 2011. In 2011, the Protector of Citizens handled **2459 complaints in the area of good administration**: in 2443 cases the procedures were initiated upon written complaints received from citizens and in 16 cases upon own initiative.

By 31 December 2011, the Protector of Citizens fully **completed the work on 1563 complaints in the area of good administration**, while the procedure in the remaining 896 complaints from 2011 is still ongoing.

**Table 4 - Division of complaints by good administration sectors**

Sector of foreign affairs, diaspora and justice	343	9.42%
Sector of defence	88	2.42%
Sector of internal affairs	148	4.07%
Sector of finance, economy and regional development	298	8.19%
Sector of agriculture, trade, forestry and water management, environment, infrastructure, energy and mining	146	4.01%
Sector of urban planning, construction and cadastre	244	6.70%
Sector of human rights, public administration and local self-government	335	9.20%
Sector of labour	348	9.56%
Sector of health, social protection, pension and disability insurance	392	10.77%
Sector of security	7	0.19%
Sector of culture, education, science and sports	110	3.02%
<b>Total</b>	<b>2459</b>	

The largest number of complaints relate to the violations of rights in the field of economic, social and cultural rights (1257 complaints or 51.12%), especially the rights of social protection and the rights from pension and disability insurance. The second largest number of complaints relate to the violation of the right to good administration (1083 complaints or 44.04%), which are followed by the violation of civil and political rights (495 complaints or 20.13%). The most common violations from the group of economic, social and cultural rights were the violations of the right to work and labour

rights and the right to protection of property, although other rights from this group were also violated.

**Table 5 – Most common violations of economic and social rights**

Right to work and labour rights	425	17.28%
Right to the protection of property	354	14.40%
Rights from pension and disability insurance	169	6.87%
Right to a healthy environment	48	1.95%
Right to health insurance	44	1.79%
Right to be informed	33	1.34%
Right to social protection	20	0.81%
Right to education	17	0.69%
Other rights	147	5.98%
<b>Total</b>	<b>1257</b>	<b>51.12%</b>

The most common violations from the group of political and civil rights related to the violation of the right to a fair trial (246) and the right to legal protection, legal remedy and legal aid.

**Table 6 – Most common violations of civil rights**

Right to a fair trial and trial within a reasonable time	246	10.00%
Right to legal protection, legal remedy and legal aid	89	3.2%
Right to personal documents	50	2.03%
Right to citizenship	19	0.77%
Right to inviolability of physical and psychological integrity	11	0.45%
Right to privacy and personal data protection	10	0.41%
Other rights	70	2.85%
<b>Total</b>	<b>495</b>	<b>20.13%</b>

The citizen complaints in the field of “good administration” referred mainly to the violation of the right to observance of laws and the right to receive a decision within the legally stipulated deadline, as shown in Table 7:

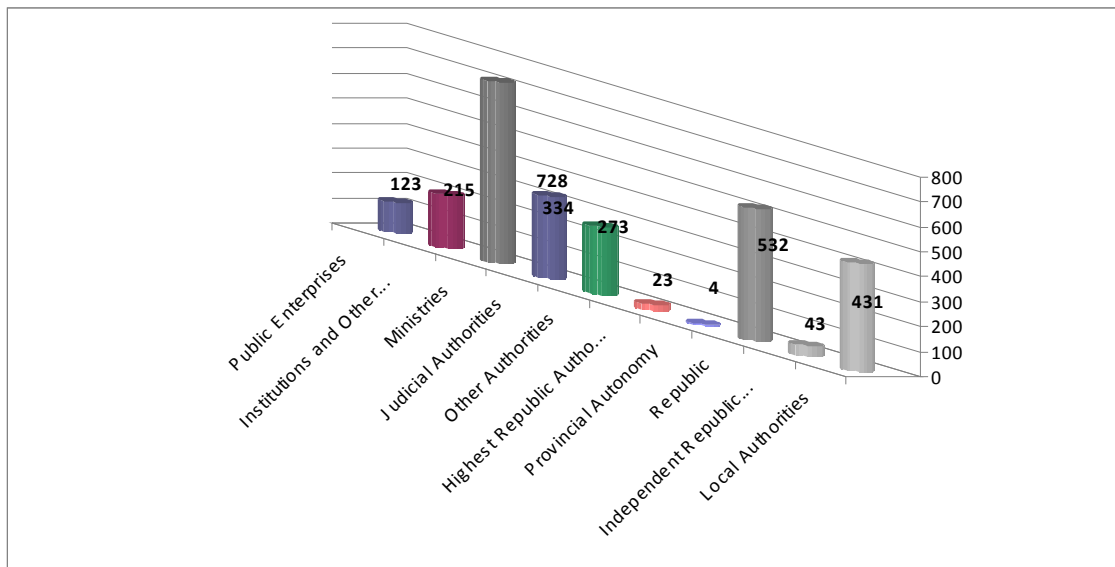


**Table 7 - Most common violations of the citizens' right to "good administration"**

Right to observance of laws	349	14.19%
Right to receive a decision within the legally stipulated deadline	173	7.04%
Right to efficient work of authorities	160	6.51%
Right to be protected from silence of administration	124	5.04%
Right to correct conduct of authorities	98	3.99%
Right to equal treatment of citizens	42	1.71%
Right to protection from the violation of procedure	50	2.03%
Right to respect created legal expectations	45	1.83%
Right to the absence of abuse of power	21	0.85%
Right to damage compensation	19	0.77%
Right to proportionality in the work of authorities	2	0.08%
<b>Total</b>	<b>1083</b>	<b>44.04%</b>

In 2011, the citizens mostly complained about the work of ministries (728 complaints), which are followed by national agencies (532), local self-government units (431) and other bodies.

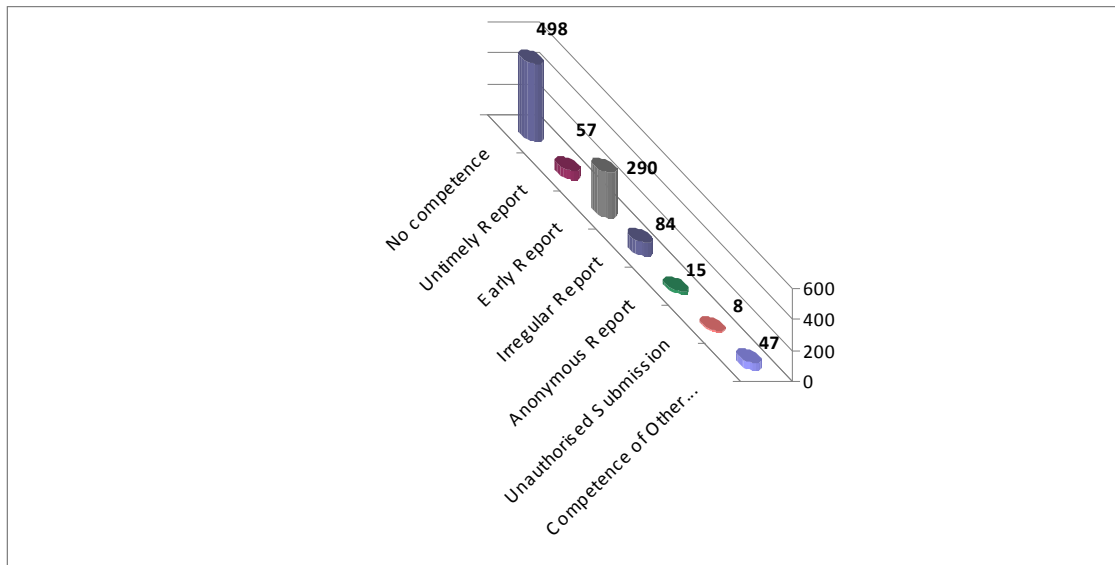
**Chart 12 - Complaints by the authorities to which they refer**



In 2011, the Protector of Citizens, acting on the complaints in the field of good administration, initiated 556 procedures of controlling the work of administration authorities and conducted 27 supervisory control visits to administration authorities. After conducted control and supervision procedures, the work was completed in 564

cases as follows: rejection of complaints as unfounded in 337 cases (59.75%), suspension of procedure in 95 cases (16.84%), given recommendations in 86 cases (15.25 %), complainant's withdrawal of complaint in 37 cases (6.56%), the Protector of Citizens' opinion in 5 cases, giving a statement in two cases and death of complainants also in two cases. The chart shows the reasons for the rejection of complaints:

**Chart 13 - Rejection of complaints in the field of good administration**



In the course of 2011, the Protector of Citizens completed work on 466 complaints carried forward from 2010 in the following ways: 74 procedures of controlling the administration authorities were initiated and then established that there were no grounds for further procedure in 160 complaints; 206 complaints were rejected because of the lack of authority and other legally determined reasons; in 48 cases, the authorities remedied deficiencies in their work by themselves during the procedure conducted by the Protector of Citizens; in 41 cases, the Protector of Citizens sent recommendations and opinions to the authorities, and in 11 cases, the complainants withdrew their complaints.

