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2013 ANNUAL REPORT

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FOREWORD, OVERALL ASSESSMENT OF RESPECT FOR THE RIGHTS OF CITIZENS AND KEY INFORMATION ON THE ACTIVITIES TAKEN BY THE PROTECTOR OF CITIZENS IN 2013

The Annual Report contains general and specific assessments and information on the respect of the rights of citizens (including in particular human and minority rights); it presents the crucial and most characteristic deficiencies identified in the work of public authorities; it sets out proposals for improving the legality and regularity of the work carried out by public authorities; and provides a detailed account of the activities carried out and the costs incurred by the Protector of Citizens.

The state of human rights is a reflection of the prevailing social values and the strength of institutions. In 2013, the institutions of the Republic of Serbia voiced more firmly their resolve to uphold and reaffirm the European values, of which an unconditional respect for the guaranteed human rights is a tenet. Declaratory commitment to further strengthening of institutions has so far failed to produce visible results in practice. The work of institutions remains susceptible to party politics and public officials at various levels have been using them to promote their parties' and their own personal agendas. The indisputable successes in foreign politics have not been sufficiently matched with improvements in the state of rule of law, implementation of human and minority rights and respect for citizens' rights in general.

The following groups and individuals have been particularly vulnerable: the extremely poor, children, persons with disabilities, national minorities (including the Roma as the most vulnerable of them), persons deprived of liberty (including persons held in psychiatric hospitals), severely ill, women, refugees and internally displaced persons, asylum seekers and illegal migrants, LGBT groups and individuals, human rights defenders and organisations and individuals critical of the government (journalists and others).

The prevalence of political will to implement (or not to implement) a law over the certainty of the rule of law; populism; weak institutions versus strong centres of political power and powerful personalities of office holders; the weak and inefficient judiciary; manipulations of media and by media, the atrophied economy and the weak and unreformed administration are the major barriers between citizens and broader implementation and respect of their rights and liberties in the Republic of Serbia.

Examples for the subordination of institutions to the workings of political parties can be found in situations when the public was told public authorities would make a decision only after a certain political party has taken a stand on the issue and situations where decisions falling within the mandate of public authorities were announced at party meetings.

When certain public officials and party leaders take it upon themselves to perform the work of various public authorities and services – when they assume the task that does not fall within the remit of their office, this violates the constitutional and institutional order and negatively affects equality, lawfulness and proper exercise and protection of rights and freedoms.

Examples of personal promotion being above the rule of law include the frequent, unpunished violations by public officials of the Law on Advertising¹. The Law specifically prohibits the use of voice or image of a public official when a public authority is disseminating pre-recorded messages to advertise its activities and measures of relevance to the citizens, the majority of the citizens or a minority social group.

Economic, social and cultural rights

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

Tens of thousands of Serbian citizens are prevented from fully exercising their constitutionally guaranteed rights to health care and age pension as prescribed by the compulsory insurance scheme. This occurs because employers have, for many years, dodged their statutory obligation to pay contributions to the health and pension insurance funds, encouraged by the feeble response of government authorities mandated to enforce the law and ensure that contributions are paid. However, for the non-implementation and non-enforcement of the law by the employers and authorities respectively, the third side is punished – workers and members of their families. If the employer did not pay the contributions, and the authorities did not act upon such an illegal evasion, the affected worker (and his/her dependents) will be striped of the right to health insurance, or/and pension. Apart from this devastating effect to workers and members of their families, this also acts against those employers who diligently meet their obligations: they do not have equal financial burden as those who evade pension and health fund contributions (resulting in unfair competition at the open market), and the rate of insurance is inevitably higher than optimal, because those who pay, pay to a certain extent instead of those who evade (urgent medical assistance for everyone is guaranteed unconditionally).

A positive step forward has been made with the enactment and implementation of the Law on Exercise of Health Care Rights of Children, Pregnant Women and Nursing Mothers², which afford unconditional health care to at least those particularly vulnerable groups.

1 Article 86 of the said Law, Official Gazette of RS No. 79/05.

2 Official Gazette of RS No.104/13.

However, the Constitution guarantees the provision of health care from public revenues to children, pregnant women, nursing mothers during maternity leave, single parents with children under seven years of age and the elderly, if they are not covered by any other health insurance arrangement. The Law mentioned above, nor any other, ensures health care for all vulnerable groups to which the Constitution explicitly guarantees it.

Trade unions have been reporting cases of violation of union rights by employers and remain unconvinced they would be able to receive satisfaction in a court. Social dialogue at the national level (representative workers' representatives, the Government, representative trade union officials) does not occur on a regular basis.

The first trade unions have been established in the Army of Serbia. The right of military personnel to associate in unions (subject to appropriate restrictions of that right) was recognized and regulated for the first time by the Law on the Army of Serbia, fully in accordance with the Opinion of the Protector of Citizens given during the process of drafting the Law.

The new Draft Law on Strike stipulates that strikes can be held only on the employer's premises. The Protector of Citizens is of the opinion that such an arrangement is too restrictive. Protector of Citizens here advocates flexibility, based on the criterion of proportionality, which should be assessed on a case-by-case basis.

Many workers have reported they are paid less than the minimum wage guaranteed by the law. Some companies are months behind on salaries and do not pay the compulsory contributions for old-age pension and health care provided for under the law. The Labour Inspectorate of the Ministry of Labour, Employment and Social Policy lacks powers to efficiently eliminate informal employment. Public sector employees are afforded better protection than those who work in the private sector. Labour-law disputes before courts, although meant to be urgent, often take years to reach a decision.

Judiciary

The second round of judiciary reform (after the unsuccessful first round) has not brought palpable improvements in this sector, crucial for guaranteeing justice to the citizens. Independence of the judiciary continues to falter under pressures, both populist and institutional.

An example for this can be found in the case of the judicial chamber of the Court of Appeals in Kragujevac, which was reported to be under pressure when deciding over an appeal against a decision delivered by a lower-instance court. When it refused to change its initial decision, its members were removed from office and disciplinary proceedings were initiated against the president of the chamber.

The High Judicial Council, an independent authority mandated under the Constitution to ensure and guarantee independence and autonomy of judges and courts, has remained tight-lipped in the public about the majority of the cases that caused concern. The crucial pillars of independence and integrity of the judicial and prosecutorial professions remain the national professional associations of judges and prosecutors – the Judges' Association of Serbia and the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia.

The judiciary has been in the focus of the Protector of Citizens because courts are (or at least should be) the primary mechanism of protecting the citizens' rights and the widest

pillar of the institutional system in place to protect the citizens' rights, which includes also the Constitutional Court, the Protector of Citizens and other parajudicial authorities. Without an efficient, fair and accessible judiciary, the Protector of Citizens lacks the core mainstay for the protection of citizens from violations of their rights due to unlawful acting and irregularities on behalf of public authorities. Reliable, robust, quick and efficient judicial enforcement of human rights is the cornerstone of any human rights protection system, and the one in Serbia is currently on shaky foundations. For this reason, other human rights authorities are faced with tasks they were not intended to perform and for which they lack capacity.

A judge of the Special Organised Crime Unit of the Higher Court of Belgrade filed a complaint with the High Judicial Council against the president of that Court, claiming the incumbent was threatening his independence. In the procedure of enforcing a valid and enforceable decision delivered by a Serbian court, an acting judge of the judicial unit in Ljig of the Primary Court of Valjevo was virtually lynched by the media, criticized also by certain public officials.

Corruption

The widely trumpeted stepped-up fight against corruption has so far failed to yield results in the shape of final and enforceable court judgements. The strong political impetus from a political level has not fully succeeded in opening the door for competent public authorities to ensure that the fight against corruption, which currently bears the personal mark of a strong political leader, matures into institutional, comprehensive, sustainable and long-term state effort.

It was rightly expected (and had in fact been announced) that Serbia would have a law on the protection of whistleblowers by the end of the reporting period. Whistleblowers are citizens who, acting in good faith, bring attention to serious threats to the public interest, including corruption. Although whistleblower protection is crucial, the law has not been adopted, nor proposed by the Government to the legislature.

The media

Freedom of media is guaranteed in Serbia. However, the Constitution also guarantees the citizens the right to information, stipulating that everyone shall have the right to be informed accurately, fully and timely about issues of public importance and that the media shall have the obligation to respect this right.³ This right, as constitutionally defined, is seriously violated in Serbia, in particular with regard to accurate and full information.

Competing for readership and viewership figures, while at the same time also under pressure from various centres of power, the media serve the citizens a mesh of accurate information, selective information, semi-information, or sometimes completely inaccurate (mis)information.

Particularly worrying are two interrelated phenomena: the pressure exerted on the media (media control) and leaking of confidential information and virtual transfer of institutional processes to privileged tabloid media ("tabloidisation" of the state).

While difficult to investigate and prove, the whispering claims by media figures speak of persistent pressure by the political and government centres of power. Those assertions

³ Article 51 paragraph 1 of the Constitution of the Republic of Serbia.

are pervasive and deeply unsettling. There have been rumors of phone calls that have resulted in cancelled TV programs and articles withdrawn from the press, of talks that have silenced journalists and made editors change their editorial policies and choice of topics. Self-censorship is the order of the day.

Information defined as confidential under the law is published on a regular basis by certain media – notably the same ones every time. Such information includes information on ongoing investigations, personal data, information on the circumstances of a person's private life that can be obtained only by systematically and deeply invading that person's privacy and accessing databases maintained by certain public authorities for very specific purposes. No proceedings have ever been conducted to determine the sources of such information, which is available only to authorised officials, and to punish the instigators of such actions for unauthorised disclosure of official secrets and other criminal offences, infringements and disciplinary infractions. The information reported by the media is, as a rule, selective and one-sided, remarkably timed to coincide with ups and downs of political processes and arrangements, and systematically directed against specific individuals. Such actions trump not only the privacy of the targeted individuals, but also the presumption of their innocence and their political careers, as well as general political processes.

Information from pre-trial proceedings regarding the content of statements and questionings by the crime police has managed time and again to find its way to certain media. Those media outlets have also published unverified, amazing details of professional and private lives of police officials, with the purpose of either discrediting or promoting them.

There has been whispering claims that certain tabloids blackmail celebrities and politicians, demanding money from them to stop the negative reporting. Pulp, kitsch and cheap, meaningless entertainment are offered as a substitute for education and culture. The consequences are damning and far-reaching.

The citizens' trust in the institutions is systematically undermined and they are led to believe that true social power rests not with the institutions, but with informal centres of power capable of "directing the public".

"Tabloidisation" of the media – against which the Protector of Citizens warned in strongest possible terms in last year's Annual Report – has meanwhile gathered momentum and developed into "tabloidisation of the state" in this reporting period.

Certain journalists have been under round-the-clock police protection for many years now. The work of the independent Committee on Investigation of Unresolved Murders of Journalists has not yielded palpable results. Among the members of this Committee are the heads and officials of those public authorities whose work the Committee is supposed to probe, i.e. exactly those authorities that have been in charge of resolving the murder cases and bringing the committers and those who gave them orders to justice since the beginning.

Unreformed administration

The main objectives of public administration reform – depoliticising and professionalisation of public administration – have not been achieved and this is the main reason for the absence of good governance in Serbia, which results in large-scale daily violation of various rights of the citizens.

The most telling example of the unwillingness to depoliticise the administration is the fact that the majority of posts of the highest civil servants / appointees have not been staffed in accordance with the Law, i.e. through a public job announcement, as many as seven years after the initial statutory time limit for doing so.

More than two thirds of overall 400+ posts of appointees have still not been staffed through public job announcements.

The process of public administration rationalisation has not even begun. The activities that have so far been termed “rationalisation” have in fact been carried out *ad hoc*, without any prior functional analysis. Therefore they have resulted in sheer linear staff cuts across certain segments of the public administration although, somehow, number of overall public servants was not reported as decreased. Such “rationalisation” as a rule often causes more damage than good.

After repeated inspections caused by delays in the work of a second-instance authority in the administrative tasks of real property measurement and Cadastre management (by a Division of the Ministry of Construction and Urban Planning), the Protector of Citizens was “forced” to issue an Opinion on the need to hire more employees for those tasks. The current staffing level is so inadequate that the cases initiated by citizens could not possibly be completed within 10 times more the time period set by the law, resulting in constant violations of the right to property and inheritance for thousands of citizens.

The most frequent omissions in the work of public authorities identified by the Protector of Citizens in the reporting period resulted from disregard for the principles of good governance: untimely acting upon citizens’ lawful requests (resulting in violations of various rights); obvious misinterpretation of substantive law (either through ignorance or wilfully); failure to comply with and unwillingness to enforce final decisions of competent public authorities, including courts; adoption and implementation of meaningless administrative procedures; unwillingness to actively exercise public powers (passivity); discriminatory exercise of public powers, including unequal treatment of the same and equal treatment of those in substantially different legal and factual position; arbitrary decision-making (lack of clear and predetermined rules of procedure) violating the legal certainty.

From his initial appointment in 2007 until the end of 2013, the Protector of Citizens received a total of 18993 citizens’ formal complaints, more than 40% of which concerned violations of rights due to the disregard for the principles of good governance. Of the 1086 recommendations issued by the Protector of Citizens to public authorities (1579 inclusive of the recommendations issued under the National Preventive Mechanism - NPM), 386 recommendations related to rectification of omissions in the field of good governance; these recommendations accounted for 35.54% of the total number of recommendations (or 24.45% if the NPM recommendations are included). Of that number, approximately 28% of the recommendations have not been implemented.

The lack of coordination between public authorities in their planning, defining and implementation of the Government’s public policies results in a large number of uncoordinated strategic documents and regulations. Their inapplicability then results in frequent modifications or non-compliance, which undermines legal certainty and threatens the achievements of their proclaimed results, including improved exercise of the rights guaranteed by the Constitution and the law.

Due to a lack of harmonisation between the Law limiting the Maximum Number of Employees in State Administration⁴ and the Law on Rehabilitation and Employment of Persons with Disabilities⁵, the Directorate of the Republic Health Insurance Fund explained to the Protector of Citizens it was unable to employ persons with disabilities, as directed by the relevant law, and had to pay the penalties to a special fund, because the other mentioned law made the employment impossible.

Ultimately, this rendered ineffective the incentive offered for the employment of persons with disabilities, instead the money from one public fund is transferred to another public fund.

The rights and responsibilities of employees in public authorities and organisations are regulated in an unsystematic and inconsistent fashion, sometimes even confusingly, which leads to legal inequality and uncertainty.

An example can be found in the conflict between the provisions of the Customs Law and the Law on Civil Servants

The Government has not displayed partnership with the Protector of Citizens, an institution with considerable potential to assist in achieving objectives within the wider public administration reform agenda.

The Government appears to be utterly unwilling to analyze the Reports submitted by the Protector of Citizens and to act upon the recommendations for improving the work of public administration contained in those reports. Although the Reports can be of invaluable assistance to the Government and the National Assembly in their oversight of the work of ministries and also to the ministries in their oversight of their subordinate authorities, the Protector of Citizens is yet to receive any feedback on the actions taken by the Government pursuant to the said reports and recommendations.

Although the National Assembly passed its Conclusions on 1 July 2013 which, inter alia, impose an obligation on the Government to report to the Assembly on a quarterly basis on the compliance of public authorities and organisations with the recommendations given by the Protector of Citizens, the Protector of Citizens is not aware that the Government actually submitted any such reports to the National Assembly.

The Protector of Citizens welcomes the positive steps forward in public administration reform, such as the enactment of the Public Administration Reform Strategy. However, he cannot assess effectiveness of this Strategy, because an action plan on its implementation has not yet been adopted. Only when the measures and activities for the next three years would be defined, after the funding for implementation of reforms has been allocated and after specific steps have been taken to substantially implement the reform will it be possible to form a clearer picture of the results of the Government's policy in this field.

The Protector of Citizens welcomes the initiation of drafting of a Law on Inspection. The assumptions which the drafting process builds upon give reason to believe that the enactment of the Law would be an important milestone in the advancement of the citizens' right to good governance, because issues with the work of inspectorates have frequently been raised in the complaints filed by the citizens.

In the 2012 Annual Report, the Protector of Citizens highlighted the inefficient operation of inspectorates. No improvements were observed in 2013.

4 Official Gazette of RS No. 104/09.

5 Official Gazette of RS Nos. 36/09 and 32/13.

All levels of government – national, provincial and local – have become a social policy tool and electoral prize for the political parties to divide amongst them. A “social policy tool” because the government employs a large number of persons, ostensibly reducing the unemployment rate and enables those persons to provide at least some kind of livelihood for their families; “prize” because the posts of top civil servants and officials are often staffed by members of political parties as a reward.

Until the administration becomes integrated functionally, organisationally and by IT means and until civil servants become qualified, motivated and accountable for their work, unlawful acts and omissions will remain numerous, the citizens’ dissatisfaction will remain a daily occurrence and administrative procedures will remain prohibitively expensive and time-consuming. Administrative procedures and disputes will continue to be closed only after repetitive appeals, petitions, lawsuits, complaints and other submissions before national and international judicial and non-judicial institutions.

The Protector of Citizens would like to underscore once again that all these positive steps forward in reforms will bear no fruit unless public administration is depoliticised and professionalized. Ultimately, the quality of public administration is not based only on perfect strategies and laws on paper, but on qualified, professional, motivated and accountable individuals who implement them.