### III COOPERATION OF THE PROTECTOR OF CITIZENS

By participating in numerous lectures, conferences, seminars and presentations of this institution, the Protector of Citizens in 2011 tried to bring closer to the media, associations, student population and government representatives at all levels, the Protector of Citizens' role, function and significance in the protection of and respect for human rights and control of public authorities and institutions.

#### 3.1. COOPERATION WITH PUBLIC AUTHORITIES

The assessment of quality of exercising the citizens' rights before the authorities vested with public powers and their cooperation with the Protector of Citizens, according to statistical parameters, suggest that cooperation is increasingly improved, but not entirely satisfactory. More specifically, the respect of citizens' rights by public authorities and their attitude towards citizens and their rights has still not reached a sufficiently good quality, although the state and other authorities in the five-year existence of the Protector of Citizens in the increasing number of cases have been taking into account the Protector of Citizens' recommendations and complying with them. In 2011, it allowed the raising of the level of cooperation to a higher level and more complete realisation of the purpose of the institution of the Protector of Citizens.

On the basis of citizen complaints received in 2011, which refer to the work of administration authorities in cases of alleged violation of the principles of administrative procedure and other rules governing the relationship between citizens and administration authorities, one can get an idea of the work of these authorities. The largest number of complaints related to the work of the representatives of executive authorities, especially the ministries to which over 30% of all written complaints referred, as well as the work of authorities in the field of pension and disability insurance, employment, health care, public companies, tax authorities, institutions of education, social welfare, judicial and administrative bodies of local self-governments.

**Table 8 - Complaints by different authorities to which they refer**

Ministries	1099	30.19%
Institutions and other public services	740	20.33%
Republic funds, institutions, agencies, directorates, administrations, etc.	643	17.66%
Local self-government authorities	525	14.42%
Judicial authorities	440	12.09%
Public companies	145	3.98%
Other bodies	355	9.75%

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**Total for all authorities**

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3947

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*Note:* The number of authorities is always higher than the number of complaints since the individual complaints sometimes indicate a violation of citizens' rights by more than one authority.

The Ministry of Interior has traditionally been a body against which most people complain every year, since it makes the largest number of contacts with citizens, but it must also be noted that this body in most cases eliminates its errors in work upon receiving the opinion of the Protector of Citizens. The classification of complaints shows that most complaints refer to the exercise of the right to personal documents, citizenship, obtaining permits to carry weapons, etc. The complaints relatively rarely relate to the cases of torture while in police custody.

**Table 9 – Complaints by different ministries to which they refer**

<b>All complaints against the ministries in the total number of complaints</b>	<b>1099</b>	<b>30,18%</b>
<b>Individual ministries compared to all ministries</b>		
Internal affairs	405	36.85%
Defence	165	15.01%
Education and science	113	10.28%
Finance	84	7.64%
Labour and social policy	75	6.82%
Environment, mining and spatial planning	72	6.55%
Health	50	4.55%
Human and minority rights, public administration and local self-government	44	4.00%
Justice	35	3.18%
Other ministries	56	5.10%

The following table shows the areas in which the Protector of Citizens receives most complaints (education, social welfare, etc.) and the sub-types within the large groups of authorities to which they belong. For example, the largest number of complaints in the area of social protection refers to the complaints about the work of Republic Fund for Pension and Disability Insurance, against which 272 complaints were received in 2011 (Table 10).

**Table 10 - Complaints by different authorities to which they refer**

<b>Institutions and other public services in the total number of complaints</b>	<b>740</b>	<b>20.32%</b>
In the field of education	254	34.32%
In the field of social protection	186	25.14%
In the field of criminal sanctions	180	24.32%
In the field of health	110	14.86%
In the field of science and culture	10	1.35%
<b>Republic funds, institutes, agencies, administrations, etc. in the total number of complaints</b>	<b>643</b>	<b>17.66%</b>
Republic Fund PIO	272	42.30%
Tax Administration	85	13.22%
Republic Geodetic Authority	75	11.66%
Privatisation Agency	51	7.93%
Republic Health Insurance Fund	44	6.84%
National Employment Service	33	5.13%
Statistical Office of the Republic of Serbia	16	2.49%
Labour Inspectorate	14	2.18%
Other bodies	53	8.24%

Regarding the geographical distribution, most complaints are related to the work of the City of Belgrade and other city municipalities.

**Table 11 - Complaints by different authorities to which they refer**

<b>Local self-government authorities in the total number of complaints</b>	<b>525</b>	<b>14.42%</b>
City of Belgrade and city municipalities	210	40.00%
Other cities	141	26.86%
Other municipalities	174	33.14%
<b>Judicial authorities in the total number of complaints</b>	<b>440</b>	<b>12.08%</b>
Basic courts	213	48.41%
Higher courts	64	14.55%
Prosecutor's Offices	52	11.82%
Commercial courts	39	8.86%
Appellate courts	37	8.41%
Administrative courts	18	4.09%
Supreme Court of Cassations	17	3.86%
<b>Public companies in the total number of complaints</b>	<b>145</b>	<b>3.98%</b>
Republic public companies	73	50.34%
Local public companies	72	49.66%
<b>Other bodies in the total number of complaints</b>	<b>355</b>	<b>9.75%</b>
Companies	133	37.46%
Private employers	57	16.06%
Natural person	49	13.80%
Foreign bodies	15	4.23%
Socially-owned companies	10	2.82%
Other	91	25.63%

### 3.2. COOPERATION WITH CIVIL SOCIETY AND ACADEMIC COMMUNITY

In the field of **protection of minority rights**, cooperation with non-governmental organisations contributed to the Protector of Citizens' higher quality of work and better information. The particularly important cooperation was established with the NGO Praxis in connection with the improvement of the regulations that should allow the exercising of the right to recognition of persons before the law and the right to adequate housing. The Protector of Citizens also established good cooperation with the Ethnicity Research Centre, especially in relation to monitoring the work of the inter-ethnic councils in the local self-government units with the ethnically mixed composition of population, exercising the right to the official use of their language and script and exercising the rights of Roma. Finally, the notifications on human rights violations submitted regularly by the Centre for Civil Society Development from Zrenjanin were valuable sources of information. In addition to cooperation with these non-governmental organisations, the Protector of Citizens cooperated also with other civil society organisations – the Youth Initiative for Human Rights, the Minority Rights Center, the Regional Center for Minorities, the Roma Education Centre from Subotica, the Roma Women's Center Bibija and others.

The members of the Protector of Citizens' Council for National Minorities, the representatives of academic community, and especially Prof. Ranko Bugarski, PhD and Prof. Ljubica Đorđević, PhD, provided expert assistance in dealing with the issues related to the exercise of minority rights. Successful cooperation on these issues was established also with other experts: Prof. Nenad Đurđević, PhD; Prof. Marijana Pajvančić, PhD; Prof. Vesna Rakić Vodinelić, PhD; Saša Gajin, PhD; Zlata Vuksanović Macura, MA; Claude Khan, PhD; Bahram Ghazi; Dragan Todorović PhD; Božidar Jakšić, PhD; Prof. Dragoljub Đorđević, PhD and others.

In the field of **child rights** in 2011, the Protector of Citizens continued and deepened cooperation with the civil society organisations dealing with child rights, especially with the Network of Civil Society Organisations for Children in Serbia (MODS), particularly with some of its members – the Child Rights Center, the Center for Youth Integration, the NGO VelikiMali, the Mental Disabilities Rights Initiative of Serbia "MDRI - S", the Autonomous Women's Center, Group 484, through participation in their meetings and vice versa.

The Protector of Citizens continued cooperation with the Faculty of Law in Niš, where the Deputy Protector of Citizens holds a lecture, for the second year in a row, within the subject *the Rights of the Child* presenting the experiences of the Protector of Citizens in the field of child rights.