Democratic civilian oversight and work of security services; privacy

There is civilian oversight of the military and the security services, in the sense that they are subordinated and report to elected (civilian) authorities of the Republic of Serbia. There is, however, also a need to add more of the “democratic” element to the civilian oversight, i.e. to adopt in practice the high democratic standards and best practices that ensure political and ideological neutrality, respect for human rights and rule of law, proper division of tasks, effective internal and external control and operational independence.

The majority of the 14 systemic measures recommended jointly by the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection to improve the respect for the citizens’ rights in the work of the security sector have not been fully accepted or implemented.

Amendments to the Law on the Bases of Organisation of Security Services of 2012 stipulate that the Secretary of the National Security Council, who is also a member of the Bureau for Coordination of Security Services under the law and in practice also presides over the Bureau, is appointed by the President of the Republic. Before the amendments, this duty was reserved for the Chief of Cabinet to the President of the Republic – mandatorily a civil servant and therefore a person forbidden to express political opinions in his/her work. After the amendments, the post was made open for any sort of appointment and the President of the Republic appointed to this office the president of the largest political party in the ruling coalition. Given the powers of the National Security Council and – even more importantly – the role of the Bureau for Coordination of Security Services (analyzing operative data and coordinating actions of the various services on operative level), the (ever-present) danger of undue political influence on the work of the internal security services grew considerably.

The constitutional guarantee of privacy of communication, which allows interference with privacy of communication only if authorized by a court, is violated by the blatantly unconstitutional provision of Article 286 paragraph 3 of the Criminal Procedure Code. This article stipulates that a public prosecutor (instead of a court, more specifically a pre-trial judge) may issue an order to the Police, directing it to obtain communication meta-data. The unconstitutionality of this provision is beyond doubt because the Constitutional Court, acting on a motion filed by the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection, has already, for the same reason, declared the provisions of two Laws unconstitutional: the Law on Military Security Agency and Military Intelligence Agency and the Law on Electronic Communications. The Protector and the Commissioner also filed with the Constitutional Court a Motion for a Constitutional Review of the said provision of the Criminal Procedure Code, however, even after 2 whole years, the Constitutional Court has still not ruled on that Motion.

Under the Constitution of the Republic of Serbia, any violation of privacy of the citizens' communication requires a court order. Rulings of the European Court of Human Rights confirmed, more than once, that the guarantees of privacy of communications apply not only to the content of communication, but also to the so-called metadata).

Members of Security Services have sought the assistance of the Protector of Citizens to protect their rights that had been violated after they came forward with claims of irregularities in the work of the services. There is a pressing need to improve the way certain services respect the rights of their members, but there is also a pressing need to investigate thoroughly all aspects of alleged irregularities they reported, as whistleblowers.

The Ministry of Defence has not taken sufficient notice of the findings and results of the Inspector General in charge of oversight of the military intelligence and security services

Police officers have on occasion abused their power and mistreated citizens. Not all substantiated allegations of irregularities in the work of police officers are investigated timely and thoroughly.

The Police did not comply with the recommendation of the Protector of Citizens after this office investigated, found and documented abuse of a citizen by police officers during detainment. Furthermore, the competent public prosecutor did not file criminal charges against the police officers involved, despite documented initiative by the Protector of Citizens.

The police did not obstruct the Protector of Citizens in exercising control activities, nor in performing oversight within the mandate of the National Preventive Mechanism.

The Protector of Citizens received citizen's complaints against members of the Gendarmerie (a special police unit), but also grievances from its officers asking protection of their rights in the service and investigation into serious irregularities they report. The Ministry of Internal Affairs did not demonstrate willingness to shed proper light on the circumstances of those complaints and grievances; instead, the initiatives of the Protector of Citizens to that effect were constantly sidelined.

There is a reasonable concern that many cases of irregularities in the work of the police and its officers remain unreported and undetected. The effectiveness of internal control appears to be improved, however its powers and autonomy are still far away from adequate.

There are no adequate programmes for identification of and support to members of the armed forces (the police, the military and security services) and other citizens who suffer psychophysical consequences of exposure to stressful situations, including in particular involvement in armed conflicts (PTSD).

The Security Information Agency has fully complied with its duty to cooperate with the Protector of Citizens in control and prevention procedures, but it has not prepared a working draft of a new Law on Security Information Agency, even though the Protector of Citizens recommended this as early as in 2010. The recommendation to prepare amendments/a new law was given due to the extensive vagueness, lack of certainty and other elements of unconstitutionality of the existing law, which leave vast space for abuse to the detriment of human rights.

Kosovo and Metohija

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

The Protector of Citizens received complaints from Kosovo and Metohija relating to violations of political rights (in particular the citizen's right to freely vote and stand for election) in connection with the local elections. Ethnic Serbs in the province have complained about pressure exerted on them by national and local officials to vote for the electoral list which was publicly supported by the Government of Serbia. In addition, the Protector of Citizens learned that the citizens were also under pressure by the interim institutions in Pristina to vote for a another list. Due to the well-known circumstances, the Protector of Citizens has not been able to reliably and efficiently investigate the allegations raised in those complaints, but he has not many doubts as to their veracity. The local elections in the northern part of Kosovo and Metohija have not been fully free.

For elections to be truly free, it is crucial that no one, least of all the officials of (any) government, exerts pressure on the electorate.

Persons on the move

The majority of more than 200,000 internally displaced persons are struggling to eke out a living, despite the modest financial support provided by the Commissariat for Refugees and Migrations. Some 1,500 of them are accommodated in collective centres, living in extremely difficult conditions. There have been virtually no returnees to Kosovo and Metohija.

More than 50,000 refugees from Croatia and Bosnia and Herzegovina live in Serbia, two decades after the war turmoil that forced them out of their homes. Hundreds of thousands of them became Serbian citizens and thus forfeited their refugee status, but many of them lack basic economic and social means. About 400 refugees continue to live in collective centres to this day. The government's efforts to provide better accommodation and employment opportunities to refugees have been limited in scope and reach, but have not gone unnoticed.

Serbian citizens of Roma and Albanian ethnicity are finding it difficult to exercise their constitutionally guaranteed right to free movement and the right to freely leave the country⁶, because of a crackdown on the so-called “fake asylum seekers” (with the tacit consent of the European Union and its Member States).

The reporting period saw continued improvements in the exercise of the right of all citizens to legal subjectivity and the related right to identity documents, owing to the implementation of laws enacted on the initiative of the Protector of Citizens. Local self-government authorities, the Ministry of Justice and specialised international and non-government organisations are involved in the creation of assumptions for the implementation of those laws, their actual implementation and enforcement.

There is a need for a substantial improvement and full functionality of the government’s mechanisms for reviewing asylum applications and processing of irregular migrants. In this context, it will also be necessary to review the appropriateness and applicability of the existing body of legislation. Thousands of people pass through Serbia on their way to Western or Northern Europe without benefiting from the applicable laws and procedures in such cases. It is also necessary to develop a regional approach to this issue.

Discrimination – LGBT, religious freedoms, HIV/AIDS

The Law on Prohibition of Discrimination is increasingly implemented.

The first valid and enforceable court judgment for workplace discrimination has been delivered in a sexual harassment case.

The Constitutional Court found the cancellation of the 2011 Pride Parade violated the freedom of assembly. This anti-discrimination event was not allowed to take place in 2012 and 2013 either. The Protector of Citizens initiated an investigation of the law enforcement authority which banned these events.

Freedom of expression has on occasion been abused to spread hate speech and incite ethnic, religious and other intolerance, frequently against the LGBT community and individuals and other vulnerable groups – usually on the Internet and through graffiti and sometimes in the media; however, there have also been cases of direct confrontation involving violence.

Same-sex couples are not legally recognized and no rights arise from such unions.

The Protector of Citizens advocates legal recognition of same-sex unions.

With regard to the exercise of religious freedoms, the situation has remained unchanged from the previous reporting period. The Protector of Citizens has received allegations from the Romanian Embassy concerning the violation of religious freedoms of Romanian Orthodox Church believers as a result of the fact that canonical law is invoked in Western Serbia, in a secular state, to effectively restrict their right to erect religious buildings. It is still as necessary as ever to improve the key piece of legislation – the Law on Churches and Religious Communities – to ensure greater equality in the exercise of religious rights.

6 Article 39 paragraph 1 of the Constitution of the Republic of Serbia.

Persons with HIV/AIDS are stigmatised and discriminated against, sometimes even by health care professionals.

There is no systematic testing for HIV/AIDS in Serbia, especially not among children and youth.

Information of public importance and personal data protection

It would appear from cooperation with the Commissioner for Information of Public Importance and Personal Data Protection that public authorities have in principle respected the freedom of information, but mostly reactively rather than proactively. An exception was noted in the case of public enterprises, which have clearly been reluctant to comply with the law and respect the citizens' right to information of public importance. The information provided by the Commissioner with regard to the unwillingness of public enterprises to obey the law is reflected in the practice of the Protector of Citizens, whose recommendations appear to be ignored in public enterprises.

Personal data are in practice not afforded sufficient protection in the work of public authorities, and far less so when they are processed by private entities. Both data controllers and the citizens are only just awakening to the full importance of this human right.

Persons deprived of liberty⁷

Prisons remain overcrowded and lacking in even the most basic of conditions. Torture and inhuman and degrading personal treatment of inmates by prison guards are not widespread. Prison records are not updated with sufficient frequency and are not detailed enough. Religious freedoms of persons deprived of liberty are generally respected.

In a proceeding pursuant to a constitutional complaint, the Constitutional Court ruled that the right to physical and mental integrity had been violated – the first judgement of its kind in Serbia. The judgement was largely substantiated by the facts the Protector of Citizens found through investigation of that case and the opinions he gave.

Rooms for police (prosecutorial) detention often lack the most basic of conditions, but certain improvements have been observed.

Pre-trial judges are often under huge pressure from tabloidized media to order detention and public officials of the executive branch of power sometimes chime in to add to the pressure. There is no statutory limitation on the duration of detention once a trial begins. Detention has become a source of serious allegations regarding violations of rights, some of which have been confirmed by rulings of the Constitutional Court.

The Constitutional Court has been exposed to an inadmissible form of public criticism from the executive branch of government because of its ruling that a citizen, described in media as a "taikoon⁸", was in un-lawful detention.

7 For a detailed review of the situation in this field, see the relevant section of the Report.

8 Person claimed to become rich during the transition process, in a fast and dubious manner.

Rights of the Child⁹

Although the Constitution guarantees children the right to health care from public revenues if they are not covered by any other health insurance arrangement¹⁰, in practice some children without validated health insurance cards face difficulties or are barred from accessing health care and health insurance.

The Law on Exercise of Health Care Rights of Children, Pregnant Women and Nursing Mothers¹¹ provided for a partial stop-gap solution, but the only systemic solution would be to directly apply the protective provisions of the Constitution, as made possible by Article 18 paragraph 1 of the Constitution.

In practice, children (and their parents) cannot have their health insurance cards validated in the parents' employers do not pay contributions to the public health insurance fund. Although this obligation is provided by the law and should be enforced by the Republic Health Insurance Fund and the Tax Administration of the Ministry of Finance, the consequences of non-compliance are suffered by the employees and their children.

Primary education is compulsory, but so should be secondary education, too, given the rising social standards concerning education and the increasing labour market demands.

The Ministry of Education and Science improved its cooperation with the Protector of Citizens in the oversight of the respect of rights of the child in education institutions.

School violence has not been contained. Neither the children nor the teachers are sufficiently familiar with the mechanisms put in place to prevent and contain school violence. Corporal punishment is strictly forbidden in schools, but no similar arrangements are in place in the family.

Child marriages occur notably between Roma children.

"Children of the street" (children experiencing homelessness) remain numerous and vulnerable. Temporary, daytime shelters are available in Belgrade, Nis and Novi Sad. Each one of them struggles with a lack of resources. Child beggars are not sufficiently recognised by legislation as victims of violence and exploitation and sometimes they are even treated as offenders (as per the Law on Public Order and Peace).

The Committee on Rights of the Child of the National Assembly accepted the motion of the Protector of Citizens to make eradication of child begging a priority goal for them and other public authorities in 2014.

De-institutionalisation of children placed in special institutions has been identified as a priority and is gathering momentum, not without opposition, but nevertheless with some excellent examples of success.

Children with developmental disorders transferred from the residential institution for adults in Kulina to community-based residential facilities have shown remarkable progress: many of them have begun feeding themselves, talking and walking. All of the children have been included in the education system for the first time. The community-based residential facilities are working towards returning the children to their biological families.

9 For a detailed review of the situation in this field, see the relevant section of the Report.

10 Article 68 paragraph 2 of the Constitution of the Republic of Serbia.

11 Official Gazette of RS No. 104/13.

Protection of children from criminal offences against sexual freedom under criminal law has been improved ("Marija's Law").

The National Assembly did not enact the legislative amendments prepared by the Protector of Citizens for the purpose of ensuring appropriate and effective assistance to children and parents who personally care for children with developmental disorders, children with disabilities or severely ill children whose condition requires constant care, attendance and support.

The Government gave a negative opinion on the proposals and the competent Ministry pledged before the National Assembly to prepare an improved version of the amendments submitted by the Protector of Citizens. Almost one year later, the government has not yet submitted any bills of amendments to the National Assembly.

Serbian citizens have been donating money through SMS campaigns and other charity actions to send children abroad for treatment in cases where the national health care system is unable to provide the required services.

The Republic of Serbia has not provided a meritorious answer in each individual case of the so-called "missing babies", even after the judgment of the European Court of Human Rights¹². The judgment relied upon recommendations and opinion of the Protector of Citizens, held in his Special Report on the Cases of "Missing Babies"¹³.

Gender equality¹⁴

The most serious issue in the context of gender equality is the sheer scale and intensity of domestic violence. The institutions have not been efficient enough in eradicating this, the most drastic of all consequences of gender inequality. More than 40 women were reported to have lost their lives in 2013 due to domestic violence.

Acting on a recommendation given by the Protector of Citizens, the Ministry of Internal Affairs, the Ministry of Labour, Employment and Social Policy and the Ministry of Justice and Public Administration adopted special sector-level protocols on handling of cases of domestic violence and intimate partner violence against women.

Women particularly frequently report cases of discrimination in connection with work and employment.

Amendments to the Labour Law have been enacted to ensure that women in temporary employment are not dismissed after the expiration of their employment term if at the time they are on pregnancy or maternity leave, leave to care for a child or leave to take special care of a child. What effects the new regulations will have remains to be seen.

12 See the case of Zorica Jovanovic vs. Serbia, available on the website of the Ministry of Justice and Public Administration <http://www.zastupnik.mpravde.gov.rs/cr/articles/presude/u-odnosu-na-rs/presuda-zorica-jovanovic-protiv-srbije-predstavka-br.-21794-08.html>.

13 Document No. 12443 of 29 July 2010, available at: http://www.ombudsman.pravadeteta.com/index.php?option=com_content&view=article&id=203%3A2012-05-21-21-20-11&catid=43%3A2012-04-09-13-00-20&Itemid=88&lang=sr.

14 For a detailed review of the situation in this field, see the relevant section of the Report.

Women are reluctant to report sexual abuse because it all too often spells social doom for them and the protections in place are not efficient enough. Cases of secondary victimisation have been reported.

Persons with disabilities¹⁵

About 800,000 persons with disabilities in Serbia are one of the least visible and at the same time most socially vulnerable social groups, discriminated against in virtually all areas of life – education, work, health, employment, political life etc. The majority of public buildings do not provide even the barest minimum of physical accessibility.

On the initiative of the Protector of Citizens, a new, more modern Bylaw on Technical Standards of Accessibility has been adopted. The Protector of Citizens will monitor its implementation across Serbia in the coming months and years.

The “discriminated among the discriminated” are persons with mental disorders. The new Law on the Protection of Persons with Mental Disorders is a step forward, but it is not sufficient, because it has failed to provide a strong enough foundation for the urgently needed comprehensive reform of mental health care.

Local self-governments, although required under the law to do so, have not provided nearly enough support services to persons with disabilities in local communities and their budgets do not include sufficient allocations for those persons. The process of deinstitutionalisation has been initiated, but is not implemented systematically enough. Indeed, how could it be, when local support services are lacking? Without them, persons with disabilities – if they were to be removed from specialised institutions and formally returned into the community – would remain absolutely helpless and their lives would be at risk.

National minorities¹⁶

Roma are the most disadvantaged because of the dire poverty of the majority of this ethnic group. They face discrimination in employment, education, health care and housing. There have been no major changes or improvements in housing conditions in the unhygienic informal settlements.

According to the data provided by the Commissioner for Protection of Equality, the most negatively perceived ethnic group in the eyes of the majority are Albanians.

The access of Roma persons to education and health care has improved. Citizens have been able to exercise more properly their right to have their names written in the language of their national minority in identity documents.

The Strategy for Improvement of the Status of Roma is not implemented systematically and the relevant action plans do not provide for specific duties of local self-government authorities in the implementation of specific measures and activities.

National Councils of National Minorities are vested with broad powers with regard to the rights of national minorities to education, information, culture and use of mother tongue.

15 For a detailed review of the situation in this field, see the relevant section of the Report.

16 For a detailed review of the situation in this field, see the relevant section of the Report.

There is a need to improve and depoliticise the Law on National Councils of National Minorities, including by reducing the influence of national minority political parties on the work of the Councils.

The National Councils established in the Autonomous Province of Vojvodina operate under more favourable conditions than those in the rest of Serbia.

The majority of local self-governments do not comply with their legal duty to allocate funding for the National Councils in their budgets. Political will (the voice of the majority) outweighs the rule of law.

The lack of educational policies for national minorities leads to problems in the exercise of the right to education in one's mother tongue in schools in Eastern Serbia for members of the Romanian and Vlachian national minorities, as well as in education in the Bosnian language. On the other hand, where education in the languages of national minorities is fully implemented, segregation has not been avoided and education does not have the integrative role it should have because it does not ensure that members of national minorities are fluent in Serbian, nor does it make the Serb population speak the language of the dominant local community.

KEY STATISTICS ABOUT THE WORK OF THE PROTECTOR OF CITIZENS

The number of grievances brought before the Protector of Citizens has continued increasing in this reporting year; the same is true also of the number of investigations closed by the Protector of Citizens. However, the Protector of Citizens had in the previous reporting period reached maximum efficiency with the existing capacities and organisation of his Secretariat (as explained in the previous Annual Report) and the current volume of activity is therefore unsustainable. This is all the more worrying given the fact that the Protector of Citizens is clearly expected to perform even better. It is therefore a matter of absolute priority to increase the capacity of the Secretariat and to improve the legislative framework regulating the work of the Protector of Citizens.

The Resolution of the CoE Parliamentary Assembly on strengthening the institution of ombudsman in Europe, adopted in October 2013, calls on the Member States to "provide ombudsman institutions with sufficient financial and human resources, enabling them to effectively carry out their tasks."¹⁷

**Table 1 – Investigations completed by the Protector of Citizens
in 2013 and comparison with 2012**

Types of activities	2012	2013	%
Pursuant to complaints and on own initiative	3957	4705	+18.90
Pursuant to legislative initiatives	20	349	+1.645.00
Pursuant to other contacts with the citizens	15213	17959	+18.05
Total activities completed	19190	23013	+19.92

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

Table 2 – Recommendations and rectification of omissions

	Issued	Due	Implemented	% implemented/rectified among those due
Recommendations given in the oversight capacity	230	198	135	68.18%
Recommendations given in the preventive capacity (National Preventive Mechanism)	263	231	185	80.09%
Total number of recommendations issued and implemented	493	429	320	74.59%
Omissions admitted and rectified by the authorities without conducting full investigation (no need to issue recommendations)	560	560	560	100%
Total irregularities identified and rectified	1053	989	880	88.89%

Table 3 – Information on contacts with citizens

Types of contacts	2012	2013	%
No. of citizens received in person	4422	5098	+15.29%
No. of phone conversations with citizens	9991	12027	+20.33%
Various citizens' submissions other than complaints	997	1220	+22.37%
No. of formal complaints	4465	5042	+12.92%
Total number of contacts with citizens	19875	23387	+17.67

Table 4 – Information on admissibility and merits of complaints and comparison with 2012

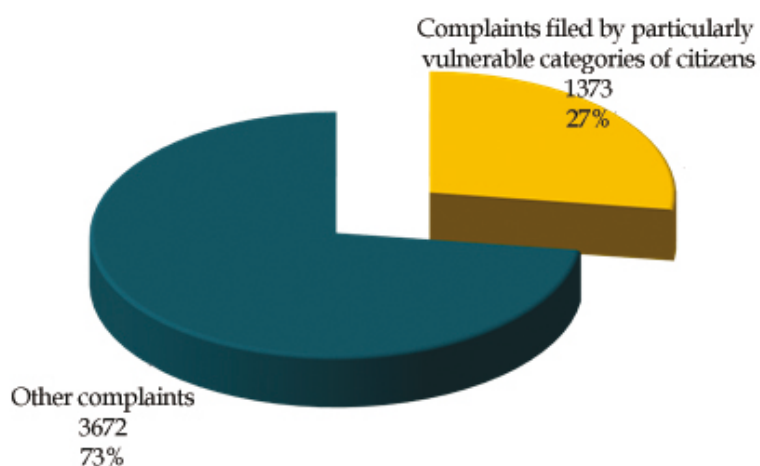
Handling of complaints received in current year and in earlier years	2012	2013	%
No. of dismissed complaints	2055	2560	+24.57
No. of complaints pursuant to which omissions to the detriment of the citizens' rights were identified	714	794	+11.20
No. of complaints pursuant to which no omissions within the sphere of competence of the Protector of Citizens were found	1188	1351	+13.72
Total number of complaints pursuant to which investigations have been completed	3957	4705	+18.90

Table 5 – Information on other activities and comparison with 2012

Types of activities	2012	2013	%
No. of legislative initiatives submitted	46	17	-63.04
No. of legislative initiatives adopted	12	1	-91.67%
No. of full investigations conducted	1314	1243	-5.40%
No. of on-site inspections and preventive visits to authorities	150	184	22.67%

Table 6 – Distribution of complaints by sectors, their numbers and percentage as a share of total complaints

Rights of persons deprived of liberty	297	5.89%
Gender equality	147	2.92%
Child rights	376	7.46%
Rights of persons with disabilities and the elderly	341	6.76%
Rights of national minorities	209	4.15%
Justice sector	524	10.39%
Defence sector	115	2.28%
Internal affairs sector	312	6.19%
Sectors of finance, economy and regional development	392	7.77%
Sectors of agriculture, trade, forestry, water management, environment, information technologies, energy and mining	396	7.85%
Sectors of urban planning, construction and cadastre	473	9.38%
Sectors of public administration and local self-government	391	7.75%
Labour sector	347	6.88%
Sectors of health, social security and pension and disability insurance	502	9.96%
Sectors of security services and independent oversight	20	0.40%
Sectors of culture, education, science, youth and sport	200	3.97%
Total	5042	

Chart 1 – Share of complaints filed by particularly vulnerable groups compared with other complaints

**Table 7 – Leaders in terms of non-compliance with recommendations:
Ratio of issued and unimplemented recommendations,
with the percentage of non-compliance**

Authority	№. упућених препорука	№. неизвршених	%
Public enterprises	6	6	100.00%
Authorities within Ministries	8	5	62.50%
Ministries	44	19	43.18%
Local self-governments	48	15	31.25%
Social security institutions	66	15	22.73%

The largest ratio of non-compliance relative to the number of recommendations issued to various authorities has been identified in the case of public enterprises (EDB Beograd - Belgrade power utility company) and Srbijagas - Serbian gas company): they were issued a total of six recommendations, none of which have been implemented.

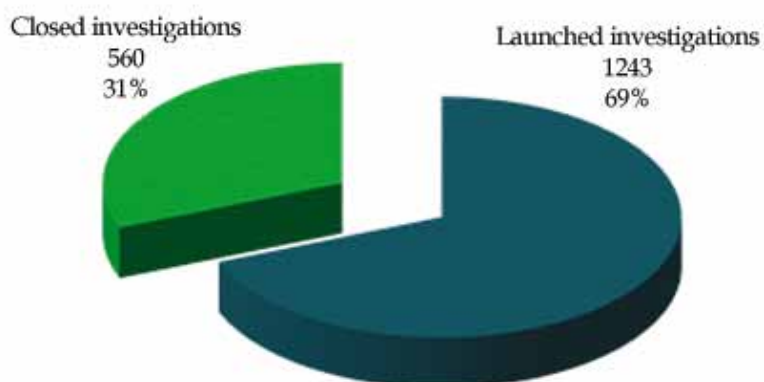
All unimplemented recommendations in the case of authorities within Ministries in fact relate to a single authority – the Tax Administration.

**Table 8 – Number and share of non-compliance in the total number
of unimplemented recommendations**

Ministries	19	23.81%
Local self-governments	15	30.16%
Social security institutions	15	23.81%
Public enterprises	6	9.52%
Authorities within Ministries	5	7.94%
Autonomous public authorities and independent bodies	2	3.17%
Compulsory social insurance organisations	1	1.59%
Total	63	

Once an authority against which the Protector of Citizens launched an investigation into the regularity and legality of its operations rectifies the shortcoming that prompted the investigation, the Protector of Citizens closes the investigation once it finds the reasons for conducting the investigation no longer pertain and does not issue any recommendations to the authority concerned.

In 2013, the Protector of Citizens launched 1243 investigations against public authorities. Of that number, in 560 cases (accounting for 31% of the total number of investigations launched) the authorities concerned rectified the shortcomings after the initiation of investigation, without any recommendations on behalf of the Protector. The number of cases in which the authorities concerned rectified the shortcomings without receiving any recommendations was 9% higher than in 2012 (22%), which is a highly commendable step forward by the authorities.

Chart 2 – Share of closed investigations

Most of the closed investigations were against the following authorities:

1. Ministry of Urban Planning and Construction (154)
2. Ministry of Education and institutions in the field of education (102)
3. Republic Pension and Disability Insurance Fund (76)

The Protector of Citizens notes that 2013 was marked by standard good performance of the Ministry of Interior during investigations and with regard to compliance with recommendations, with improved performance by the Ministry of Education, Science and Technological Development and the Ministry of Labour, Employment and Social Policy.

The capacities of the Secretariat of the Protector of Citizens are very limited in terms of staffing, which significantly hampers this authority's potential for even more efficient performance. The number of employees in the Secretariat of the Protector of Citizens, in accordance with the job classification instrument adopted in the early days of this institution back in 2007, has remained unchanged over the years at 62. This is nearly twice fewer than the number planned and identified by European experts as optimal for efficient operations at the time of formation of this institution. From 2007 to this day, the volume of work the Protector of Citizens has increased exponentially and he has been vested with new powers – those of the National Preventive Mechanism.

The employees in the Secretariat the Protector of Citizens are not on an equal footing with their counterparts in the majority of other public authorities with oversight mandate in terms of workload, in terms of requirements for diverse education and skills, in terms of salaries or in terms of other work conditions.

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

1.1. LEGAL FRAMEWORK

Regulations

The Protector of Citizens of the Republic of Serbia is an independent and autonomous public authority, introduced in the legal system of the Republic of Serbia in 2005 under the Law on the Protector of Citizens.¹⁸ The position of this institution was substantially reinforced by the by the Constitution of the Republic of Serbia¹⁹ of 2006, which made the Protector of Citizens a constitutional category, in line with best international practices.

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

The Constitutional Law on Implementation of the Constitution of the Republic of Serbia²⁰ *inter alia* provides for a duty of a newly-elected convocation of the National Assembly to harmonise the law governing the work of the Protector of Citizens with the Constitution in its first session after the election of a Government and to appoint the (first, note by PoC) Protector of Citizens.

The Law o the Protector of Citizens provides in detail for the powers of the Protector of Citizens, his/her appointment and removal from office, investigations handled by the Protector of Citizens, the duty to report to the National Assembly and cooperate with other

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

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

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

authorities, his/her entitlement to a salary, his/her equipment for work and the operations of the Secretariat of the Protector of Citizens.

Under the **Law on the National Assembly**²¹, the National Assembly elects and removes the Protector of Citizens in its voting capacity and oversees the work of the Protector of Citizens in its oversight capacity.

The Law on the Army of Serbia²² stipulates that the Protector of Citizens conducts democratic civilian oversight of the Army.

The Law on Amendments to the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment²³, the Protector of Citizens is entrusted with the duties of the National Preventive Mechanism.

The Criminal Procedure Code²⁴ provides that the Protector of Citizens is entitled to freely visit detainees and talk to them without the presence of any other person; it furthermore provides that a detainee cannot be prohibited from having a correspondence in writing with the Protector of Citizens. The Code also provides for an obligation of a penal judge or another judge appointed by the president of a court to notify Protector of Citizens without delay of any irregularities identified during visits to correctional facilities.

The Law on Enforcement of Prison Sentences for Organised Crime²⁵ *inter alia* provides for the following: the operations of the Special Unit are overseen by authorised officers of the Administration and a committee appointed by the National Assembly in accordance with the Law on Enforcement of Penal Sanctions, as well as by the Protector of Citizens in accordance with the Law on the Protector of Citizens; inmates have the right to be visited by the Protector of Citizens once a month and such visits are exempted from mandatory video surveillance and recording; and inmates have the right to hold a correspondence in writing with the Protector of Citizens and such correspondence is not subject to surveillance.

Under the **Law on Civil Servants**²⁶, the employment of a civil servant shall be terminated *inter alia* if an authority or body responsible for appointing that civil servant accepts a public recommendation of the Protector of Citizens.

The Law on Data Confidentiality²⁷ specifies the cases in which the Protector of Citizens, as a public authority appointed by the National Assembly, is authorised to access data subject to all levels of classification which he/she needs to perform the duties within his/her sphere of competence, without any security checks, as well as the cases when such security checks are necessary.

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

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

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

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

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

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

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

The Law on the Use of National Coat of Arms, Flag and National Anthem of the Republic of Serbia²⁸ provides that the Large Coat of Arms is to be used on the building, inside the offices, on the stamp and on the invitations, congratulatory cards etc. of the Protector of Citizens.

The Law on the Seal of State and Other Authorities²⁹ governs the purpose, content, layout and use of the stamps used by the Protector of Citizens as part of exercise of his/her powers.

According to the **Law on Political Parties**³⁰, the Protector of Citizens cannot be a member of any political party.

The Law on Anti-Corruption Agency³¹ stipulates that members of the Agency's Board are appointed by the National Assembly, including on the proposal of the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection.

Under the **Law on Patient Rights**³², Health Councils formed by local self-governments submit the annual reports on their work and measures taken to protect patient rights to the Protector of Citizens, for information purposes and to establish the necessary cooperation.

Under the **Law on Public Property**³³, government authorities and organisations within the meaning of that Law are deemed to include the Protector of Citizens.

The Protector of Citizens is also mentioned in more than 20 strategies and action plans, including e.g. the National Security Strategy of the Republic of Serbia³⁴, the National Anti-Corruption Strategy of the Republic of Serbia for the Period 2013-2018³⁵, the Public Administration Reform Strategy of the Republic of Serbia³⁶, the Strategy for Improvement of the Status of Roma³⁷, the Strategy for Prevention and Protection against Discrimination³⁸, the Strategy on Implementation of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters – the Aarhus Convention³⁹, the Penal Sanctions Enforcement System Development Strategy of the Republic of Serbia by 2020⁴⁰, the National Youth Strategy⁴¹, the National Strategy for the Prevention and Protection of Children from Violence⁴², the Action Plan on Implementation of Recommendations contained in the 2013 Serbia Progress Report of the European Commission, the Action Plan for Implementing the Strategy on Implementation of the Aarhus Convention⁴³,

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

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

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

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

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

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

34 Official Gazette of RS No. 88/09.

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

36 Official Gazette of RS No. 09/14.

37 Official Gazette of RS No. 27/09.

38 Official Gazette of RS No. 60/13.

39 Official Gazette of RS No. 103/11.

40 Official Gazette of RS No. 114/13.

41 Official Gazette of RS No. 55/08.

42 Official Gazette of RS No. 122/08.

43 Official Gazette of RS No. 103/11.

the Action Plan for Implementing the National Sustainable Development Strategy for the Period 2011-2017⁴⁴ etc.

The legal framework governing the work of the Protector of Citizens includes also a body of secondary legislation which governs in detail the actions and operation of this institution, including: the Rules of Procedure of the National Assembly⁴⁵, the Decision on Formation and Operation of the Secretariat of the Protector of Citizens⁴⁶, the Decision on Formation of Local Offices in Presevo, Bujanovac and Medvedja⁴⁷, the Decree on Organisation of an Internal Open Competition to staff Public Authorities⁴⁸, the Special Collective Agreement for Public Authorities⁴⁹, The Bylaw on Administration in Public Prosecution Offices⁵⁰, the Bylaw on the Code of Conduct of Correctional Facilities and District Prisons⁵¹, the Bylaw on the Code of Conduct of Juvenile Correctional Facilities⁵² etc.

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

The Constitution and the Law on the Protector of Citizens reflect the majority of the standards contained in the key international documents which regulate and/or promote and propose standards for ombudsmen and national human rights institutions.⁵³ Independence of the Protector of Citizens, which is in line also with relevant international standards applicable to the ombudsman institution and/or national human rights institutions⁵⁴, is the key defining feature of this public authority, one without which it would have no substance. Relevant international documents highlight in particular the importance of financial independence and the need to provide adequate resources for smooth and efficient work of the

44 Official Gazette of RS No. 62/11.

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

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

47 Official Gazette of RS No. 91/09.

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

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

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

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

52 Official Gazette of RS No. 71/06.

53 UN General Assembly Resolution 48/134, the so-called "Paris Principles", available at: <http://www.un.org/documents/ga/res/48/a48r134.htm>; UN General Assembly Resolution 66/169 on national institutions for the protection and promotion of human rights, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/468/96/PDF/N1146896.pdf?OpenElement>; UN General Assembly Resolution 67/163 on the role of the ombudsman, mediator and other national institutions for the protection and promotion of human rights, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/488/38/PDF/N1248838.pdf?OpenElement>; Resolution 1959/13 of the Parliamentary Assembly on strengthening the institution of ombudsman in Europe, available at <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20232&lang=en>; Recommendation 1615/03 of the Parliamentary Assembly on the institution of ombudsman, available at: <http://assembly.coe.int/main.asp?link=/documents/adoptedtext/ta03/erec1615.htm>; Venice Commission of the Council of Europe, Compilation on the Ombudsman Institution, available at: [http://www.venice.coe.int/webforms/documents/CDL\(2011\)079-e.aspx](http://www.venice.coe.int/webforms/documents/CDL(2011)079-e.aspx).