In the area of **gender equality**, in 2011, the Protector of Citizens established and deepened cooperation with several associations of citizens, as follows: with the Autonomous Women Center through the work on legislative initiatives for amending

criminal legislation to improve legal protection for women victims of domestic violence; with the Network *Women Against Violence* regarding local budgets and the Victimology Society of Serbia through collaboration on mapping the dimensions and characteristics of gender-based discrimination in the labour market and the response of society to that phenomenon.

The Protector of Citizens has agreed on future cooperation with the representatives of associations of citizens, whose mission is to protect the rights of LGBT population, GAYTEN and the Gay Straight Alliance, in analysing how the LGBT population is presented in the pre-school and primary school textbooks.

In the field of the **protection of rights of persons with disabilities**, the Protector of Citizens in 2011 met with the associations of paraplegics and quadriplegics in Vojvodina, to find solutions for equalising the level of rights to assistance and care of another person for civilian and military beneficiaries.

A meeting was held with the representatives of civil society organisations dealing with disability issues (Center for Independent Living of People with Disabilities in Serbia and MDRI), to expand cooperation in order to provide protection and take measures for the improvement of position of these individuals. On one hand, cooperation raises the visibility of the institution of Protector of Citizens, while on the other hand, through these organisations, people with disabilities will have the opportunity to point to the violations of rights or irregularities in the work of authorities.

The Protector of Citizens continued cooperation with the Serbian Association of Blind and Visually Impaired People and the organisation "From the Circle" on eliminating the inequality of people with disabilities, compared to other citizens, in conducting banking transactions and financial services.

### **3.3. INTERNATIONAL COOPERATION AND PROJECTS**

In 2011, the Protector of Citizens continued with intensive international cooperation at the multilateral and bilateral level. In 2011, the Protector of Citizens continued to perform regular activities as a member of several professional networks: the International Coordinating Committee of National Human Rights Institutions, the International Ombudsman Institute, the Association of Mediterranean Ombudsmen, the European Ombudsman Institute and the European Network of Ombudsmen for Children.

During the reporting period, the Protector of Citizens had several meetings with the representatives of international organisations. In June, he met with the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg,

during his visit to Serbia.<sup>123</sup> The Protector of Citizens also met with the members of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe<sup>124</sup> and the European Union's expert missions.

Cooperation with the Council of Europe was established during the drafting of two international instruments – the *Recommendations of the Council of Europe on the rights and legal status of children and parenting responsibilities*<sup>125</sup> and the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly health care*.<sup>126</sup> The Protector of Citizens joined the discussion on the Council of Europe's Draft Strategy for the Rights of the Child 2012 - 2015<sup>127</sup>, both at the national level, by giving opinions to the Ministry of Foreign Affairs, and within the framework of international cooperation, by participating at the Council of Europe's conference, dedicated to this topic, in November 2011.

The Protector of Citizens and the Commissioner for the Protection of Equality established cooperation in the field of publishing, and with the support of UNICEF in Serbia, released a publication *Children's rights in international documents*<sup>128</sup>, the first publication of its kind published in the Serbian language, as an expression of their joint efforts to promote the concept of child rights and encourage all social actors to assume a proactive approach to children.

With the support of the OSCE Mission to Serbia, in 2011 the Protector of Citizens also released a publication entitled *A child in the centre of attention - Collection of selected recommendations of the Council of Europe and the European Court of Human Rights in Education*<sup>129</sup>, dedicated to inclusive education of children in a tolerant, safe and respectful environment.

### **3.3.1. Activities of the Protector of Citizens as National Institution for the Promotion and Protection of Human Rights (NHRI)**

The Protector of Citizens was awarded with "A" status National Human Rights Institution (NHRI) accreditation for the period 2010-2015, at the meeting of the International Coordinating Committee, held on 17 and 18 May 2011 in Geneva. The

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<sup>123</sup> The Commissioner's report on the visit to Serbia is available at: [http://coe.org.rs/def/news\\_sr\\_def/?conid=2215](http://coe.org.rs/def/news_sr_def/?conid=2215);

<sup>124</sup> The Report of the CoE Parliamentary Assembly *The honouring of obligations and commitments by Serbia* is available at: <http://assembly.coe.int/Documents/WorkingDocs/Doc12/EDOC12813.pdf>;

<sup>125</sup> Recommendation on the rights and legal status of children and parental responsibilities. The Recommendation is being prepared, its draft version is available at: <http://www.coe.int/family>;

<sup>126</sup> Guidelines of the Committee of Ministers of the Council of Europe on child-friendly health care, available at <http://www.coe.int/t/dg3/health>;

<sup>127</sup> The Conference held in Monaco on 20 and 21 November 2011. See more at: <http://www.coe.int/t/dg3/children>;

<sup>128</sup> *Children's rights in international documents (Prava deteta u međunarodnim dokumentima)*, editor Prof. Nevena Vučković Šahović, PhD, the Protector of Citizens, the Commissioner for the Protection of Equality, 2011;

<sup>129</sup> *A child in the center of attention - Collection of selected recommendations of the Council of Europe and the European Court of Human Rights in Education (Dete u centru pažnje – Zbirka odabranih preporuka Saveta Evrope i presuda Evropskog suda za ljudska prava, u oblasti obrazovanja)*, prepared by Tamara Lukšić – Orlandić and Nataša Jović, the Protector of Citizens, 2011;



Protector of Citizens was granted this prestigious status by the Sub-Committee on Accreditation of the International Coordinating Committee National Human Rights Institutions (hereinafter referred to as ICC). The ICC is a global network of institutions for the protection and promotion of human rights whose internal accreditation system, based on the Paris principles, is recognised by the UN. The ICC coordinates the relationship between the NHRIs and the United Nations on human rights.

Since being granted this status in April 2011, the Protector of Citizens has undertaken numerous activities at the regional and international levels working as a national institution for the promotion and protection of human rights.

The Protector of Citizens prepared and sent to the UN Committee on the Elimination of Racial Discrimination (hereinafter referred to as CERD) the *Observations on certain issues concerning the laws and regulations governing the status of national minorities* in relation to the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. The Protector of Citizens submitted to the UN Human Rights Committee (hereinafter referred to as CCPR) his *Observations on the Implementation of the International Covenant on Civil and Political Rights* in the second reporting period for Serbia, and verbally explained them at the Committee session in New York. The Protector of Citizens participated in the presentation of the Draft Alternative Report on the Situation of Persons with Disabilities, which was presented before the Committee for monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities.

As part of the regular activities in the field of international cooperation, primarily the capacity of national institutions for the protection and promotion of human rights (NHRIs), the Protector of Citizens prepared and sent the answers to various questionnaires of the Office of the High Commissioner for Human Rights (OHCHR) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) about the role of prevention in promoting and protecting human rights, the rights of persons with disabilities, the elderly, gender equality and women's rights (including violence against women and girls) and child begging. The Protector of Citizens prepared a special report on the Serbia's progress in the application of Article 33 of the ratified Convention on the Rights of Persons with Disabilities.

Seeking to raise the institution's capacity to meet obligations arising from the NHRI status, the Protector of Citizens participated in the workshops devoted to monitoring the results of the Universal Periodic Review (hereinafter referred to as UPR) and recommendations of other mechanisms for protection and promotion of human rights, strategic planning and development of a NHRI communication plan.

### 3.3.2. Projects

The Protector of Citizens participates in a five-year programme of judicial reform and government accountability, implemented by the U.S. Agency for International Development (USAID) with the aim to strengthen the rule of law, raise awareness of justice sector reforms and build capacity of government institutions, civil society and independent institutions for identification and prevention of corruption. The activities carried out by the Protector of Citizens under the project relate to the promotion of principles of good administration and efficient and accountable government, but also to strengthening cooperation with other independent institutions and civil society organisations and enhancing the capacity of institutions in promoting and protecting human rights. One of the most important activities in the first year of the project is launching a campaign to promote the principle of good administration among public administration authorities based on the draft Code of Good Administration, which was prepared by the Protector of Citizens in June 2010. The campaign will be conducted in cooperation with the Ministry of Human and Minority Rights, Public Administration and Local Self-Government.