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

ombudsman. The Paris Principles, adopted as an annex to UN General Assembly Resolution 48/134 in December 1993, are the most complete document dealing with NHRIs. They unambiguously proclaim the importance of financial independence. "The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it (the institution – comment by PoC) to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence."⁵⁵

In its Recommendation 1615 of 2003, adopted by the Parliamentary Assembly, the Council of Europe "concludes that certain characteristics are essential for any institution of ombudsman to operate effectively", one of them being "guaranteed sufficient resources for discharge of all responsibilities allocated to the institution... and complete autonomy over issues relating to budget and staff."⁵⁶ The most recent Resolution of the Parliamentary Assembly on the institution of ombudsman, adopted in October 2013, reaffirms this stand by calling on Member States to "provide ombudsman institutions with sufficient financial and human resources, enabling them to effectively carry out their tasks."⁵⁷ In the light of the economic crisis, "The Assembly calls on member States to make all efforts to avoid budget cuts resulting in the loss of independence of ombudsman institutions or even their disappearance altogether."⁵⁸ The Venice Commission of the Council of Europe also firmly insists on its opinion that financial independence of ombudsmen must be ensured by legislative texts as specifically and as completely as possible.⁵⁹

Under the Law on Amendments to the Law on Budget System⁶⁰, the Protector of Citizens has to obtain the approval of the committee of the National Assembly in charge of administrative and budgetary issues before hiring or employing each new person, regardless of the fact that the post in question is provided for in the human resources plan and the funds are secured in the budget of the Republic of Serbia. Although the National Assembly never fails to offer its declarative support to building the capacity of the Protector of Citizens, in practice this approval becomes a serious point of contention, to the extent that it undermines the independence and effectiveness of the Protector of Citizens, as guaranteed by the Serbian and international regulations listed above.

THE NEED TO AMEND THE LAW ON THE PROTECTOR OF CITIZENS

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

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

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

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

58 Ibid.

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

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

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

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

The bill on Amendments to the Law on the Protector of Citizens submitted by the Government under Prime Minister Mirko Cvetković to the National Assembly in 2012 was withdrawn the same year after parliamentary elections and the formation of the new government, as is customary under the Constitution. The bill has not been returned to the National Assembly for enactment during the term of Prime Minister Ivica Dačić in office, although the Protector of Citizens formally submitted an Initiative to amend the Law to the Ministry of Justice and Public Administration.

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

The years and years of delays in the enactment of amendments to the Law threaten the work of the Protector of Citizens, as the new powers, the manifold increase in the workload, the identified shortcomings and the reasonable expectations of the citizens place demands before this institution that cannot be addressed satisfactorily within the existing legal framework.

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

There is a need to regulate better the relations and distribution of powers between the Ombudsman of the Autonomous Province and of local self-governments and the Protector

of Citizens and to protect the name and marks of the Protector of Citizens, the unauthorised use (or sometimes even abuse) of which by various institutions, organisations and individuals at different levels creates confusion among the citizens and other authorities and organisations, as well as among the media. The Protector of Citizens needs to be vested with more specific powers to protect the so-called whistleblowers, which would, apart from protecting the rights of those citizens who, in good faith, bring attention to serious threats to a public interest, would also ensure more efficient protection of those interests. It is necessary to provide for an efficient mechanism for considering citizens' complaints within every public authority and organisation and to impose a duty on those mechanisms to report on their work to the heads of their respective authorities and organisations, as well as to the Protector of Citizens. In Serbia there is no systemic method of considering those complaints that cut horizontally and vertically through the entire administration; instead, the Protector of Citizens is in most cases the first, rather than the last, point of contact for the citizens.

Independence

The independence of the Protector of Citizens, enshrined in the Constitution and provided for by the Law, in compliance with applicable international standards pertaining to the institution of ombudsman and national human rights institutions⁶¹, is a key distinctive feature of this public authority, one without which it would have no substance. The legislation of the Republic of Serbia guarantees the independence of the Protector of Citizens in principle. In practice, too, the Protector of Citizens has managed to ensure his independence, as evidenced by his accreditation as an "A status" NHRI by the International Coordination Committee of National Human Rights Institutions and the opinions of other relevant institutions and organisations.⁶²

Under the Constitution, the Protector of Citizens is subject to oversight by the National Assembly. However, the National Assembly in its oversight role is not authorised – and neither is any other authority, organisation or individual – to influence the work and actions of the Protector of Citizens⁶³. The principle of independence is closely related to the principle of autonomy. The independence and autonomy of the Protector of Citizens imply his/her organisational and functional separation both from the authorities and organisations whose work he/she supervises and from the authority responsible for overseeing his/her work in accordance with the Constitution. In practice this has been the case.

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

Under the provisions of the Law on Amendments to the Law on Budget System (Article 6 Paragraph 3), the Protector of Citizens, just as all other independent oversight authorities, is required to seek the approval of the Administrative Committee of the National Assembly for every "new hiring", including work under a service contract, work under a temporary or

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

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

63 Article 2 paragraph 2 of LoPoC.

occasional work contract, work through youth or students' cooperatives and other types of engagement, regardless of the fact that a post may have already been envisaged by the relevant human resources plan and job classification document, no matter how necessary the post may be and regardless of the fact that funding for the post has already been secured in the budget of the Republic of Serbia.

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

However, with regard to the Protector of Citizens and other independent public authorities, Article 6 paragraph 3 of the Law provides that new employment and hiring of persons under a service contract or a temporary or occasional work contract, persons working through youth or students' cooperatives and other types of engagement requires the consent of the committee of the National Assembly in charge of administrative and budgetary issues. Thus, the quoted provision puts the Protector of Citizens and other independent authorities at a disadvantage compared to other budget spending units, **because of different regimes applicable to the maximum number of fixed-term employees who can be hired due to an increased volume of work or on other grounds (without the consent of a competent body) in accordance with Article 1 of the Law.**

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

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

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

1.2. COMPETENCE, SCOPE AND MANNER OF WORK

The duty and mandate of the Protector of Citizens under the Constitution and the Law is twofold: to **protect** citizens' rights and to **control** the legality and regularity of work of government agencies and organisations to which public powers has been delegated (hereinafter referred to as "public authorities and organisations"⁶⁴). These two duties are clearly interrelated: the Protector protects rights by conducting control procedures and conducts the control procedures to protect rights and freedoms. In accordance with the Law on the Protector of Citizens, the Protector of Citizens "ensure[s] that human and minority freedoms are protected and **promoted**". These determinants (*protection, control, promotion of respect for rights and freedoms*) essentially and formally set the framework for the powers of the Protector of Citizens.

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

The Protector of Citizens acts in accordance with the Constitution, the law and other regulations and general acts, as well as the ratified international treaties and generally accepted rules of international law⁶⁵. The Protector of Citizens controls the legality, as well as the regularity⁶⁶, of the work of public authorities and organisations. In practical matters, the Protector of Citizens is guided by the principle of fairness, within the framework of positive law.

The Protector of Citizens controls the work of government agencies, the body authorized for legal protection of property rights and interests of the Republic of Serbia and other bodies and organisations, enterprises and institutions which have been delegated public authority (public authorities and organisations). The only public authorities and organisations the Protector of Citizens is not authorised to control, in accordance with

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

65 Article 2 paragraph 2 of LoPoC.

66 Article 17 paragraph 2 of LoPoC.

the Constitution and the Law, are the National Assembly, the President of the Republic, the Government, the Constitutional Court, courts and public prosecution offices.⁶⁷

In the reporting year, the High Judicial Council once again refused to accept that the Protector of Citizens had the power to inspect the work of that authority, although it is not listed as one of the authorities exempted from the Protector's control powers under the Constitution.

In its submissions to the Protector of Citizens after the launching of investigations due to failure of its disciplinary bodies to act on citizens' complaints against the work of judges, apart from explaining that the complainants were answered, the High Judicial Council continues to challenge the power of the Protector of Citizens to control the legality and regularity of work of the said authority.

Upon presentation of an appropriate personal security clearance certificate, the Protector of Citizens is granted access to all levels of classified data, to the extent that such data are necessary for the performance of his/her duties.⁶⁸

In addition to the right to launch and conduct investigations of the work of public authorities and organisations, the Protector of Citizens can also act pre-emptively by providing good services, mediating between the citizens and the public authorities and providing advice and opinions on matters within his/her sphere of competence, with a view to improving the work of public authorities and protecting human rights and freedoms. The powers of the Protector of Citizens to act pre-emptively are evident in particular in his role as the National Preventive Mechanism.

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

Procedure

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

Of far greater interest to the Protector of Citizens than mere formal adherence to the law are ethical conduct, diligence, impartiality, qualifications, soundness, effectiveness,

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

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

respect for a person's dignity and other characteristics that should be inherent in the public administration which the citizens rightly expect from those they pay as taxpayers.

Legal nature of instruments passed by the Protector of Citizens

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

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

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

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

Relationships with other independent authorities

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

Work outside the head office

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

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

With the support of the Norwegian Government, libraries in 15 cities and towns in Serbia⁶⁹ have been equipped and trained to receive citizens, establish video links with the head office of the Protector of Citizens and forward complaints filed by citizens in writing.

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

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

In practice, in spite this specific provision of the Law, Ombudsman Institutions of the Autonomous Province and local self-governments also handle complaints which fall within the sphere of competence of the Protector of Citizens, which sometimes has harmful effects.

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

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

PART II: OVERVIEW BY AREAS / SECTORS

2.1. RIGHTS OF THE CHILD

I BACKGROUND

1. State's achievements

- 1.1. The Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption⁷⁰ has been ratified.
- 1.2. The Law on Exercise of Health Care Rights of Children, Pregnant Women and Nursing Mothers has been adopted.⁷¹
- 1.3. The Law on Special Measures for the Prevention of Crimes against Sexual Freedom against Minors (the so-called "Marija's Law") has been enacted.⁷²

2. Results achieved by the Protector of Citizens

- 2.1. In accordance with the proposals given by the Protector of Citizens in his 2012 Annual Report⁷³, the Law on Special Measures for the Prevention of Crimes against Sexual Freedom against Minors has been enacted.
- 2.2. In accordance with the proposals given by the Protector of Citizens in his 2012 Annual Report⁷⁴, the Law on Exercise of Health Care Rights of Children, Pregnant Women and Nursing Mothers has been enacted.
- 2.3. The Protector of Citizens submitted a Bill on Amendments to the Labour Law and the Bill on Amendments to the Law on Financial Support to Families with Children, supported by the signatures of 60,000 citizens.

70 Official Gazette of RS – International Treaties, No.12/13.

71 Official Gazette of RS No. 104/13.

72 Official Gazette of RS No. 32/13.

73 2012 Annual Report of the Protector of Citizens, p. 78.

74 2012 Annual Report of the Protector of Citizens, p. 78.

- 2.4. Recommendations of the Protector of Citizens contributed to the improvement of protection of rights of children with developmental disorders to education and protection from violence, abuse and neglect.
- 2.5. The Protector of Citizens made the importance of respecting child rights by the media more visible and mobilised the competent oversight authorities.
- 2.6. The opinions and views of children have been presented to the public through the Panel of Young Advisors.
- 2.7. The public has been made aware of the harmfulness of corporeal punishment of children and the alternatives to this method of disciplining children.
- 2.8. In 2013, the Protector of Citizens received 376 complaints in this field. In the same period, he completed the investigations in a total of 409 cases, received in 2013 and in earlier years. He identified a total of 94 different violations of rights. For the purpose of rectifying the omissions, he issued 62 recommendations, of which 62 have been accepted (100%), while 59 have been implemented. In the same period the Protector of Citizens issued three (3) opinions, while in 52 (12.71%) cases the investigations have been closed because the authorities concerned rectified the omissions upon learning they were being investigated by the Protector of Citizens.

3. Shortcomings at the national level

- 3.1. The Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, which Serbia signed in February 2012, has not yet been ratified.
- 3.2. No appropriate and effective support and assistance mechanism is in place for parents who personally care for children with developmental disorders, children with disabilities or severely ill children whose condition requires constant care, attendance and support.
- 3.3. The Republic of Serbia has not provided a meritorious answer in each individual case of the so-called "missing babies", although it was ordered to do so by the European Court of Human Rights⁷⁵ referring to the recommendations given by the Protector of Citizens in his Special Report on the Cases of "Missing Babies".⁷⁶
- 3.4. The Criminal Code has not been harmonised with Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.⁷⁷
- 3.5. Children who are crime victims are not sufficiently protected from secondary traumatisation and victimisation in proceedings before law enforcement and judicial authorities.

75 See the case of Zorica Jovanovic vs. Serbia, available on the website of the Ministry of Justice and Public Administration <http://www.zastupnik.mpravde.gov.rs/cr/articles/presude/u-odnosu-na-rs/presuda-zorica-jovanovic-protiv-srbije-predstavka-br.-21794-08.html>.

76 Document No. 12443 of 29 July 2010, available on the website of the Protector of Citizens http://www.ombudsman.pravadeteta.com/index.php?option=com_content&view=article&id=203%3A2012-05-21-21-20-11&catid=43%3A2012-04-09-13-00-20&Itemid=88&lang=sr.

77 Law on Ratification of Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Official Gazette of RS - International Treaties 19/09).

- 3.6. A new Law on Textbooks has not been enacted to regulate the manner and procedure of quality evaluation, approval and procurement of textbooks for primary and secondary school pupils.
- 3.7. School violence – both peer violence and violence of the staff towards pupils – remains widespread, because schools often do not respond to suspected/witnessed cases of violence in accordance with the applicable rules and standards.
- 3.8. The system of additional support in education to children with developmental disorders and disabilities is not sufficiently developed and the existing support services are not provided to a sufficient extent.
- 3.9. Corporal punishment of children is still not outlawed as a form of education of children and information on the harmfulness of corporal punishment of children and the alternatives to this method of disciplining children is not widely available to the citizens.
- 3.10. Media reporting on children and images of children in the media are burdened with sensationalism and the media do not pay sufficient attention to ensuring that the content and texts intended for children are age-appropriate.
- 3.11. The mechanism for determining and collecting child support is not sufficient enough.

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

- 4.1. No action have been taken to implement the following proposals for improving the citizens' position in relation to public authorities set out in the 2012 Annual Report of the Protector of Citizens:
 - To ratify the Optional Protocol to the UN Convention on the Rights of the Child on a Communications Procedure;
 - To amend the relevant laws to ensure support and assistance mechanism is in place for parents who personally care for children with developmental disorders, children with disabilities or severely ill children whose condition requires constant care, attendance and support;
 - To organise public awareness raising campaigns on the harmfulness of corporal punishment of children and the alternatives to this method of disciplining children;
 - To provide expert assistance and support to parents in raising their children, through the mechanisms of social and health care services (parent counselling, phone lines, "schools of parenting" etc.);
 - To ensure efficient and timely initiation and conduct of proceedings to determine personal responsibility of school staff for violations of the prohibition of violence, abuse and neglect, negligence at work and omissions in the implementation of measures to protect children from violence, abuse and neglect.⁷⁸

78 2012 Annual Report of the Protector of Citizens, p. 62 and 63, available at http://www.ombudsman.rs/attachments/2766_Godi%C5%A1nji%20izve%C5%A1taj%20Za%C5%A1titnika%20graana%20za%202012%20godinu.pdf.

- 4.2. The National Assembly has not debated the Bills amending the Labour Law and the Law on Financial Support to Families with Children, submitted by the Protector of Citizens⁷⁹ with the support of 60,000 citizens, while the Government gave an opinion that the Bill on Amendments to the Law on Financial Support to Families with Children should not be enacted.
- 4.3. The Republic of Serbia has not passed a special law which would enable the truth to be found in the cases of the so-called “missing babies”, in accordance with the judgement of the European Court of Human Rights and the recommendation of the Protector of Citizens.
- 4.4. Even after almost two years since the Protector of Citizens resubmitted his Initiative to amend the Criminal Code⁸⁰ to harmonise it with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the Ministry of Justice and Public Administration has not considered the Initiative.
- 4.5. The Ministry of Justice and Public Administration, the Ministry of Labour, Employment and Social Policy, the Ministry of Health and primary and higher courts in Belgrade, Nis, Novi Sad and Krusevac have given absolutely no response to the Opinion submitted by the Protector of Citizens in connection with the need to protect child victims of crime from secondary traumatising and victimisation during criminal trials.
- 4.6. The Ministry of Education, Science and Technological Development has not taken into consideration the comments made by the professional community and has not prepared a new legislative text that would govern the approval, publication and procurement of textbooks and other teaching aids.
- 4.7. Even after repeated talks with the Protector of Citizens, primary school “Sreten Mladenovic Mika” refused to implement the recommendations of this authority⁸¹ and review the work of its employees and their responsibility for the omissions made towards tragically deceased student – which were found not only by the Protector of Citizens, but also by the education inspectorate of the City of Nis and the Magistrates’ Court of Nis.
- 4.8. The Police Administration of Novi Sad has not complied with the recommendations of the Protector of Citizens⁸² and has not put in place the measures proposed by the Internal Control Department of the police.

79 Enactments of the Protector of Citizens No. 218-3/13, ref. No. 12808 and 12809 of 07 May 2013, available at <http://www.ombudsman.rs/index.php/lang-sr/zakonske-i-druge-inicijative/2825-2013-05-14-07-58-42> and <http://www.ombudsman.rs/index.php/lang-sr/zakonske-i-druge-inicijative/2826-2013-05-14-08-12-28>.