Within the regional project *Preventing Exploitation of Children in Southeast Europe*, with the participation of four Ombudsman institutions - members of the Children's Rights Ombudspersons' Network in South and Eastern Europe (CRONSEE) and with the support of the international organisation Save the Children Norway, the Protector of Citizens conducted a research on child begging in the Republic of Serbia, which resulted in the Report of the Protector of Citizens entitled *Child begging in the Republic of Serbia* with the identified priority issues and recommendations for relevant authorities, institutions and organisations. The Protector of Citizens also participated in the annual meetings of CRONSEE, which in 2011 were dedicated to protecting children from economic exploitation.

The OSCE Mission to Serbia supported the Protector of Citizens' visits to the Roma settlements in Serbia aimed at increasing the availability of that institution for the Roma population and raising awareness among the population about the role and responsibilities of the Protector of Citizens. The project was conducted in consultation with the Roma National Council and in cooperation with 13 Roma non-governmental organisations and Roma coordinators in 16 local self-government units. The team members of the Protector of Citizens visited 47 settlements in the territory of 27 towns and municipalities, including 5 settlements in Belgrade.

With the support of the British Embassy in Belgrade and the OHCHR, the Protector of Citizens launched a project of support to the exercise of the rights of the Roma community in Serbia. The project has been implemented with the purpose of improving the normative framework of human rights of Roma in Serbia through the analysis of the current status of this population as well as the evaluation of inclusion measures taken so far within the Roma Inclusion Programme. The individual reports were prepared on the implementation of Roma Inclusion Programme in the field of employment, housing, education, health care, readmission, and anti-discrimination.

Based on these reports, the Protector of Citizens will compile a comprehensive report along with the recommendations to the authorities for the improvement of status of the Roma population in Serbia.

### ***3.3.3. Organisation and participation in international events***

At the international level, the year 2011 was marked by the organisation of two major events, as well as the participation in several professional conferences abroad where the specific segments of the Protector of Citizens' role and activities were presented.

The Protector of Citizens of the Republic of Serbia and the Geneva Centre for Democratic Control of Armed Forces (DCAF), with the support of the Ministry of Defence of the Republic of Serbia, organised from 13 to 15 April 2011 in Belgrade the **Third International Conference of Ombudsman Institutions for Armed Forces**. The conference was opened by the keynote speeches of Boris Tadić, President of the Republic of Serbia, Dragan Šutanovac, Minister of Defence of the Republic of Serbia, Ambassador Theodor Winkler, DCAF Director and Saša Janković, the Protector of Citizens of the Republic of Serbia. The conference was attended by the Ombudsmen for armed forces, inspectors general and presidents of the parliamentary bodies responsible for the protection of the rights of armed forces personnel from nineteen countries, and the representatives of state institutions, academia, non-governmental organisations and the media. At the end of three days of the Third International Conference of Ombudsman Institutions for Armed Forces, the **Belgrade Memorandum** was adopted. The Report on the Conference, which includes the key elements of discussion and the Memorandum, is printed in both Serbian and English languages.<sup>130</sup>

In order to present the Report on Human and Minority Rights in Serbia, the European Commission against Racism and Intolerance of the Council of Europe (hereinafter referred to as ECRI), in cooperation with the Protector of Citizens of the Republic of Serbia and the Commissioner for the Protection of Equality, organised a roundtable entitled *Combating Discrimination in Serbia*, on 16 November the Palace of Serbia. The roundtable, which brought together over one hundred participants, was to define ways of ensuring the implementation of ECRI's specific recommendations for Serbia.

The Protector of Citizens held a lecture on the role of the Ombudsman in the modern concept of the rule of law at the European Forum Alpbach (Austria); he spoke at the international conference in Baku (Azerbaijan) on the Ombudsman's access to information relevant to the conduct of procedures and access to information of public importance, while at the international conferences at The Hague and Tirana he presented the role of the Protector of Citizens and other independent control institutions in the security sector reform, and the Protector of Citizens' competences

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<sup>130</sup> The Report is available at: <http://www.ombudsman.rs/index.php/lang-sr/component/content/article/1590>

and mechanisms for controlling the work of the security intelligence sector in Serbia. In addition, the Protector of Citizens participated in the regional conference entitled *Protection of human rights and freedoms of armed forces personnel* in Sarajevo, organised by the Parliamentary Military Commissioner of Bosnia and Herzegovina.

### **3.4. COOPERATION WITH THE MEDIA**

Following a continuous growth in the number of articles in the print media about the Protector of Citizens of the Republic of Serbia in the period from its establishment to 2010, in 2011 one-fifth fewer texts were published than in the previous year. As regards the electronic media, the number of features on the televisions with national coverage was the same as in 2010.

The number of articles in 26 newspapers, followed regularly by this institution, is 726 (including statements, reports, news, comments, notifications), which is about 20 percent less than the last year. Most of these articles were published in the daily newspapers Politika, Blic, Danas and Pravda.

In one year, there were 18 comments written by journalists about the work and activities of the Protector of Citizens, mainly in Politika and Blic. They include the authors' texts of the Protector of Citizens and his Deputies. The journalists commented in their articles the lobbying in the field of health care, additional work of medical doctors, introduction of the so-called "musical dinar" for technical devices, and they supported the views and efforts of the Protector of Citizens for the abolition of the legislative provisions and regulations that violated the rights of citizens. The Protector of Citizens himself and his Deputies regularly commented in their articles the news within their scope of work, such as judicial reform, gender equality, the Law on Social Protection, protection of whistle-blowers, the Law on Electronic Communications, the Preliminary Draft Law on the Rights of the Child and others. The aforementioned preliminary draft attracted particular interest and divided the media and public opinion.

As regards television, the number of features of various genres was 283 in the past year, which indicates the stagnation compared to the year before. Most features were broadcast by RTS, then B92 and Pink. Over a hundred statements of the Protector of Citizens and his Deputies were broadcast, which is almost twice as much as before. Moreover, the number of TV appearances of the Protector of Citizens and his Deputies were also doubled compared to the year before, which points to the fact that the media seek and appreciate the opinion of this institution on the topics they address.

The published newspaper articles and broadcast television features of local media throughout Serbia are not covered by the analysed statistics and therefore it should be mentioned that the local media outlets were very interested in the presentation and promotion of the project *Electronic Access to the Protector of Citizens*, which is implemented in the libraries of ten municipalities in Serbia.

## IV CONCLUDING CONSIDERATIONS

### 4.1. TOTAL NUMBER AND CLASSIFICATION OF COMPLAINTS BY THE TYPE OF RIGHTS VIOLATIONS

In 2011, the Protector of Citizens had 15,782 contacts with citizens. Out of the total number of verbal complaints received in 2011, recorded in the client reception offices of the Protector of Citizens, 23% fell within the competence of the Protector of Citizens<sup>131</sup>. It means that in 2011 a total of 3,640 complaints received that year were considered, of which 3,456 written complaints and 184 procedures launched upon own initiative. At the same time, some 1,000 complaints from the previous years were considered, of which the work was completed in 766 cases.

In 2011, out of 3,640 complaints the Protector of Citizens completed the work on 2,203 complaints, by rejecting 1,319 complaints for the lack of grounds to initiate a procedure, while in the remaining cases (884) the procedure was carried out in an appropriate manner.<sup>132</sup> Other initiated procedures upon the remaining 1,437 complaints from 2011 are still ongoing.

**Table 12 – Procedures of the Protector of Citizens upon the 2011 complaints completed until 31 December 2011**

Complaints rejected as unfounded	502	56.79%
Cases covered by recommendations – individual and collective	187	21.15%
Suspended procedures – administrative authorities removed deficiencies	118	13.35%
Complainants withdrew complaints	65	7.35%
Opinions – pursuant Article 24, para. 2 of the Law on the Protector of Citizens	9	1.02%
Statements of the Protector of Citizens on conducted procedures	3	0.34%
<b>Total:</b>	<b>884</b>	

A total of 1,181 complaints (32%) referred to the sectors of vulnerable categories of population (children, persons with disabilities and the elderly, persons belonging to national minorities, persons deprived of liberty, complaints in the field of gender

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<sup>131</sup> Upon receiving a complaint that by its contents falls within the competence of the Protector of Citizens, the citizens are advised to submit a written complaint to this authority. In cases where the complaint does not fall within the competence of the Protector of Citizens, the citizens are referred to the authorities which they should address and instructed on the procedural steps that should be taken in order to solve their problems. Thus, this institution reduces the number of written complaints that are not within the powers of the Protector of Citizens.

<sup>132</sup> The citizen complaints which do not fall within the competence of the Protector of Citizens, which are untimely, premature, anonymous, incomplete or filed by an unauthorised person, are rejected pursuant Article 28 of the Law on the Protector of Citizens. The complainant whose complaint is being rejected for one of legally stipulated reasons receives a response that always comprises an instruction on adequate legal remedies or competent authorities.

equality) and 2,459 (68%) referred to the sectors of good administration<sup>133</sup>. The sectors of good administration mainly coincide with the line ministries in the Republic of Serbia and the complaints about the ministries account for nearly two thirds of all complaints received in 2011.

**Table 13 –Division of complaints by sectors, their number and percentage in the total number of complaints**

Persons deprived of liberty	384	10.55%
Gender equality	34	0.93%
Child rights	391	10.74%
Rights of persons with disabilities and the elderly	151	4.15%
Rights of national minorities	221	6.07%
Sector of foreign affairs, diaspora and justice	343	9.42%
Sector of defence	88	2.42%
Sector of internal affairs	148	4.07%
Sector of finance, economy and regional development	298	8.19%
Sector of agriculture, trade, forestry and water management, environment, infrastructure, energy and mining	146	4.01%
Sector of urban planning, construction and cadastre	244	6.70%
Sector of human rights, public administration and local self-government	335	9.20%
Sector of labour	348	9.56%
Sector of health, social protection, pension and disability insurance	392	10.77%
Sector of security	7	0.19%
Sector of culture, education, science and sports	110	3.02%

As data show, there were complainants from all districts in the Republic of Serbia, but most of them were from Belgrade, since Belgrade has the largest population and, as the capital, it is the place where most administration authorities have their head offices (Table 14):

**Table 14 – Data about the percentage of complaints from different districts**

Other parts of Serbia	1056	29.01%
Belgrade	1306	35.88%

<sup>133</sup> For the purpose of handling complaints more efficiently and performing more accurate statistical analysis, all complaints received by the Protector of Citizens during the year or procedures instigated upon own initiative were recorded by the sectors of vulnerable categories of citizens, on one hand, and by the sectors of the so-called good administration, on the other hand.

AP Vojvodina	610	16.76%
Raška	153	4.20%
Nišava	151	4.15%
Braničevo	142	3.90%
Zlatibor	101	2.77%
Preševo, Bujanovac and Medveđa	41	1.13%
Foreign country	55	1.51%
AP KiM	25	0.69%
<b>Total</b>	<b>3640</b>	

#### ***4.1.1. Classification of complaints by the type of rights violations***

By considering the total of 3,640 complaints filed with the Protector of Citizens in 2011, it was established that the largest number of rights violations indicated by the citizens related to the economic and social rights, cases of violation of the principles of "good administration" and violation of civil and political rights.

**Table 15 - Types of violated rights, their number and percentage in the total number of complaints**

Area	Number of violated rights	% in the total number of complaints
Economic, social and cultural rights	1708	46.92%
Right to good administration	1404	38.57%
Civil and political rights	903	24.81%
Child rights	391	10.74%
Right of persons deprived of liberty	384	10.55%
Right of national minorities	221	6.07%
Right of persons with disabilities	153	4.20%
Gender equality	34	0.93%
<b>Total</b>	<b>5172</b>	

*Note:* The number of violated rights is always higher than the number of complaints since numerous complaints indicate multiple violations of rights.

**Table 16 - Overview of violated economic, social and cultural rights, their number and percentage in the total number of complaints**

Right to protection of property	362	9.95%
Right from pension and disability insurance	235	6.46%
Labour right	224	6.15%
Right to education	211	5.80%
Right to work	141	3.87%
Right to health care	114	3.13%
Right to social protection	59	1.62%
Property and labour rights in privatisation procedure	44	1.21%
Right to a healthy environment	40	1.10%
Right to health insurance	26	0.71%
Prohibition of abuse at work	24	0.66%
Right in case of unemployment	13	0.36%
Right to protection of family, mother and single parent	8	0.22%
Other rights	153	4.20%
Impossible to determine violated rights	54	1.48%
<b>Total</b>	<b>1708</b>	

**Table 17 - Overview of violated rights in the field of “good administration”, their number and percentage in the total number of complaints**

Right to observance of laws	432	11.87%
Right to efficient work of authorities	204	5.60%
Right to receive a decision in the legally stipulated deadline	163	4.48%
Silence of administration	147	4.04%
Right to correct conduct of authorities	142	3.90%
Right to protection from the violation of procedure	84	2.31%
Right to the absence of abuse of power	68	1.87%
Right to respect created legal expectations	56	1.54%
Right to equal treatment of citizens	50	1.37%
Failure of authorities to act upon administrative and court decisions	47	1.29%
Right to proportionality in the work of authorities	11	0.30%
<b>Total</b>	<b>1404</b>	



The overview of the violations of civil and political rights, which were 903 in 2011, shows a relatively equal proportion of violation of these rights, whereas the most numerous ones are those related to a fair trial and trial in a reasonable time.

**Table 18 - Overview of violated civil and political rights, their number and percentage in the total number of complaints**

Right to a fair trial and trial within a reasonable time	289	7.94%
Right to personal documents	101	2.77%
Right to legal protection and legal remedy	80	2.20%
Right to legal aid	59	1.62%
Right to inviolability of physical and psychological integrity	44	1.21%
Right to be informed	43	1.18%
Right to protection from discrimination	36	0.99%
Right to protection from torture, inhuman and degrading treatment	35	0.96%
Right to citizenship	21	0.58%
Right to damage compensation	19	0.52%
Right to language and script	17	0.47%
Right to protection of refugees and internally displaced persons	16	0.44%
Right to protection from incitement of racial, national and religious hatred and intolerance	15	0.41%
Right to protection from groundless deprivation of liberty	15	0.41%
Right personal data protection	15	0.41%
Right to freedom and security	14	0.38%
Right to respect for dignity and free development of personality	12	0.33%
Right to privacy	12	0.33%
Freedom of movement	11	0.30%
Right to life	9	0.25%
Other rights	40	1.10%
<b>Total</b>	<b>903</b>	

The majority of complaints in 2011 referred to the work of representatives of executive authorities, especially the ministries to which over 30% of all written complaints refer, as well as to the work of authorities in the field of pension and disability insurance, employment, health care, public companies, tax authorities,

institutions of education, social welfare, judicial and administration authorities in local self-governments.<sup>134</sup>

### *Key results achieved by the Protector of Citizens in 2011*<sup>135</sup>

In the field of **national minority rights**, in 2011, there was a positive outcome of the initiative for amending the Law on Identity Cards and the Law on Permanent and Temporary Residence, which allowed the citizens, mostly Roma, to obtain an identity card despite not having registered their residence.

Secondly, the Protector of Citizens' Recommendations on human displacement and postponement of the eviction of Roma from the settlement in Block 72 were implemented, until the competent authorities regulated appropriate eviction rules and procedures.

Moreover, the visits to the unsanitary Roma settlements and data analysis resulted in the determination of exact data on the implementation of the Strategy for Improvement of the Status of Roma in the Republic of Serbia.

In the course of 2011, in the field of **child rights**, the Protector of Citizens continued to work on **drafting the Law on the Rights of the Child**, which will regulate the child's position in the domestic legal system in a comprehensive and balanced way. The Recommendation to adopt a comprehensive law on child rights was given to the Republic of Serbia by the Committee on the Rights of the Child, at the time of considering the Initial Report of the Republic of Serbia on the implementation of the Convention on the Rights of the Child<sup>136</sup>, as well as by the Human Rights Commissioner of the Council of Europe.<sup>137</sup> The Preliminary Draft of this Law was presented at a conference organised by the Protector of Citizens, and the international experts and the Council of Europe provided their expert opinion on this draft. Their expertise is a great contribution to the improvement of specific provisions proposed in the Preliminary Draft.

**The Preliminary Draft of the Law on the Rights of the Child** is available on the Protector of Citizens' official website and its website dedicated to children<sup>138</sup>. Both experts and general public are invited to submit comments, proposals, suggestions and criticisms to the Protector of Citizens in all stages of developing this law. Further work on the text will be accompanied by the consultative process with experts, government representatives, civil society and children.

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<sup>134</sup> For more detailed statistical overview of the number and classification of complaints by the authorities to which they refer, see the section on cooperation of the Protector of Citizens with public authorities.

<sup>135</sup> The key results achieved in different areas are presented in the second chapter that includes the overview by sectors.