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

81 Available on the website of the Protector of Citizens <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/2247-2012-03-30-07-47-14>.

82 Enactment the Protector of Citizens No. 14-1789/11 of 28. 12. 2012, available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/2681-2013-01-08-13-41-06>.

5. Explanation

Ratification of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption allows that, in cases where the adoption of a child in the Republic of Serbia is not possible, such child is put up for adoption internationally, under sound arrangements that better serve the interest of the child and guarantee safety, according to internationally recognised procedures, thereby providing a permanent family environment for the child. Past experience has shown that prospective adoptive parents for children with developmental disorders and children of Roma ethnicity are very difficult to find in Serbia.

Following the enactment of the Law on Exercise of Health Care Rights of Children, Pregnant Women and Nursing Mothers, children no longer suffer the consequences of belated payment of health insurance contribution by the insurance payers and of omissions made by the public authorities responsible for overseeing the collection of contributions. The Protector of Citizens drew attention to this issue as early as in 2012⁸³, when he submitted recommendations to the competent authorities.⁸⁴

The Law on Special Measures for the Prevention of Crimes against Sexual Freedom against Minors has introduced new forms of criminal law protection in Serbia's legal system for child victims of criminal offences against sexual freedom, the introduction of which had been proposed by the Protector of Citizens in 2011 and 2012.⁸⁵

Inclusive education of children with developmental disorders is burdened with numerous issues and weaknesses as a result of non-existing rules and standards for the provision of additional support in education, the ambiguousness of the existing regulations, their incomplete implementation and the persistence of various kinds of prejudice and stereotypes regarding the education of children with developmental disorders in the general education system and their life in the community. Full exercise of the right of children with developmental disorders to proper and accessible education will not be possible without detailed regulation of the operations, funding and oversight of intersectoral committees, introduction of support measures and mechanisms for their implementation and funding, imposition of duties and responsibilities on the competent authorities and introduction of a control and performance monitoring mechanism – as recommended by the Protector of Citizens back in 2012.⁸⁶

The competent Ministry accepted some of the objections made by the Protector of Citizens in his opinion on the Draft Law on Amendments to the Law on Fundamentals of the

83 Under enactment the Protector of Citizens No. 14-288/12 of 22. 06. 2012, ref. No. 15192, available at: <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/2383-2012-06-25-09-50-57>.

84 Enactment the Protector of Citizens No. 14-288/12 of 22. 06. 2012, ref. No. 15192 and "Предлози за побољшање стања in the field of child rights", 2012 Annual Report of the Protector of Citizens, p. 62, available at: http://www.ombudsman.rs/attachments/2766_Godi%C5%A1nji%20izve%C5%A1taj%20Za%C5%A1titnika%20graana%20za%202012%20godinu.pdf.

85 Initiative of the Protector of Citizens submitted to the Ministry of Justice and Public Administration No. 218-89/11 of 13 October 2011 and 19 November 2012 and 2012 Annual Report of the Protector of Citizens, p. 62, available at: http://www.ombudsman.rs/attachments/2766_Godi%C5%A1nji%20izve%C5%A1taj%20Za%C5%A1titnika%20graana%20za%202012%20godinu.pdf.

86 Enactments of the Protector of Citizens No. 14-2755/12 of 06 December 2012, ref. No. 31802 and No. 14-1737/12 of 06 December 2012, ref. No. 31832, available at <http://www.zastitnik.rs/index.php/lang-sr/2011-12-11-11-34-45/2623-m-> and <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/2629-2012-12-10-09-13-58>.

Education System and implemented them in the text of the Law. Unfortunately, it has not accepted the objections of the Protector of Citizens concerning the improvement of inclusive education, with a system of support for those pupils who need it and with explicit protection of pupils with different sexual orientation from discrimination.

Unlike the previous years, cooperation between the Ministry of Education, Science and Technological Development and the Protector of Citizens has been improved. The Ministry timely provided to the Protector of Citizens all information and complied with all recommendations in the field of child rights issued to that authority by the Protector of Citizens in the reporting period. In particular, the Protector of Citizens has had exceptionally good cooperative relations with the school administrations in Belgrade and Novi Sad, in cases where they – in parallel with the investigations led by the Protector of Citizens – put in place measures to protect the right of every child to proper education. Unfortunately, the otherwise good cooperation was somewhat tainted when the Ministry engaged in a war of words with the Protector of Citizens in connection with the numerous omissions made by the Ministry after it learned about possible irregularities in the organisation of final examinations for primary school pupils⁸⁷.

In the absence of adequate services in the systems of health care, social security, education and community-based services for children with developmental disorders and disabilities and severely ill children in need of constant care and assistance, parents take on the role of providers of these services, which effectively prevents them from finding employment or forces them to leave their jobs. For this reason, the Bills of Amendments to the Labour Law and the Law on Financial Support to Families with Children submitted by the Protector of Citizens were aimed at ensuring financial support and relief under labour law for those parents who care for their children unassisted, until such time as the system is capable of offering them adequate services so that the parents could devote their time to work or to seeking employment. The Bills submitted by the Protector of Citizens have not been debated at all and the Ministry of Labour, Employment and Social Policy – believing it could offer a better, financially viable bill – formed a cross-sectoral working party, which includes members from a number of public authorities and organisations and parents' representatives.

In a special report on the cases of the so-called "missing babies", the Protector of Citizens found numerous shortcomings in the work of competent administrative authorities and institutions exercising public powers and concluded it was "difficult to state with absolute certainty that the babies in question were not unlawfully separated from their families unless a special investigation is conducted by specialised government authorities"⁸⁸. One of the recommendations made by the Protector of Citizens was to enact a special law to provide for such an investigation. Starting from this recommendation, the European Court of Human Rights ordered the Republic of Serbia in its judgement to provide mechanisms for investigation of these cases, recommending that such mechanism should take the form of a special law. The Special Report of the Protector of Citizens was presented at a regular meeting with the members of the Committee of Ministers of the Council of Europe.

The provisions of the Criminal Code need to be harmonised with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention). The necessary amendments include redefining certain criminal

87 Available at: http://www.ombudsman.pravdeteta.com/index.php?option=com_content&view=article&id=554%3A2013-07-02-15-28-07&catid=37%3A2012-04-09-12-59-03&Itemid=90&lang=sr.

88 Special Report on the so-called "Missing Babies" Cases, p. 2.

offences, increasing the (minimum) sentence for certain offences and amendments to the provisions pertaining to safety measures and methods of criminal prosecution in certain cases.

The Republic of Serbia does not have sufficient resources to implement the questioning techniques envisaged for child victims under the law and even those resources that do exist are underutilised. Information obtained from primary and higher courts in Belgrade, Krusevac, Nis and Novi Sad reveals that courts rarely use the possibility of questioning child victims in purpose-built and specially equipped screen rooms. On the other hand, there are only five such rooms in Serbia.⁸⁹

Although anticipated for a long time, the new Law on Textbooks and Other Teaching Aids has not been enacted in the reporting period. The Draft Law presented by the Ministry of Education, Science and Technological Development in the public debate has been heavily criticised by the professional community because it fails to address a number of issues that have so far been fraught with the publication, quality evaluation, approval and procurement of textbooks. The Protector of Citizens warned about this situation on multiple occasions and he issued his recommendations to the competent authorities.

School violence remains widespread, while schools often fail to respond to suspected/witnessed cases of violence in accordance with the applicable rules and standards. Of particular concern is the fact that there are education institutions which refuse to rectify the omissions they made and to adapt their work to the responsibilities they have with regard to protection of pupils against violence. Although such cases are rare, one the most flagrant examples is primary school "Sreten Mladenovic Mika" in Nis. This school refused to implement the recommendations of the Protector of Citizens and thus eliminate/alleviate the consequences of numerous omissions in the protection of pupils against violence, which have been identified not only by the Protector of Citizens, but also by the education inspectorate of the City of Nis and the Magistrates' Court of Nis, resulting in a valid and enforceable judgment which imposed on the school the highest available fine in infringement proceedings.

One exception from the otherwise sound cooperation between the Ministry of Interior and the Protector of Citizens was noted in the case of the Police Administration of Novi Sad, which refused to implement the recommendations of the Protector of Citizens even after repeated urgings. The said Administration has therefore not rectified/alleviated the consequences of unlawful, irregular and unprofessional exercise of police powers against a child, which had been identified by the Protector of Citizens, and the Internal Affairs Sector (as the internal control mechanism) as well.

Media reports about children and programs on which children appear often do not take sufficient account of the child's privacy, risk of additional traumatising of child victims of traumatic events and the damage a child may suffer as a result of exposure to inappropriate content. Although the authorities responsible for overseeing the media diligently implement their procedures and impose sanctions, they do so only when they receive reports. However, exercise and protection of children's right to privacy and protection from exposure to harmful content requires larger-scale involvement of oversight mechanisms *ex officio*.

The Protector of Citizens supported the initiative of the Coalition for Improvement of the System of Compulsory Child Support, with proposals for improving the status of children without parental support and increasing the efficiency of the existing collection system.

89 Figures of the Ministry of Labour, Employment and Social Policy.

Upon forwarding the initiative to the Ministry, the Protector of Citizens explained that changes in the system of child support collection were necessary to ensure efficient calculation and collection of debt, where payment of child support from public money would be the last resort, followed by efficient mechanisms for recovering the paid amounts from the defaulting payers of such support.⁹⁰

II COMPLAINTS

In the field of child rights, in 2013 the Protector of Citizens received 371 complaints and investigated 5 cases on own initiative. Those 371 complaints accounted for 7.47% of the total number of complaints received by the Protector of Citizens in 2013. The number of complaints in this year has been 11.53 % lower than last year.

Chart 3 – Child rights – Number of complaints received compared to 2012

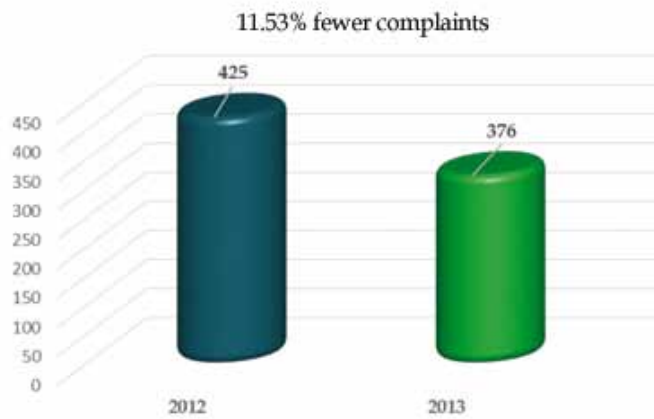
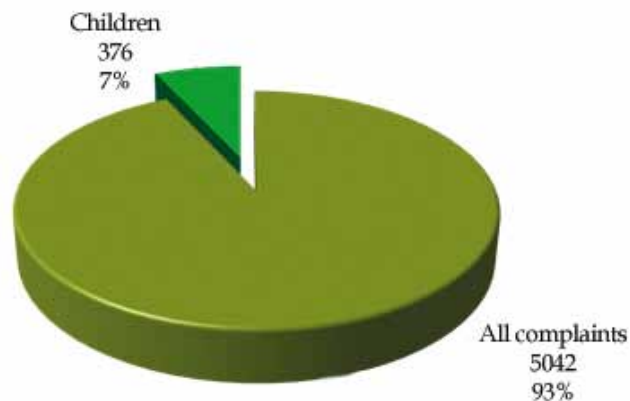


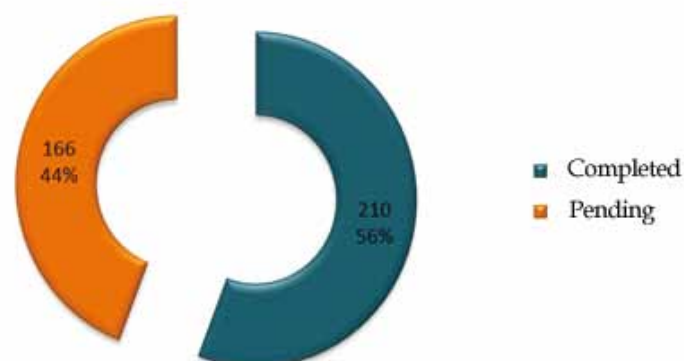
Chart 4 – Complaints in the field of child rights as a share of all complaints received in 2013



90 Enactment of the Protector of Citizens No. 218-39/12 of 30 September 2013 (ref. No. 27697).

In the field of child rights, in 2013 the Protector of Citizens received a total of 376 cases. 210 cases received in 2013 have been closed, while 166 are pending.

Chart 5 – Child rights – handling of cases in 2013



In 2013, the Protector of Citizens completed a total of 409 cases in the field of child rights, including 210 cases received in 2013, with the remaining cases carried forward from earlier years, as shown in Table 7.

Table 9 – Child rights – outcome of cases handled in 2013 and in earlier years

Dismissed complaints	152	37.16%
Unfounded complaints	148	36.19%
Omissions admitted and rectified by the authorities without conducting full investigation - no need to issue recommendations (closed investigations)	52	12.71%
Cases covered by recommendations	22	5.38%
Opinion	1	0.24%
Complaint dropped by complainant	15	3.67%
Announcement by PoC ⁹¹	19	4.65%
Total	409	100 %

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

91 In the “primary school graduation” case, the Protector of Citizens deemed it would be appropriate to close the complaints received by a public announcement, as the public was well aware of the omissions made and the nature of the omissions made it impossible to issue recommendations, because any recommendation would have led to further violations of rights of the children and further consequences for the children, who have already been harmed.

Table 10 – Child rights – reasons for dismissal of complaints in 2013

Declined jurisdiction by PoC - referred to competent authority	22	14.47%
Belated complaint	7	4.61%
Premature complaint - complainant advised on available remedies	70	46.05%
Anonymous complainant	2	1.32%
Formally deficient complaint	50	32.90%
Within the competence of a local ombudsman	1	0.66%
Total:	152	100%

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

As can be seen in Table 3, in 60.53% of dismissed complaints the Protector of Citizens gave the citizens legal assistance in the exercise of their rights before the competent authorities.

Table 11 – Child rights – assistance provided in the form of legal advice

	number	percentage
Dismissed complaints	152	100%
Declined jurisdiction - complainant referred to competent authority	22	14.47%
Premature complaint - complainant advised on available remedies	70	46.05%
Total: assistance provided in the form of legal advice	92	60.53%

Pursuant to the complaints received in 2013 and in earlier years, the Protector of Citizens issued a total of 62 recommendations to public authorities in connection with 22 cases. As of 31 December 2012, 100% of the recommendations have been implemented by the competent authorities to which they were addressed.

Table 12 – Child rights – compliance with recommendations issued in 2013

Recommendations	number	percentage
Total	62	100
Implemented	62	100
Unimplemented	0	0
Implementation pending	0	0

In the field of child rights, 742 different violations of rights have been identified pursuant to 376 complaints. The largest number of complaints pointed to violations of special rights in the field of child rights. The right to education, as one of the economic, social and cultural rights, appears more than 100 times in the complaints received.

Table 13 – Child rights – violations reported by complainants

Special rights in the field of child rights	526	70.89%
Economic, social and cultural rights	150	20.22%
Civil and political rights	35	4.72%
right to good governance	31	4.18%
Total	742	100%

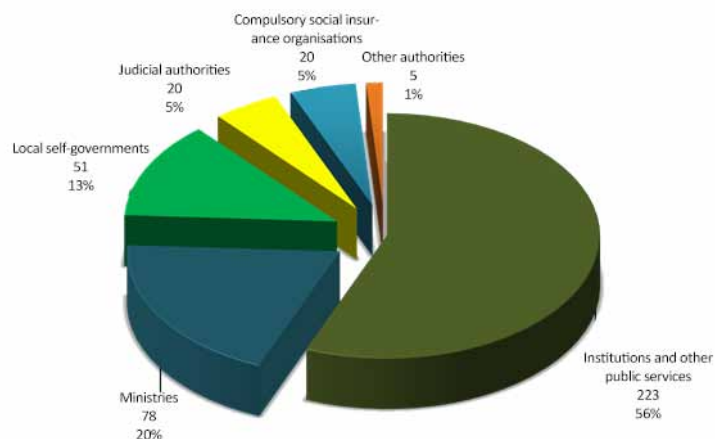
Table 14 shows the structure of special rights based on the 526 identified violations of these rights.

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

Type of right violated	Number	%	Type of right violated	Number	%
Right to respect for the best interest of the child	183	34.79%	Rights of children in conflict with the law	4	0.76%
Right to protection against violence, abuse and neglect	96	18.25%	Right to maintain personal relations with the family of origin and close persons	4	0.76%
Right to proper development	56	10.65%	Right to personal identity	3	0.57%
Right to maintain personal relations with the parent with whom he/she does not live	43	8.17%	Right to a healthy environment	3	0.57%
Rights of children with developmental disorders to quality of life and special protection by the state	42	7.98%	Right to protection against exploitation	3	0.57%
Parenting assistance to parents	22	4.18%	Right to family reunification	2	0.38%
Right to live with parents	13	2.47%	Right of the child in case of adoption	2	0.38%
Right to an adequate standard of living	11	2.09%	Right to the preservation of personal identity	2	0.38%
Assistance to families in the exercise of children's right to an adequate standard of living	11	2.09%	Special protection of maternity	1	0.19%
Right to review of treatment in care	10	1.90%	Freedom from discrimination of the child because of his/her parents	1	0.19%
Right to express his/her own opinion	8	1.52%	Right to leisure and play	1	0.19%
Right to protection against parental abduction				5	0.95%

Chart 6 shows the authorities most frequently complained against by the citizens.

Chart 6 – Authorities and organisations most frequently complained against by the citizens in the field of child rights



On his child – friendly website (www.pravadeteta.rs), the Protector of Citizens received 133 questions raised by children or adults concerned about the situation of children. The questions received in this way pointed to 193 different violations of rights, including 66 violations of economic, social and cultural rights, mostly concerning education and upbringing (more than 50%), and 127 violations of special rights in the field of child rights.

Table 15 – Questions most frequently asked on www.pravadeteta.rs

Right to respect for the best interest of the child	47	37.01%
Right to protection against violence, abuse and neglect	25	19.69%
Right to an adequate standard of living	11	8.66%
Rights of children with developmental disorders to quality of life and special protection by the state	8	6.30%
Parenting assistance to parents	6	4.72%
Right to proper development	4	3.15%
Right to live with parents	4	3.15%
Right to maintain personal relations with the parent with whom he/she does not live	4	3.15%
Right to express his/her own opinion	4	3.15%
Other rights	14	11.02%
Total	127	100%

III OTHER ACTIVITIES

Panel of Young Advisors

The Panel of Young Advisors is an advisory body of the Protector of Citizens comprised of thirty children aged 13 - 17 years from across Serbia, chosen according to the criteria of territorial representation, gender equality and participation of children from vulnerable social groups. In 2013, the Panel saw renewed membership: 12 new members replaced those who could no longer participate in the work of this body for various reasons.

The members of the Panel of Young Advisors debated with children and adults on the use of corporeal punishment and positive parenting in the upbringing and disciplining of children. These debates, held in ten schools in several cities, provided the public with an opportunity not only to learn about the concept of positive parenting and the harmfulness of corporeal punishment, but also to hear the views of children and youth on corporeal punishment and positive parenting practices collected by the Panel of Young Advisors in its last year's peer survey.



Image 1 – Panel of Young Advisors

The Panel of Young Advisors presented the views of children and youth on corporeal punishment and positive parenting practices in the Third Congress of the Serbian Society of Child and Adolescent Psychiatry and Related Disciplines (DEAPS).

Other activities⁹²

The work of the Protector of Citizens and his conclusions, views and recommendations in connection with the exercise of child rights received the attention of the Committee on the Rights of the Child of the National Assembly, as well as other Committees (Committee on Education, Science, Technological Development and Information Society and Committee on Labour, Social Issues, Social Inclusion and Poverty Reduction).

The Protector of Citizens received 133 questions from children and adults through the interactive portal www.pravadeteta.rs. The number of questions received was higher than the previous year and most of them related to education and upbringing issues and special rights in the field of child rights. Some of the answers given by the Protector of Citizens that bear particular relevance or apply to the position of many children have been posted on the website www.pravadeteta.rs

IV TYPICAL CASES

Better protection from secondary traumatisa- tion is needed for child victims

The information given to the Protector of Citizens by the Ministry of Labour, Employment and Social Policy and primary and higher courts in Belgrade, Nis, Novi Sad and Krusevac revealed that Serbia has only five specially equipped questioning rooms suitable for children ("screen rooms") within its social security system and that very few courts used those rooms when questioning child victims. In an opinion he issued, the Protector of Citizens highlighted the particularly vulnerable position of child victims of crime and the need for public authorities make every effort to protect children from secondary victimisation and traumatisa- tion. The Protector of Citizens called on the courts and competent authorities to use the existing resources as much as possible when dealing with child victims ("screen rooms" and technical means of conveying and recording image and sound), to consistently implement the statu- tory provisions on the protection of victims from secondary victimisation and to take steps to ensure that all courts have access to "screen rooms" and appropriate technical means to take statements from child victims in a way which avoids repeat traumatisa- tion.

No one is authorised to demand exclusion of pupils with developmental disorders from schools/classes

The Protector of Citizens received complaints from a number of parents whose children attend the same class in a primary school. Although they related to the same events, these complaints stated conflicting demands: in one complaint, the complainants demanded that their child with developmental disorders be allowed normal education in the school and class he attended; in the remaining complaints, the complainants demanded that the pupil with developmental disorders be transferred from the school to another one or at least from that class to another ("special needs" or regular) class. The complainants in the latter group held

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

a “school boycott”, i.e. they decided not to let their children attend school until their demands are met. The investigation launched by the Protector of Citizens, during which he made the complainants and the investigated authorities aware of his views on demands to exclude any pupil from a school, was closed after it was found that the school had rectified the omissions. In parallel with the investigation conducted by the Protector of Citizens, the Ministry of Education, Science and Technological Development provided the school with technical support and used pedagogical supervision and inspection activities to authoritatively demand respect for the law from all participants in the education process. With these activities and measures, the Ministry reduced the “school boycott” to several isolated cases.

*Participation of a child in a television programme
not appropriate for children*

In the investigation of legality and regularity of operations launched by the Protector of Citizens, the Republic Broadcasting Agency warned the broadcaster Pink TV to exercise greater editorial scrutiny to ensure that interests of the child are protected in its programmes. The warning was issued because Pink TV had broadcast the programme “Grand Show” in which a child of a very young age performed a song that was not age-appropriate and that contained explicit sexual innuendos.

V PROPOSALS FOR IMPROVING THE CITIZENS’ POSITION
IN RELATION TO THE AUTHORITIES

1. **The National Assembly** should enact the Law on Ratification of Optional Protocol to Convention on the Rights of the Child on a Communications Procedure, which Serbia signed in February 2012.
2. **The National Assembly** should consider the Bills of Amendments to the Labour Law and the Law on Financial Support to Families with Children submitted by the Protector of Citizens.
3. **The Ministry of Justice and Public Administration** should continue and step up its efforts to harmonise the relevant regulations with the provisions of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, to ensure full protection of child victims from secondary traumatization and victimisation.
4. **The National Assembly and the Government** should provide for the establishment of a mechanism to investigate the cases of the so-called “missing babies”, in accordance with the judgement of the European Court of Human Rights.
5. **The Ministry of Education, Science and Technological Development and education inspectorates of local self-governments** should increase the inspection coverage of education institutions in cases of violence against pupils, including in particular timely, proper and diligent implementation of the Law on Fundamentals of the Education System, the Regulations on the Protocol of Actions taken by Institutions in Response to Violence, Abuse and Neglect, the General Protocol on the Protection of Children from Abuse and Neglect and the Special Protocol on the Protection of Children and Pupils from Violence, Abuse and Neglect in Education Institutions.

6. **The Ministry of Education, Science and Technological Development and education inspectorates of local self-governments** should ensure efficient and timely initiation and conduct of proceedings to determine personal responsibility of school staff for violations of the prohibition of violence, abuse and neglect, negligence at work and omissions in the implementation of measures to protect children from violence, abuse and neglect.
7. **The Ministry of Education, Science and Technological Development** should intensify the activities aimed at regulating the services of additional support and assistance to pupils with developmental disorders in education, the types of those services, the methods of their provision and financing, the procedure of assessment of the child's/pupil's needs and formation, operation and control of intersectoral committees.
8. **The Ministry of Education, Science and Technological Development** should provide regular trainings at education institutions aimed at increasing the sensitivity of the staff to children with developmental disorders and adoption of practical skills and knowledge in the work with them.
9. **The Ministry of Education, Science and Technological Development** should, taking into considerations the objections raised by the professional community, prepare a new legislative text governing the approval, publication and procurement of textbooks and other teaching aids.
10. **The Ministry of Labour, Employment and Social Policy, Ministry of Health and the Ministry of Education, Science and Technological Development** should organise public awareness raising campaigns on the harmfulness of corporeal punishment of children and the alternatives to this method of disciplining children and provide expert assistance and support to parents in the education of their children through the mechanisms of social and health care services (parent counselling, phone lines, "schools of parenting" etc.).
11. **The Government** should prepare and propose to the National Assembly to enact a law that would outlaw corporal punishment of children in all environments.
12. **The Republic Broadcasting Agency and the Ministry of Culture and Information** should intensify their oversight activities, including actions taken *ef officio*, in cases of violation of child rights in the media and impose appropriate sanctions against the responsible media outlets.
13. **The Ministry of Youth and Sport** should amend the Law on Sports and regulate contracts between sport clubs/organisations and underage athletes.
14. **The Ministry of Education, Science and Technological Development** should ensure that primary school "Sreten Mladenovic Mika" complies with the recommendations of the Protector of Citizens and takes steps to determine individual responsibility for past failures to implement the recommendations.
15. **The Ministry of Interior** should ensure that the Police Administration of Novi Sad complies with the recommendations of the Protector of Citizens and takes steps to determine individual responsibility for past failures to implement the recommendations.

2.2. RIGHTS OF NATIONAL MINORITIES

I BACKGROUND

1. State's achievements

- 1.1. An opportunity has been provided to citizens without permanent place of residence (mainly the Roma) in regulations and in practice to have administrative address at the address of a social work centre or an institution where they permanently reside, which enables them to respect the duty and exercise the right to personal identity documents and subsequently a number of other rights.
- 1.2. At the end of the year, the Government adopted the proposal of Amendments to the Law on National Councils of National Minorities.
- 1.3. The right of citizens to have their personal names entered in the language and script of national minorities in registers of births and identity documents has been successfully exercised.

2. Results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens launched an initiative, carried out a number of intermediary activities and gave his Opinion⁹³, after which the Ministry of Interior and the Ministry of Labour, Employment and Social Policy passed the instructions on the manner of acting of police stations and social work centres on the citizens' requests for the registration of permanent place of residence at the address of a social work centre or an institution where they permanently reside. Twenty months after adoption of the Law on Primary and Temporary Place of Residence of Citizens⁹⁴, an efficient procedure to register permanent place of residence at the address of a social work centre was regulated and introduced for persons who cannot register permanent place of residence on any other basis specified by the law. Most of these persons are the Roma who live in illegal settlements.

93 Available at: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/588-zatitnik-graana-uputio-miljenje-ministarstvu-unutranjih-poslova-i-ministarstvu-rada-zapoljavanja-i-socijalne-politike>.

94 Official Gazette of RS No. 87/11.

- 2.2. The Protector of Citizens prepared and submitted to the National Assembly the special Report on Implementation of the Strategy for Improvement of the Position of Roma.
- 2.3. An opinion⁹⁵ was issued to the Ministry of Justice and Public Administration to take all measures from its sphere of competence to ensure the citizens of Bosniak ethnicity can use their language and script in administrative and court proceedings and in procedure before the competent authority, in accordance with the law.
- 2.4. The Protector of Citizens gave his opinion⁹⁶ to the competent authorities about the need to introduce and develop other social housing programs for the most vulnerable citizens in Serbia.
- 2.5. The Protector of Citizens submitted to the National Assembly the Draft Law on Amendments to the Law on Non-Contentious Proceedings, which ensures that the administrative authority competent for conducting the procedure for granting citizenship (Ministry of Interior) is bound by a court decision finding the fact of birth.
- 2.6. In 2013, the Protector of Citizens received 209 complaints in this sector. In the same period, he completed the investigations in a total of 409 cases, received in 2013 and in earlier years. He identified a total of 66 of various violations of rights. For the purpose of rectifying the omissions, he issued 17 recommendations, of which 6 were implemented (35.29%). In the same period the Protector of Citizens issued three (3) opinions and in 29 cases (10.25%) investigations were closed because authorities rectified the omissions after they found out that the Protector of Citizens launched investigation of their work.

3. Shortcomings at the national level

- 3.1. Equal official use of languages and scripts of national minorities is not fully ensured in the Republic of Serbia.
- 3.2. Public authorities do not always implement the duty to use the Serbian language and the Cyrillic script.
- 3.3. The full exercise of the rights of National Councils of National Minorities has not been achieved because the Law on National Councils of National Minorities is not implemented consistently.
- 3.4. The Roma are still in disadvantaged social and economic position because the complete normative basis and practical mechanisms for their integration have not been introduced.
- 3.5. The social housing mechanisms and other relevant programs for provision of housing to the most vulnerable population groups have not been fully developed.
- 3.6. The administrative authority competent for conducting the procedure for granting citizenship is still exempted from the principle of compulsory implementation of

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

96 Available at: <http://www.pravamanjina.rs/index.php/sr/podaci/dokumenta/-/589-nadleni-organi-da-preduzmu-sve-mere-kako-bi-se-obezbedili-uslovi-za-stanovanje-u-zatienim-uslovima-za-najugroenije-graane>.

court decisions and a court decision on the time and place of birth may, contrary to the explicit provision of the Constitution of the Republic of Serbia, be subject to consideration by and administrative authority.

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

- 4.1. No actions have been taken to implement the following proposals for improving the citizens' position in relation to public authorities set out in the 2012 Annual Report of the Protector of Citizens:
- Recommendation that amendments to the Law on National Councils of National Minorities eliminate all irregularities and problems occurred during the implementation of the Law so far;
 - Recommendation to ensure consistent official use of the Cyrillic script and equal official use of languages and scripts of national minorities;
 - Recommendation provide to the largest possible extent the protection and exercise of the rights relevant for preservation of ethnic and cultural identity to national minorities whose national councils have head offices in Central Serbia, at the level exercised by the national minorities in the Autonomous Province of Vojvodina.
- 4.2. Recommendations of the Protector of Citizens in connection with official use of languages and scripts of national minorities have not been implemented.
- 4.3. Recommendations of the Protector of Citizens in connection with official use of the Serbian language and the Cyrillic script have not been implemented.
- 4.4. The competent authorities did not provide their position on the opinion on the need to develop other social housing programs and did not inform the Protector of Citizens on possible planned or taken measures.
- 4.5. The National Assembly has not considered the Draft Law on Amendments to the Law on Non-Contentious Proceedings.

5. Explanation

As early as in the first year of implementation of the Law on National Councils of National Minorities⁹⁷, when elections were held in 2010, the Protector of Citizens identified shortcomings of the Law and their harmful consequences on the exercise of citizens' rights. With the aim to rectify them he issued Recommendations⁹⁸ by which he required amendments to the Law. The Draft Law on Amendments to the Law is in the parliamentary procedure, which implemented the Recommendations and improved the provisions regulating the procedure for registration of voters in a special voting list, protection of personal data and holding of a constitutive session. Since elections for national councils of national minorities will be held in 2014 this is important. However, the Ministry of Justice and Public Administration has not amended all articles of the Law which revealed their shortcomings

97 Official Gazette of RS No. 72/09.

98 Recommendation No. 16-1725/10 of 6 December 2012, available at: <http://www.ombudsman.pravamanjina.rs>.

and caused problems in previous practice, with explanation that the procedure for decision on constitutionality of certain provisions of the Law is underway.

In investigation of complaints of the National Councils of Albanian and Bosniak national minorities, the Protector of Citizens found that four year of the date of passing the Law, the provision of Article 115, paragraph 5 is not implemented. That provision specifies in which manner local self-governments participate in financing of the activities of national councils. On the basis of the notification of the Office for Human and Minority Rights submitted during these investigations, of 51 local self-governments which comply with the conditions specified by the law, in 2012 only 16 complied with the law and allocated the funds in their budgets for financing of the activities of national councils. This case and all identified problems in implementation of the Law to which the Protector of Citizens pointed in previous annual reports and in the public are reasons to improve certain legal arrangements. The legal nature, the role and the functions of national councils have not been clearly defined. The National Councils do not exercise their capacities in the full capacity and the established concept does not guarantee the exercise of the right to self-government in culture, education, information and official use of languages and scripts guaranteed by the Constitution. The Law is not implemented consistently and certain provisions are not implemented at all. The impact of political parties on elections and decisions of national councils is too high, while decisions of local self-governments in implementation of the law depend on the political will of the majority or other interests, although the implementation of the law must not be subject to political or other will.

Due to delay in implementation of the Law on Official Use of Languages and Scripts⁹⁹, a mechanism for compulsory introduction of the languages of and national minorities in official use in local self-government units has still not been provided, although the conditions specified by the law have been complied with. The municipality of Vrbas did not introduce in official use the Montenegrin language by its Statute, although according to the latest census 17.5% of citizens are of Montenegrin ethnicity. The number of complaints filed in 2013 by which the citizens requested the protection of the right to official use of languages and scripts also indicate that there are still problems in the consistent use of the Cyrillic script and the right to equal official use of minority languages and scripts recognized by the law.

Lack of translators for the Bosnian language for Bosniak national minority prevents citizens from using their language and script in proceedings before public authorities, while some citizens, as parties in the proceedings, use this shortcoming to avoid or delay implementation of certain regulations which would be unfavourable for them under certain circumstances.

Consistent use of the Cyrillic script in work of public authorities has not been provided, so it is still possible to issue rulings and decisions of administrative authorities in the Latin script and certain local self-governments incorrectly introduced in the official use the Serbian language, the Cyrillic script and the Latin script by their statutes and made them illegally equal, while official internet pages of a significant number of administrative authorities are available only in the Latin script.

The complaints received from National Councils of Albanian and Hungarian national minorities show that due to the lack of efficient supervision and financial and human resource capacities national minorities still cannot use their languages and scripts, which are

99 Official Gazette of RS No. 30/10.

in official use, in administrative proceedings before competent authorities of local self-government. The issue of the official use of languages and scripts of national minorities in the statutory forms and on public signs and traffic and tourist signs was also initiated.