<sup>136</sup> Committee on the Rights of the Child, Forty-eighth session, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Republic of Serbia, CRC/C/SRB/CO/1, 20 June 2008; available at: [www2.ohchr.org/english/bodies/crc](http://www2.ohchr.org/english/bodies/crc)

<sup>137</sup> Report by the Commissioner for Human Rights, Thomas Hammarberg, on his visit to Serbia (13-17 October 2008), point 138 of the Report and 19<sup>th</sup> recommendation, available at <https://wcd.coe.int>

<sup>138</sup> [www.zastitnik.rs](http://www.zastitnik.rs) and [www.pravadeteta.rs](http://www.pravadeteta.rs)

On 10 December 2011, the **Protector of Citizens' Panel of Young Advisors completed its first year of work**. During this year, four meetings were held with the Panel members. In 2011, the Panel participated in the consultative process for the preparation of the Council of Europe's Recommendation on the rights and legal status of children and parenting responsibilities<sup>139</sup> and the Council of Europe's Guidelines of the Committee of Ministers on child-friendly health care.<sup>140</sup> The most important event of the Panel of Young Advisors was a research on violence in schools. The Protector of Citizens and the Panel members had a public presentation of Report on the Human Rights Day, 10 December 2011.

Some members of the Panel of Young Advisors had the opportunity to hold a presentation about their work to the pupils of primary schools in Serbia who came to visit the Belgrade Book Fair in October 2011.

With two Special Reports in 2011<sup>141</sup>, devoted to child begging and protection of children from violence, the Protector of Citizens drew attention of the public, authorities, institutions, public services, organisations, and especially professionals working with children, on the fact that violence against children and exploitation of children requires immediate, efficient and adequate response of all of them.

Some of the key results of the Protector of Citizens in the field of **gender equality** are certainly three special reports: *Special Report LGBT Population in Serbia – the Situation of Human Rights and Social Status*,<sup>142</sup> *Special Reports on the Situation of Domestic Violence against Women in Serbia*<sup>143</sup> and *Special Reports of the Protector of Citizens on Conducted Inspections in Social Care Institutions for the Elderly*.<sup>144</sup> By publishing these reports, the Protector of Citizens seeks to draw and hold attention primarily of the competent public authorities, and thus also the professionals involved in the protection of these two population groups, to indicate that the response and attitude of society toward these three groups of population is not adequate and that it is unacceptably inefficient, since the consequences of ignoring, and particularly of violence, are long-lasting, unpredictable and affect society as a whole.

*The Special Reports on the Situation of Domestic Violence against Women in Serbia* deals with domestic violence as a form of gender-based violence. It starts from the definition of violence contained in the *UN Declaration on the Elimination of Violence against Women*.<sup>145</sup> The Protector of Citizens firmly believes that domestic violence is a

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<sup>139</sup> Recommendation on the rights and legal status of children and parental responsibilities; the draft of this document is available at <http://www.coe.int>

<sup>140</sup> Guidelines of the Committee of Ministers of the Council of Europe on child-friendly health care, available at <http://www.coe.int/t/dg3/health>

<sup>141</sup> Child Begging in Serbia and Protection of Children from Violence in Schools

<sup>142</sup> <http://www.ombudsman.rs/attachments/Izvestaj%20LGBT.doc>

<sup>143</sup> <http://www.ombudsman.rs/index.php/lang-sr/component/content/article/1563>

<sup>144</sup> Available at <http://www.ombudsman.rs/attachments/Domovi%20za%20stare.doc>

<sup>145</sup> Adopted by the General Assembly of the United Nations in 1993, Resolution 48/104 according to which domestic violence is "any act of physical, sexual and psychological violence that occurs within the family or household or any other partner or intimate relationships, regardless of whether the perpetrator shares or not the same housing unit with the victim".

public, not a private problem, and that the state has an obligation to protect victims of domestic violence. Otherwise, the violence is tacitly approved. The stronghold of this view is the position of the European Court of Human Rights that the state is obliged not only to provide an adequate legal framework to combat domestic violence, but to ensure its effective implementation.

The Protector of Citizens' report gave a summary of possible measures and courses of action to combat and prevent domestic/partner violence and pointed specifically to the raising of public awareness and empowerment of victims, which should be supported by the media through writing and presenting "the examples of best practices".

*The Special Report LGBT Population in Serbia - the Situation of Human Rights and Social Status* points out that "no special rights" are sought, but only the equalisation of LGBT persons with other members of society in the enjoyment of human rights and freedoms guaranteed by the Constitution Republic of Serbia. Based on the knowledge acquired through work, the Protector of Citizens proposed in this report some specific measures for addressing the identified gaps, and, above all: continuous enjoyment of the rights to free assembly and ensured safety of assembly participants; prosecution of all cases of violence and threats against LGBT people; development of programmes for education and sensitisation of employees in state institutions for the issues of sexual orientation and human rights, primarily the employees of the institutions of judiciary, prosecution, police and health; modify primary and secondary educational programmes to ensure that the existence of LGBT individuals or same-sex orientation is not ignored, but treated in the sociologically, legally and medically acceptable manner; and comprehensive legal regulation of the issues that accompany a sex change.

This report, as an overview of the Protector of Citizens' work in this area, was posted on the site of the Protector of Citizens' to be available for the general public, and it was separately presented to the representatives of LGBT organisations on 10 December - the International Human Rights Day.

*The Special Report of the Protector of Citizens on Conducted Inspections in Social Care Institutions for the Elderly* - During 2011, after controlling 13 social care institutions for accommodating elderly people, the Protector of Citizens analysed the position of older women in these institutions and established that two-thirds of service users were women. Since women are over their lifetime devoted to raising children according to the traditionally attributed gender-stereotyped roles, the fact of the prevailing number of women in the institutions for the elderly suggests that this "female" life investment most likely has not "paid off" because in their old age they do not receive care and attention in return from their offspring and other family members. The management of the institutions explain this fact otherwise, saying that women decide "more easily" to "leave an apartment or house to their children," and that

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"grannies are more yielding, quiet and languishing." The problem of humiliating and insulting beneficiaries was also noticed in some other institutions.<sup>146</sup> This is an initial snapshot of the situation made by the Protector of Citizens in order to be able to contribute to improving the situation of elderly persons in institutional care, through further work and the National Prevention Mechanism.

**In the field of the rights of persons with disabilities**, the Protector of Citizens published a Special Report on the Situation in Social Care Institutions for the Elderly, prepared after controlling the situation in 13 social care institutions, gerontology centres and homes for pensioners and the elderly. It was established that the issue of service price was one of the most sensitive ones, and the beneficiaries generally believed that the prices were too high for the standard and quality of services provided. In particular, they expressed their dissatisfaction with the quality and quantity of food. The biggest problem is that one day of stay in the institutions for elderly is estimated to cost 947 dinars, while the price of one-day stay in general hospitals is 2900 dinars.<sup>147</sup> Nonetheless, the services provided by the homes for the elderly are very similar to hospital services, which makes a drastic difference in available resources. Therefore, the future existence of gerontology centres will require the recognition of their costs at the level of one-day stay in general hospitals, because it is the only realistic way of covering actual costs. In connection therewith, it is necessary that the Ministry of Health and the Ministry of Labour and Social Policy agree on that.

At the request of the UN High Commissioner for Persons with Disabilities, we prepared the answers to the questions about the legal and social situation of persons with disabilities in Serbia.

One of the Protector of Citizens' achievements refers to the raised issue of accessibility of banking and financial services to persons with disabilities. Specifically, after the NGOs pointed to the problem that persons with disabilities faced in the sector of banking and financial services, the Protector of Citizens initiated a debate on the actions of authorities that should contribute to solving these problems. It was found that persons with disabilities were not able to independently use the funds from the accounts of commercial banks, either as natural persons or legal entity representatives. This refers to the blind, persons without upper limbs, people with cerebral palsy and others because they are not able to personally sign the bank documents. The Protector of Citizens held a meeting with the representatives of the Association of Commercial Banks, after which he addressed the Governor of the National Bank of Serbia, expecting him to take measures within his competence, which would eliminate deficiencies in the provision of banking services to customers with disabilities.

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<sup>146</sup> More than one beneficiary in Kragujevac pointed to such behaviour of staff, but the administration ignores such remarks.