The position of the Roma is still very difficult and the results achieved so far have not eliminated the obstacles for their social and economic integration because the comprehensive normative basis has not been provided for the implementation of long-term measures to reduce poverty and to achieve essential equality of the Roma. In his Report on Implementation of the Strategy for Improvement of the Status of the Roma, the Protector of Citizens presented the results achieved, but he also indicated the reasons which prevented the achievement of all objectives of the Strategy and action plans. The recommendations about which measures should be taken to improve the situation and social and economic position of the Roma, particularly in the fields of employment and housing are an integral part of the Report.



Image 2 – Submission of Report to the President of the National Assembly

The affirmative measures from Article 21 of the Constitution of the Republic of Serbia¹⁰⁰ have not been developed enough and have not been taken to address the extremely unfavourable social and economic position of the Roma, which is the cause of their essential inequality. The main reasons for lack of implementation of the adopted inclusion measures are poor management of the implementation of the Strategy; lack of an administrative body competent and responsible for implementation, planning, supervision and correction of the adopted measures and activities; weaknesses of action plans supporting the Strategy which do not determine specific duties of local self-government authorities in connection with the implementation of specific measures and activities; uncoordinated time limit of attainment of short- and long-term objectives; underutilisation of the existing capacities in public authorities and institutions providing public services to take care of the exercise of citizens' rights of the Roma.

¹⁰⁰ Official Gazette of RS No. 98/06.



Image 3 – Receiving complaints in the Roma settlement

Adoption of the proposed amendment to the Law on Non-Contentious Proceedings would ensure respect for the basic constitutional principles, according to which the legal order of the Republic of Serbia equal for all and court orders are binding for all and cannot be subject to extra-judicial oversight.

II COMPLAINTS

With regard to the rights of national minorities, the Protector of Citizens received 209 complaints, and investigated 3 cases on his own initiative. These 206 complaints account for 4.15% of the total number of complaints received by the Protector of Citizens in 2013. The number of complaints received in this year is lower by 42.58% compared with the previous year.

Chart 7 – Rights of national minorities – number of complaints received compared with 2012

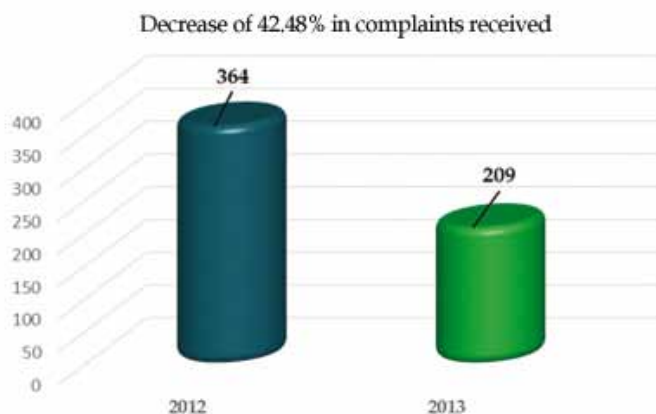
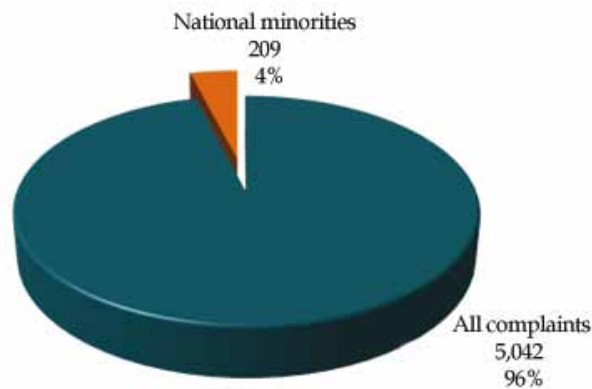
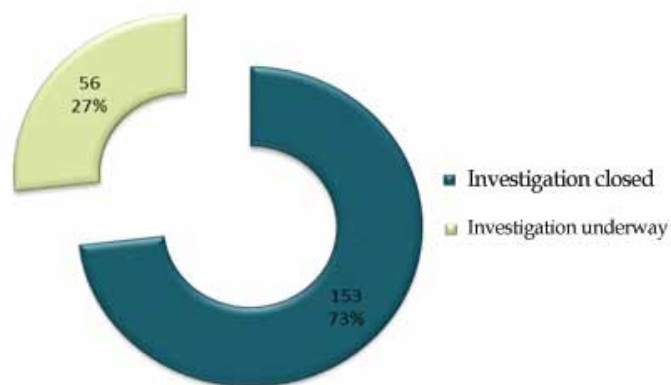


Chart 8 – Complaints in the field of rights of national minorities compared with all complaints received in 2013.



As per the rights of national minorities, the Protector of Citizens in 2013 received a total of 209 cases. In 2013, he closed investigations in 153 cases, while 56 are still in the procedure.

Chart 9 – Rights of national minorities – handling of cases in 2013



In 2013, the Protector of Citizens closed a total of 283 cases, of which 153 were from 2013, while the remaining cases were from earlier years.

Table 16 – Rights of national minorities – outcome of cases handled in 2013 and in earlier years

Unfounded complaints	149	52.65%
Dismissed complaints	64	22.61%
Cases covered by recommendations	30	10.60%
Authority rectifies omission upon learning of being subject to investigation (suspended investigations)	29	10.25%
Opinion	7	2.47%
Complaint dropped by complainant	4	1.41%
Total	283	

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

Table 17 – Rights of national minorities – reasons for dismissal of complaints in 2013

Declined jurisdiction by PoC - referred to competent authority	35	54.69%
Premature complaint - complainant advised on available remedies	11	17.19%
Incomplete complaint	11	17.19%
Belated complaint	4	6.25%
Anonymous complainant	2	3.13%
Unauthorised complainant	1	1.55%
Total:	64	100%

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

As can be seen in Table 2, in **71.88%** of dismissed complaints the Protector of Citizens gave the citizens legal assistance in the exercise of their rights before the competent authorities.

Table 18 – Rights of national minorities – assistance provided in the form of legal advice

	number	percentage
Dismissed complaints	64	100%
Declined jurisdiction - complainant referred to competent authority	35	54.69%
Premature complaint - complainant advised on available remedies	11	17.19%
Total: assistance provided in the form of legal advice	64	71.88%

Pursuant to the complaints received in 2013 and in earlier years, a total of 17 recommendations were issued to the competent authorities, which pertained to 30 cases. As of 31 December 2012, the competent authorities implemented only six recommendations, while the time limit for implementation of the remaining recommendation has not yet expired.

Table 19 – Rights of national minorities – compliance with recommendations issued in 2013

Recommendations	number	percentage
Total	17	100
Implemented	6	35
Unimplemented	11	65
Implementation pending	0	0

In the sector competent for the protection of the rights of national minorities, in 2009 lodged complaints 317 various violations of rights were identified. Most of the complaints indicated the violation of special rights of national minorities. The complaints also pointed to numerous violations in the field of good governance such as administrative silence and consequential violation of the right to receive decisions within the statutory time limit.

Table 20 – Rights of national minorities – violations of rights reported by complainants

Special rights of national minorities	161	50.79%
Civil and political	70	22.08%
Right to good governance	50	15.77%
Economic, social and cultural	36	11.36%
Total	317	

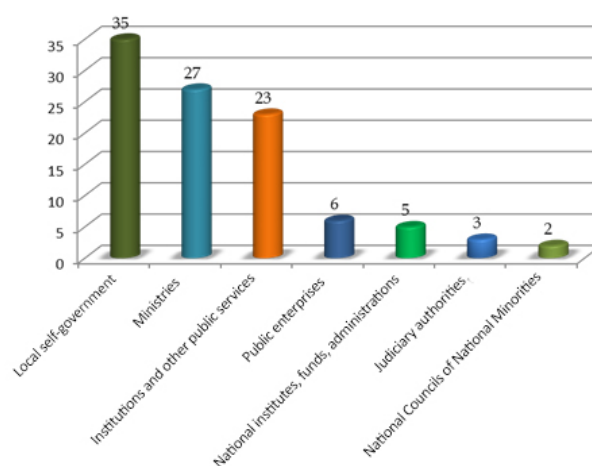
Table 6 shows the structure of special rights compared with 161 registered violations of these rights.

Table 21 – Violations of special rights of national minorities, their number and percentage

Type of right violated	Number	%
Special rights of the Roma	85	52.80%
Prohibition of discrimination based on ethnicity	14	8.70%
Right to official use of languages and scripts national minorities	12	7.45%
Right to exercise the powers of the National Councils of National Minorities	11	6.83%
Right to education in mother tongue	6	3.73%
Right to information in mother tongue	4	2.48%
Legally invisible persons	4	2.48%
Equality in conduct of public affairs	2	1.24%
Right to cultural creative work in mother tongue	1	0.62%
Right to direct elections for National Councils of National Minorities	1	0.62%
Prohibition of violent assimilation	1	0.62%
Total	161	

The authorities most frequently complained against in the complaints registered in the field of national minority rights were ministries responsible for human and minority rights, public administration, internal affairs, labour and social policy. As regards institutions, most of the complaints were lodged against the institutions in the field of social security.

Chart 10 – Authorities and organisations most frequently complained against by the citizens in the field of rights of national minorities



III OTHER ACTIVITIES¹⁰¹

The direct receiving of the citizens' complaints was organized in local self-governments and in the Roma settlements in Belgrade, Bujanovac, Vranje, Zrenjanin, Leskovac, Nis, Novi Sad, Novi Pazar, Prijepolje and Priboj. The Protector of Citizens continued his regular meetings with representatives of the National Councils of Albanian, Bosniak, Bunjevac, Hungarian, German, Slovak, Croatian and Roma national minorities.

In cooperation with the Belgrade Centre for Human Rights, the Lawyers' Committee for Human Rights (YUCOM) and the Praxis, the Protector of Citizens organized in a number of cities and municipalities talks with officials in local authorities, NGOs and citizens dedicated to implementation of the recommendations of the Protector of Citizens in local communities which pertain to the protection and exercise of the rights of national minorities and to the social and economic rights of the Roma.

Cooperation between the United Nations High Commissioner for Refugees (UNCHR) and the Ministry of Justice and Public Administration was successfully continued on further addressing of the issue of "legally invisible persons", i.e. persons who are not registered with registers of birth.

Regular cooperation with NGOs was continued, particularly with Praxis, YUCOM, Belgrade Centre for Human Rights and Ethnicity Research Centre, which monitored implementation of the recommendation of the Protector of Citizens targeted at the protection of the rights of national minorities and other vulnerable groups.

¹⁰¹ International activities of the Protector of Citizens in the field of rights of national minorities are available in the part of this Report titled "International Cooperation and Projects".

IV TYPICAL CASES

It is necessary to ensure consistent implementation of the law

In investigation of complaints lodged by National Councils of Albanian and Bosniak national minorities, the Protector of Citizens found that the municipalities of Presevo, Priboj, Prijepolje, Sjenica and the city of Novi Pazar have not complied with the provision of Article 115, paragraph 5 of the Law on National Councils of National Minorities four years after this Law was passed, although the stipulated conditions have been complied with.

This provision specified the duty of local self-government units to participate in financing of work of the National Councils of National Minorities, which represent national minorities that account for at least 10% of the population in local self-governments or national minorities whose language is in official use in the territory of self-governments. With the aim to rectify the omission, the Protector of Citizens issued recommendations to these local self-governments, but these recommendations were implemented only by the municipalities of Priboj and Sjenica.

Most vulnerable population groups face problems in covering the costs of living in social housing

The Protector of Citizens received complaints from 48 families renting social housing apartments in the Kamendin community in the city municipality of Zemun because their tenancy contracts were terminated since they were not able to regularly pay utility and other services and rent. On the basis of the complaints it was found that those are socially vulnerable families, persons with confirmed disabilities, refugees and the Roma, that some of the families live from disability pensions or welfare payments, i.e. that it could be assumed when the contract were concluded that they will not be able to pay the costs of rent and utility services even at subsidized prices.

The competent authorities to which the opinion on the need to develop other social housing programs was sent have not provided their opinions to the Protector of Citizens or provided information on possible planned or taken measures or reasons for rejection of the proposed measures.

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

1. **The Ministry of Justice and Public Administration** should propose to the Government amendments to the Law on Official Use of Languages and Scripts.
2. **The Ministry of Justice and Public Administration** should propose to the Government amendments to all other provisions of the Law on National Councils of National Minorities which were proven to have shortcomings in practice.
3. **The National Assembly** should consider the special Report on Implementation of the Strategy for Improvement of the Position of Roma and should adopt a Conclusion which would put the Government under an obligation to propose and pass relevant regulations and use other appropriate measures with the aim to initiate attainment of the objectives set in the Strategy and to implement recommendations issued by the Protector of Citizens, which are an integral part of the Report.

2.3. GENDER EQUALITY AND RIGHTS OF LGBT PERSONS

I BACKGROUND

1. State's achievements

- 1.1. The Law on Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence has been enacted.¹⁰²
- 1.2. The Law amending the Labour Law has been enacted.¹⁰³
- 1.3. The Law on Exercise of Health Care Rights of Children, Pregnant Women and Nursing Mothers has been enacted.¹⁰⁴
- 1.4. The Special Protocol on Conduct of Police Officers in Cases of Domestic and Intimate Partner Violence against Women has been enacted.¹⁰⁵
- 1.5. The Special Protocol on Acting of Centres for Social Work - Guardianship Authority in cases of Domestic Violence and Intimate Partner Violence against Women.¹⁰⁶
- 1.6. The Special Protocol for the Judiciary in cases of Domestic Violence and Intimate Partner Violence against Women has been enacted.¹⁰⁷

2. Results achieved by the Protector of Citizens

- 2.1. In accordance with the proposal made by the Protector of Citizens in his 2012 Annual Report¹⁰⁸, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence has been ratified.

102 Official Gazette of RS - International Treaties, number 12/13.

103 Official Gazette of RS No. 32/13.

104 Official Gazette of RS No. 104/13.

105 Available at: http://www.ombudsman.rodnaravnopravnost.rs/attachments/037_MUP%20Protokol%202013.pdf.

106 Available at: <http://minrzs.gov.rs/doc/porodica/nasilje/Posebni%20protokol%20MRZSP%20nasilje%20u%20porodici.pdf>.

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

108 2012 Annual Report of the Protector of Citizens, p. 87.

- 2.2. Acting pursuant to a recommendation of the Protector of Citizens¹⁰⁹ Ministry of Interior and the Ministry of Labour, Employment and Social Policy adopted special sector-level protocols governing the actions taken in response to cases of domestic violence and intimate partner violence against women.
- 2.3. After the Protector of Citizens warned about the consequences of the country's failure to submit the Second and Third Period Report on Implementation of the UN Convention on the Elimination of all Forms of Discrimination against Women to the UN Committee on the Elimination of all Forms of Discrimination against Women, the Republic of Serbia presented these reports in the 55th session of CEDAW in July 2013.
- 2.4. The Ministry of Labour, Employment and Social Policy - acting pursuant to a recommendation of the Protector of Citizens¹¹⁰ - pledged to issue all city/municipal administrations with instructions on the course of action to be taken in cases where employers evade their statutory obligation to pay compensation to employees during maternity leave, leave to care for a child or leave to take special care of a child.
- 2.5. In 2013, the Protector of Citizens received 147 complaints in this field. In the same period, he completed the investigations in a total of 175 cases, received in 2013 and in earlier years. He identified a total of 24 different violations of rights. For the purpose of rectifying the omissions, he issued 35 recommendations, of which 26 (74.29%) have been implemented. In the same period, investigations have been closed in 13 cases (7.43%) because the authorities concerned rectified the omissions upon learning they were being investigated by the Protector of Citizens.

3. Shortcomings at the national level

- 3.1. Consistent implementation of international documents, laws and implementing regulations to protect women against domestic violence and intimate partner violence has not been ensured.
- 3.2. The rights of citizens with different sexual orientation and gender identity, including in particular the freedom of assembly guaranteed by the Constitution, have not been protected. For this reason, the Pride Parade has been cancelled for the third time in the last four years.
- 3.3. The Law on Fundamentals of the Education System in the Republic of Serbia¹¹¹ does not stipulate an explicit prohibition of discrimination based on sexual orientation and gender identity.
- 3.4. No implementing regulation has been adopted that would lay down detailed criteria for recognition of forms of discrimination by the staff, the pupils or third parties in education institutions.

109 Opinion with recommendations of of Citizens 13 – 4174 / 12 of 11 December 2012, available at: http://www.ombudsman.rodnaravnopravnost.rs/attachments/022_Microsoft%20Word%20-%20Miš%20%20sa%20preporukama-uz%20saglasnost%20za%20potpis.pdf.

110 Recommendation of the Protector of Citizens 13 – 632 / 12 of 13 May 2013, available at: http://www.ombudsman.rodnaravnopravnost.rs/attachments/046_2840_Preporuka%20Ministarstvu%20rada.doc.