<sup>147</sup> Prices in 2010

## 4.2. RECOMMENDATIONS, LEGISLATIVE INITIATIVES AND PROPOSALS FOR ASSESSMENT OF CONSTITUTIONALITY

### 4.2.1. Recommendations of the Protector of Citizens

#### *Statistics on recommendations*

In 2011, acting upon citizen complaints or upon own initiative in 181 cases (from 2011 and from the previous years), the Protector of Citizens established deficiencies in the work of administration authorities, which caused the violations of citizens' rights, and referred 217 recommendations to the authorities requesting from them to remedy these deficiencies. In addition, the Protector of Citizens sent to the authorities over 70 proposals of the measures for remedying deficiencies in their work.

By 31 December 2011, the authorities implemented 116 recommendations (53%) within the given deadline, failed to implement 54 (25%), and as regards 47 (22%) recommendations, the deadline did not expire by the date of reporting.

**Table 19 - Authorities that received recommendations**

Ministries	51	23.50%
Educational institutions	27	12.44%
Directorates within the ministries	26	11.98%
Local self-government authorities	22	10.14%
Social protection institutions	19	8.76%
Health institutions	17	7.83%
Police administrations	15	6.91%
Organisations of compulsory social insurance	14	6.45%
Special organisations	13	5.99%
Independent state bodies	5	2.30%
Public companies	3	1.38%
Republic directorates and agencies	3	1.38%
Cultural institutions	2	0.92%
<b>Total</b>	<b>217</b>	

Table 20 shows which bodies failed to comply with the Protector of Citizens' recommendations in the reporting period. As shown in Tables 20 and 21, the ministries are the bodies to which the Protector of Citizens gave most recommendations and which failed to act as recommended in nearly one half of the cases. On the other hand, the highest percentage of compliance refers to educational institutions, which received 27 recommendations and failed to implement only three of them.

**Table 20 – Authorities that failed to comply with recommendations and the number of recommendations**

<b>Ministries</b>	23	<b>45.28%</b>
Directorates within the ministries	7	9.43%
Special organisations	6	11.32%
Local self-government authorities	5	7.55%
Social protection institutions	4	5.66%
Educational institutions	3	7.55%
Organisations of compulsory social insurance	2	3.77%
Republic directorates	2	3.77%
Independent bodies	1	1.89%
Cultural institutions	1	1.89%
<b>Total</b>	<b>54</b>	

The following table shows which ministries failed to comply with the Protector of Citizens' recommendations.

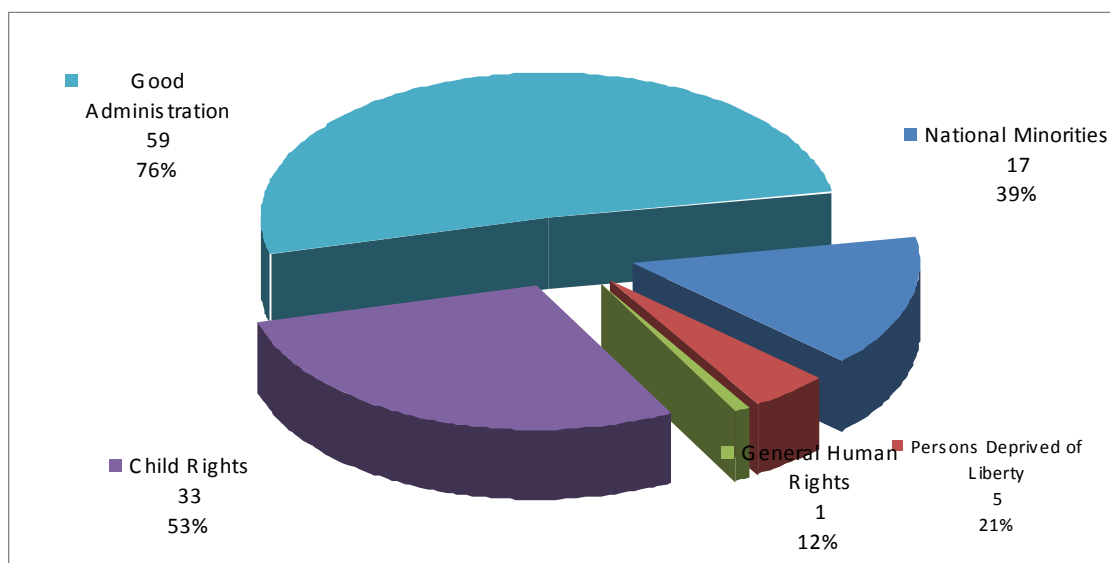
**Table 21 – Ministries that failed to comply with recommendations of the total number of ministries**

<b>Ministry of Human and Minority Rights</b>	8	<b>34.78%</b>
Ministry of Education	5	21.74%
Ministry of Defence	4	17.39%
Ministry of Environment, Mining and Spatial Planning	3	13.04%
Ministry of Health	1	4.35%
Ministry of Religious and Diaspora	1	4.35%
Ministry of Internal Affairs	1	4.35%
<b>Total</b>	<b>24</b>	

As regards the areas of rights to which they refer, the largest number of recommendations refers to the area of good administration (78), child rights (62), rights of national minorities (44), rights of persons deprived of liberty (24), general human rights (8) and one recommendation referred to persons with disabilities. There were no recommendations related to gender equality in 2011.

Consequently, the largest number of implemented recommendations was also in the area of good administration (Chart 14):

**Chart 14 – Number and percentage of implemented recommendations in particular areas**



***Recommendations of the Protector of Citizens for improving the work of administration authorities***

***Protection of the rights of persons deprived of liberty:***

1. Ensuring an efficient system of supervising police custody and providing adequate conditions in the facilities where custody takes place.
2. Building new facilities that will be used by the institutes for execution of criminal sanctions. Repairing, upgrading and/or reconstructing the existing facilities.
3. Taking further steps to improve the treatment of prisoners and prison conditions in line with the UN Standard Minimum Rules for the Treatment of Prisoners.
4. Regulating systemically, i. e. adopting legislation that will regulate the protection of mental health, treatment and status of persons with mental disorders.
5. Regulating the provision of health care and social protection for the persons who no longer need to be treated in psychiatric hospitals and institutions.
6. Determining liability in every individual case of torture and other forms of cruel, inhuman or degrading treatment or punishment of persons deprived of liberty.

***Protection of the rights of national minorities:***

1. Amending the Law on the National Councils of National Minorities;
2. Developing measures to provide the national minorities in Central Serbia with the same opportunities and conditions for development and preservation of identity that the national minorities in AP Vojvodina have;
3. Ensuring the Serbian language classes in the public schools throughout the territory of the Republic of Serbia to enable social integration, and introducing in the public schools of the local self-government units with a mixed composition of population a



compulsory elective subject "Language (of the national minority) with the elements of national culture" for the pupils whose first language/mother tongue is not that minority language;

4. Drafting and adopting regulations that effectively regulate the status of religious communities, the organisation of religious education and the status of religious education teacher;
5. Amending the Law on Official Use of Languages and Scripts to ensure the official use of languages and scripts of national minorities and the protection of the official use of Serbian language and Cyrillic scripts;
6. Amending the Law on Non-Contentious Procedure to allow for an efficient procedure of subsequent registration into civil registry books of the persons who are not able to exercise that right in the prescribed administrative procedure;
7. Providing conditions for the implementation of the Strategy for Improvement of the Status of Roma and establishing a specialised body responsible for its implementation;
8. Strengthening human, financial and other capacities of the Directorate for Human and Minority Rights of the Ministry of Human and Minority Rights, Public Administration and Local Self-Government, and enhancing working conditions of the competent public authorities in charge of the exercise and protection of national minority rights, as well as hiring the required number of staff necessary for the use, protection and promotion of minority rights.

#### *Child rights:*

1. The Committee on the Rights of the Child of the National Assembly should be directly, organisationally and professionally involved in the adoption of the Law on the Rights of the Child, which the Protector of Citizens will submit in accordance with his statutory powers, and which introduces uniform standards in the field of child rights.
2. In order to protect children and pupils/students from violence, the educational institutions should, consistently and to the full extent, apply the Law on the Fundamentals of Education System, and the Rulebook on the Protocol for Responding to Violence, Abuse and Neglect, and obligatorily establish the levels of violence and implement prevention, intervention and support measures in the manner and according to the steps prescribed in the Rulebook and the Special Protocol.
3. The Ministry of Education and Science, in cooperation with other bodies, should provide all pupils/students, teachers and other employees with regular training on the development of tolerance and non-violent communication, different forms of violence, abuse and neglect and effective ways of countering and preventing

violence, and it should periodically conduct participatory research with children on violence in schools.

4. In implementing the measures of protection against violence, the educational institutions should undertake, alone or in cooperation with other bodies, the measures for supporting, rehabilitating and reintegrating pupil/student victims, as well as rehabilitating and reintegrating violent pupils/students.
5. The Ministry of Justice should proceed with the alignment of the Criminal Code with the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse, in accordance with the Initiative submitted by the Protector of Citizens.
6. The National Assembly of the Republic of Serbia should introduce, through the amendments to the existing legislation, the right to a special financial assistance and support to the parents who provide immediate care to their children who due to illness, disability or developmental challenges require continuous parental care (the right to the status of parent caregiver).
7. The Ministry of Justice should continue to work on the amendments to the Criminal Code in order to align it with the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse, in accordance with the Initiative submitted by the Protector of Citizens.
8. The Ministry of Health, the National Health Insurance Fund and the Public Health Institute of Serbia Dr Milan Jovanović Batut should re-establish the achieved level of health care services for children with psychophysiological disorders and/or speech pathology, establish accurate records of these children and initiate the procedure of including the capacity of other systems (education, social protection) in the detection, prevention and treatment of psychophysiological and speech disorders in children, in accordance with the *National Programme of Preventive Health Care for Children with Psychophysiological Disorders and Speech Pathology*.
9. The Council for the Rights of the Child and the Government of the Republic of Serbia should prepare and submit to the National Assembly for adoption a comprehensive national strategy for the protection of children whose lives and/or work are related to the street ("children of the street"); the competent state authorities and the bodies of territorial autonomy and local self-government units should approach child begging and living and working of children in the street in a comprehensive, planned, expedient and efficient way, whilst respecting child rights and allowing participation of the "children of the street" and above all, recognising the fact that these children are always and without exception the victims of exploitation, abuse and neglect.

### *Gender equality:*

1. The Government of the Republic of Serbia should as soon as possible prepare the Law on Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, and the National Assembly should adopt that Law as soon as possible.
2. The Ministry of Interior, the Ministry of Justice and the Ministry of Labour and Social Policy should immediately enact specific protocols defining the actions of officials in cases of reported partnership/domestic violence, in accordance with the General Protocol of the Republic of Serbia on procedures and cooperation of institutions, bodies and organisations in situations of violence against women in intimate partnerships.
3. The Ministry of Justice should continue to work on the amendments of the Criminal Code, which should improve the criminal legal protection of victims of domestic violence, tighten the penal policy and introduce the system of criminal legal protection in the cases of "hate crime".
4. Medical institutions are obliged to take measures to ensure photographing the injuries indicated by victims of domestic/partner violence as the injuries resulting from family/partner violence, and to consider these photos an integral part of medical reports on injuries.
5. The Ministry of Interior should implement the measures that will allow the LGBT persons to enjoy freedom of assembly and ensure the safety of participants of gatherings, as well as of human rights defenders.
6. The Ministry of Education and Science should initiate the introduction of changes to primary and secondary educational programmes in order to raise awareness among children and young people about LGBT persons and their right to equal protection.

### *Rights of persons with disabilities and elderly persons:*

1. Intensifying the measures of non-institutional care for the elderly, by developing and improving home care and assistance in their households without displacing them from the natural environment.
2. Intensifying the activities for the establishment and development of specialised psychogeriatric centres for the elderly.
3. Amending the Rulebook on orthopaedic aids and equipment, thus ensuring that the users are entitled to diapers (not only those users who suffer from multiple sclerosis, paraplegia and quadriplegia).
4. The Ministry of Human and Minority Rights, Public Administration and Local Self-Government should propose amendments to the Law on Permanent and Temporary Residence of Citizens, so as to enable the users accommodated in social care

institutions to register the address of the institution in which they are accommodated as their address of permanent residence.

#### ***4.2.2. Legislative initiatives***

In 2011, the Protector of Citizens submitted a total of 40 legislative initiatives. One of them consisted of proposing a law, while 39 were the initiatives for amending laws and regulations, referred to the competent authorities or other bodies. A total of 26 initiatives are still in procedure, 11 were rejected and three were accepted: the initiative on the prevention of domestic violence by the Amendments to the Criminal Code, the initiative concerning the procedure for issuing temporary identification cards for the persons who do not fulfil the requirements for obtaining an ID card in accordance with the Amendments to the Law on Identity Cards and the Protector of Citizens' initiative to accept the address of the Social Welfare Centre as residence of the persons without permanent residence.

Based on Article 18 paragraph 2 of the Law on the Protector of Citizens, the Protector of Citizens submitted to the National Assembly, the Committee on Labour, Veteran and Social Affairs, *an initiative for submitting 11 amendments to the Bill on Social Protection*. The Protector of Citizens placed a special emphasis on the introduction of new rights for the parents who provided immediate care to their children who, due to illness, disability or developmental challenges, needed continuous parental care. The competent committee of the National Assembly did not discuss the initiative of the Protector of Citizens.

In order to ensure as adequate institutional mechanism as possible for the protection of children and women against all forms of violence, the Protector of Citizens, in accordance with Article 18 of the Law on the Protector of Citizens, submitted to the Ministry of Justice *an initiative with 24 amendments to the Criminal Code*.

In 2011, on the basis of information obtained through work, adopted strategic documents at national level, ratified and signed international documents, as well as on the basis of notifications received from the association Autonomous Women's Center, the Protector of Citizens proposed expanding the concept of a family, in the cases of criminal offence of domestic violence, to the category of ex-spouses, common-law partners or former common-law partners; to the persons who had been or continued to be in an emotional or sexual relationship, or had a common child or a conceived child, even though they had never lived in the same household. Many of the most serious offences of domestic violence resulting in death occur exactly in the situations following the termination of marriage or before its conclusion.

The initiative also included a proposal to extend the security measures for victims of violence by introducing the following three measures: removal of

perpetrator from the family household, prohibiting access to the internet and mandatory psychosocial treatment of the perpetrator. It was also proposed to introduce the criminal offence of *stalking*, etc. The proposed amendments to the Criminal Code included the Protector of Citizens' proposal to extend the time limitations for the prosecution of perpetrators of criminal offences against sexual freedom committed against a child.

Although the Protector of Citizens expected that the Ministry of Justice, as previously announced, would continue to work on the amendments to the Criminal Code and adopt other proposals of the Protector of Citizens relating to gender-based violence and violence against children, while working on this report, the Government adopted the version of proposed amendments to the Criminal Code, which did not cover the issues of gender-based violence, thus excluding the proposals initiated by the Protector of Citizens. Therefore, the Protector of Citizens will continue to monitor relevant legislative activity of the Ministry and the Government.

The Protector of Citizens submitted to the Committee on Education of the National Assembly an initiative for submitting three amendments to the Bill on the Amendments to the Law on the Fundamentals of Education System, in order to protect the achieved level of child rights relating to educational - disciplinary procedure initiated against pupils/students. However, the Protector of Citizens' amendments were not even considered, because they would undermine the agreement between the Ministry and the teachers. Specifically, this amendment was one of the conditions for suspending the strike of teachers in spring 2011, which creates a rather poor image of the perception of school, its educational role, and especially the role of teachers, union members, who argued for such a solution.

Based on Article 18, paragraph 1 of the Law on the Protector of Citizens, the Protector of Citizens submitted to the National Assembly submitted a *Proposal* for amending the Law on Copyright and Related Rights (*Official Gazette of RS*, No. 104/2009) by deleting Article 39 of the Law. This proposal is still in parliamentary procedure.

At the same time, pursuant Article 24, paragraph 2 of the Law on the Protector of Citizens, the Protector of Citizens submitted to the Government of the Republic of Serbia an initiative to undertake all available measures to postpone the application of the by-laws arising from Article 39 paragraph 1 of the Law on Copyright and Related Rights (*Official Gazette of RS*, No. 104/2009), until the National Assembly decided about the proposed Law on Amending the Law on Copyright and Related Rights.

In the field of child rights, the Protector of Citizens submitted to the Ministry of Environment, Mining and Spatial Planning an initiative for exempting the car owners whose children have a disability from paying the pollution fee, to the extent prescribed for other persons with disabilities who are already exempt from this fee. However, the response of the acceptance of this initiative has not been received.