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

- 3.5. Equal access to justice for all citizens has not been ensured because the citizens' right to free legal assistance has still not been regulated
- 3.6. Women in situations of acute domestic violence (currently occurring violence) are not always provided with sheltered accommodation (safe houses, shelters etc.).
- 3.7. There are no normative provisions that would regulate the legal consequences of sex and gender reassignment.
- 3.8. Implementation of the Law on Gender Equality by local self-governments across Serbia has been patchy, particularly with regard to the establishment of permanent working bodies or appointment of gender equality officers and equal opportunities officers.
- 3.9. Statistics on gender-based violence are kept by a number of institutions and authorities according to different methods, which renders the data incomparable.
- 3.10. Government and other authorities organisations and institutions responsible for protecting women against violence and improving the status of victims of intimate partner and domestic violence have not ensured continual professional advancement of their employees in this field.
- 3.11. Women with disabilities do not have proper access to gynaecological examinations, because the majority of health care institutions do not have gynaecological tables accessible to patients with disabilities.

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

- 4.1. No actions have been taken to implement the following proposals for improving the citizens' position in relation to public authorities set out in the 2012 Annual Report of the Protector of Citizens:
 - The Ministry of Education, Science and Technological Development should amend the Law on Fundamentals of the Education System in the Republic of Serbia by including a provision that would explicitly outlaw discrimination based on sexual orientation;
 - The Ministry of Education, Science and Technological Development should include in the curricula and syllabuses of primary and secondary schools, and subsequently also the textbooks, content that would acceptably, but professionally cover all major issues relating to the rights of the LGBT population;
 - The Gender Equality Directorate of the Ministry of Labour, Employment and Social Policy should continually supervise the implementation of gender equality and equal opportunity policies in local self-governments and national authorities;
 - The Ministry of Justice and Public Administration and the Republic Secretariat for Legislation should propose measures for the introduction of gender-sensitive language in the work of public authorities, including the drafting of laws and other instruments;
 - Local self-governments should put in place mechanisms for gender equality and take measures to implement and oversee the implementation of the Law on Gender Equality at the local level;

- The status of transgender/transsexual persons should be improved through the enactment of new laws or through amendments to the existing ones.
- 4.2. The Ministry of Justice and Public Administration has not accepted the Initiative to amend the Criminal Code, regarding the criminal protection of victims of domestic violence and sexual abuse¹¹², which the Protector of Citizens launched in 2011 and repeated in 2012.

5. Explanation

The National Assembly ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, which had been one of the proposals for improving the status of citizens in relation to public authorities made by the Protector of Citizens in his 2012 Annual Report. By ratifying this Convention, the Republic of Serbia committed itself to harmonising its criminal law with that international document, as pointed out by the Protector of Citizens in Initiative to amend the Criminal Code with Regard to Criminal Law Protection of Victims of Domestic Violence and Sexual Abuse. The proposals included reintroduction of sexual harassment as a criminal offence, defining the criminal offences of rape and non-consensual intercourse, introduction of the criminal offence of stalking and introduction of new safety measures and special victim protection measures.

According to the amendments of the Labour Law, fixed-term employment of a pregnant woman or nursing mother is extended for the period spent on pregnancy leave, maternity leave, leave to care for a child or leave to take special care of a child. Termination of an employment contract is deemed null and void if the employer had been aware of these circumstances on the date of termination and the Law stipulates that employers must allow working women who returned to work in less than one year from childbirth to take multiple daily breaks for breastfeeding.

Acting in compliance with the Opinion of the Protector of Citizens with recommendations, the Ministry of Interior, the Ministry of Labour, Employment and Social Policy and the Ministry of Justice and Public Administration adopted special sector-level protocols on the course of action to be followed in cases of domestic violence and intimate partner violence against women. These special protocols elaborate in detail the internal procedures put in place within each individual system, in accordance with the core principles and objectives of the General Protocol on Acting and Cooperation between Institutions, Authorities and Organisations in Situations of Domestic Violence and Intimate Partner Violence against Women.

The Protector of Citizens recommended that the competent ministries should provide for systemic training of their employees in the implementation of the protocols and other professional and technical requirements for their implementation, as well as to promote local-level cooperation agreements between the institutions and other organisations whose

¹¹² The initiative was submitted to the Ministry of Justice and Public Administration on 13 October 2011 and 19 November 2011. Available at: http://www.ombudsman.rodnaravnopravnost.rs/attachments/018_Tekst%20inicijative.pdf.

cooperation is necessary for effective achievement and implementation of protection for victims of violence.

Following the enactment of the Law on Exercise of Health Care Rights of Children, Pregnant Women and Nursing Mothers, women in the particularly sensitive period of pregnancy and nursing no longer have to suffer the consequences of omissions made by the government and its authorities or of untimely payment of compulsory health insurance contributions.

Upon learning that the Ministry of Foreign Affairs had cancelled the presentation of the Integrated Second and Third Periodic Reports of the Republic of Serbia on the Implementation of the UN Convention on the Elimination of all Forms of Discrimination against Women in 2012, the Protector of Citizens voiced his concern and warned it was imperative that the Government and line ministries take all necessary steps to ensure that Serbia's Reports are presented. In the 55th session of the Committee on the Elimination of all Forms of Discrimination against Women, the Delegation of the Republic of Serbia presented its report, after which the Committee adopted its Concluding Remarks.

In the Concluding Remarks, the Committee on the Elimination of all Forms of Discrimination against Women noted that the majority of the complaints received by the Protector of Citizens in connection with gender-based discrimination had been dismissed as unfounded. The Protector of Citizens considered it was necessary to send a letter to the Chairwoman of CEDAW and explain the method of his work. He pointed out in particular that in the majority of the complaints the Secretariat of the Protector of Citizens had not dismissed the complaints because they were unfounded, but because the complainants had not exhausted all available remedies.

The Protector of Citizens sent recommendations to the Ministry of Labour, Employment and Social Policy in connection with the provisions that would govern the actions taken by local self-governments in cases where employers avoid or are unable to comply with their statutory duty of paying salary compensation to female employees on pregnancy leave, maternity leave, leave to care for a child or leave to take special care of a child. It was recommended that the Ministry should instruct municipal and city authorities and the Labour Inspectorate to obtain factual evidence *ex officio* and that the Inspectorate should notify the findings of its inspections to other authorities so they could take measures within their respective spheres of competence. The Ministry obliged itself to implement the recommendations and provide appropriate instructions to the said authorities.

II COMPLAINTS

In the field of gender equality, the Protector of Citizens received 141 complaints and investigated 6 cases on his own initiative. The said 141 complaints accounted for 3% of the total number of complaints received by the Protector of Citizens in 2013. The number of complaints in this year is about 55% higher than last year.

Chart 11 – Gender equality – Number of complaints received compared to 2012

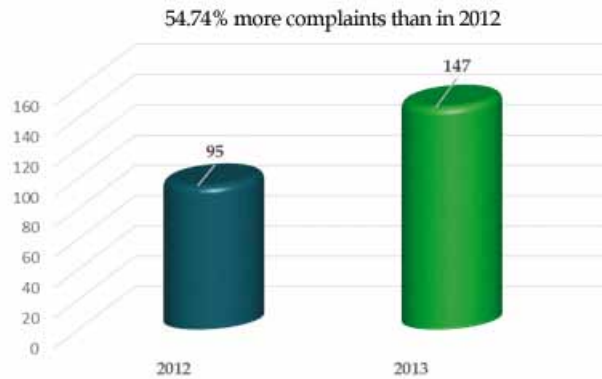
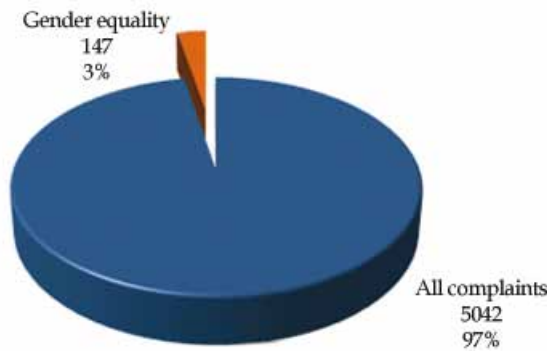


Chart 12 – Complaints in the field of gender equality as a share of all complaints received



In 2013, the Protector of Citizens received a total of 147 cases in the field of gender equality for investigation. He has completed 90 cases received in 2013, while the remaining 57 are still pending.

Chart 13 – Gender equality – handling of cases in 2013



In 2013, the Protector of Citizens completed a total of 175 cases. Out of that number, 90 were received in 2013, while the remaining ones were carried forward from earlier years.

Table 22 – Gender equality – outcome of cases handled in 2013 and in earlier years

Dismissed complaints	58	33.14%
Unfounded complaints	77	44.00%
Complaint dropped by complainant	16	9.14%
Omissions admitted and rectified by the authorities without conducting full investigation - no need to issue recommendations (closed investigations)	13	7.43%
Cases covered by recommendations	11	6.29%
Total	175	100%

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

Table 23 – Gender equality – reasons for dismissal of complaints in 2013

Premature complaint - complainant advised on available remedies	27	46.55%
Declined jurisdiction - complainant referred to competent authority	15	25.86%
Formally deficient complaint	11	18.97%
Unauthorised complainant	4	6.90%
Within the competence of a local ombudsman	1	1.72%
Total:	58	100%

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

As can be seen in Table 3, in 72.41% of the dismissed of complaints the Protector of Citizens provided the citizens legal advice in the exercise of their rights before competent authorities.

Table 24 – Gender equality – assistance provided in the form of legal advice

	number	Percentage
Dismissed complaints	58	100%
Declined jurisdiction - complainant referred to competent authority	15	25.86%
Premature complaint - complainant advised on available remedies	27	46.55%
Total: assistance provided in the form of legal advice	42	72.41%

Pursuant to the complaints received in 2013 and in earlier years, the Protector of Citizens issued a total of 35 recommendations to public authorities in connection with 11 cases. As of 31 December 2012, the competent authorities have implemented 26 recommendations, seven have not been implemented, while the remaining ones are still pending implementation.

Table 25 – Gender equality – compliance with recommendations issued in 2013

recommendations	number	percentage
Total	35	100
Implemented	26	74,29
Unimplemented	7	20,00
Implementation pending	2	5,71

In the sector of gender equality, 152 different violations of rights have been identified pursuant to 147 complaints. The largest number of complaints pointed to violations of special rights in the field of gender equality.

Table 26 – Gender equality – violations of rights reported by complainants

Special rights in the field of gender equality	94	61.84%
Economic, social and cultural rights	44	28.95%
Civil and political rights	9	5.92%
Right to good governance	5	3.29%
Total	152	100%

The most frequently violated economic, social and cultural rights were the right to social security and the right to work and other work-related rights.

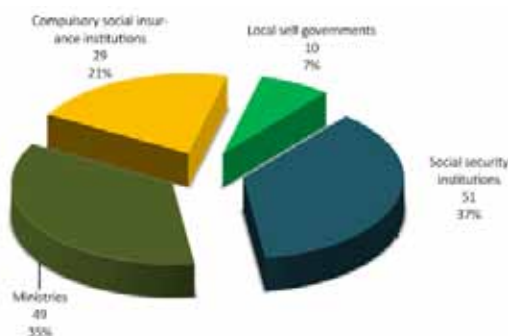
Table 27 shows the structure of special rights based on the 94 recorded violations of these rights

Table 27 – Special rights in the field of gender equality, their number and percentage

Type of right violated	Number	%
Rights of pregnant women and nursing mothers	41	43.62%
Domestic violence	22	23.40%
Right to compensation of salary during pregnancy leave, maternity leave and leave to take care of a child	15	15.96%
Special rights of marginalised categories of women	14	14.89%
Sexual violence	1	1.06%
Parental rights	1	1.06%
Total	94	100%

Most of the complaints pointed to violations of rights by institutions in the field of social security, the Ministry of Labour, Employment and Social Policy and the Ministry of Interior, as shown in Chart 14.

Chart 14 – Authorities and organisations most frequently complained against by the citizens in the field of gender equality



III OTHER ACTIVITIES

The National Assembly and its competent Committees showed interest in the work of the Protector of Citizens in the field of gender equality. Deputy Protectors of Citizens took part in the activities of the Committee on Human and Minority Rights and Gender Equality of the National Assembly and the first National Conference of the Female Parliamentary Network.

The Gender Equality Advisory Body of the Protector of Citizens held seven sessions in 2013. On the proposal and with the assistance of its members, the Protector of Citizens visited local self-governments to monitor the implementation of the Law on Gender Equality by local self-governments with regard to the improvement of the position of women and protection of women's human rights.



Image 4 – Visits to local self-governments to monitor the implementation of the Law on Gender Equality

The International Day against Homophobia and Transphobia was marked on the 17th of May by flying LGBT flags and, for the first time, the flag of transgender and transsexual persons. Also, representatives of the Protector of Citizens took part in the walk through the central area of Belgrade organised to mark the 27th of June, International Pride Day. During the Pride Week, which was held in Belgrade in September 2013, Deputy Protector of Citizens addressed the panel "Homophobia in the Schoolbag".

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

Cooperation with the Equality Commissioner was achieved through a joint expert task force mandated to analyse the existing legal framework for the exercise of the rights of transgender persons. The task force completed its work in 2013 by defining recommendations for amendments to regulations relevant for the legal status of transgender persons.¹¹³

The work of the Protector of Citizens was presented at the summer school "Tradition, Culture and Gender Equality", which was organised for female members of National Councils of National Minorities. The activities of the Protector of Citizens were also presented at the training "Gender Equality at the Local Level" organised for the Standing Conference of Towns and Municipalities.

In the field of gender equality and rights of LGBT persons, the Protector of Citizens continued his successful cooperation with civil society organisations, including the Autonomous Women's Centre, the Victimology Society of Serbia, Labris, Gayten-LGBT, Rainbow Association from Sabac, Belgrade Centre for Security Policy and Bibija.

Deputy Protector of Citizens took part in a meeting organised by the Ministry of Labour, Employment and Social Policy with mayors and representatives of municipalities in connection with the implementation of the Law on Gender Equality by local self-governments. The Protector of Citizens monitors the work of the Government's Political Council for Implementation of the National Action Plan pursuant to UN Resolution 1325.

In response to the issues raised by the UN Committee on the Elimination of all Forms of Discrimination against Women, the Protector of Citizens sent a letter to the Chairwoman of CEDAW to explain the powers of the Protector of Citizens in the field of gender equality.

IV TYPICAL CASES

*Murder-suicide leaves assaulted woman and perpetrator dead
in the last of a string of violent events as competent authorities
fail to respond properly and on time*

Upon learning from the media of a case of intimate partner violence in which a man murdered his unwedded wife and killed himself by a hand grenade, before the eyes of their underage child, the Protector of Citizens launched on his own initiative an investigation into the legality and regularity of work of the competent Centre for Social Work and Police Administration. During the investigation it was found that the prison authorities and the Police Administration, upon identifying the situation as intimate partner violence, failed to put in

113 Available at: <http://www.ombudsman.rodnaravnopravnost.rs/images/stories/preporuke%20transpolne%20osobe.doc>.

place all measures required under the law to protect the woman from violence and to establish comprehensive cooperation to save the lives of the victim and the perpetrator.

The Protector issued recommendations¹¹⁴ in which he advised the competent authorities that, in any future cases of domestic violence, including in particular gender-based violence, they should exercise the full scope of their powers and authorities under the law and fully perform all their duties in order to provide timely, complete and effective protection for victims of violence. In addition to complying with the recommendations, the authorities concerned also adopted a Protocol of Actions and Cooperation between Institutions, Authorities and Organisations in Situations of Domestic Violence and Intimate Partner Violence on the Local Level.

School fails to protect a gay pupil from abuse and neglect

Acting pursuant to a complaint filed by a secondary school pupil who stated he had been forced to drop out of regular education due to frequent attacks after publicly declaring his sexual orientation and that he had been the victim of peer violence when taking extraordinary examinations at the school, the Protector of Citizens launched an investigation into the legality and regularity of work of the school in question.

It was found that the school had failed to put in place the measures required by the law and implementing regulations to protect the pupil from violence to which he was exposed because of his different sexual orientation. The Protector of Citizens therefore issued recommendations to the school¹¹⁵. Acting on the recommendations, the school, in cooperation with the competent school administration, analysed its work in this case, drew up an Action Plan to prevent School Violence, with special emphasis on prevention of violence and reducing intolerance against persons of different sexual orientation and conducted a procedure to determine the responsibility of school employees. The headmistress issued a letter of apology to the pupil because of the school's failure to ensure normal learning in a safe environment.

*Protection of pregnant women and nursing mothers
in case of bankruptcy of their employer*

The Protector of Citizens was contacted by a group of pregnant women and nursing mothers employed at Razvojna banka Vojvodine upon learning that the bank was discontinuing its operations, to ensure protection against termination of employment. Believing that pregnant women and nursing mothers were entitled to a certain level of protection of rights and that public authorities had the responsibility to plan and put in place measures to protect women, pregnant women, nursing mothers and maternity in general, in accordance with the Constitution and special laws governing the status of this social group, the Protector of Citizens launched an investigation into the legality and regularity of work of the Provincial Secretariat of Finance. As it was found during the investigations that bankruptcy

114 Recommendation of the Protector of Citizens 13-691/11 of 21 January 2013, available at: http://www.ombudsman.rodnaravnopravnost.rs/attachments/029_2695_Jagodina%20preporuka.doc.

115 Recommendation of the Protector of Citizens 13-3785/12 of 08 August 2013, available at: http://www.ombudsman.rodnaravnopravnost.rs/attachments/058_058_preporuka%20ekonomska%20skola%20-%20kursumlija.doc.

trustee of Razvojna banka a.d. had signed employment contracts with 41 pregnant women and nursing mothers, the shortcoming was rectified and the Protector of Citizens accordingly closed the investigation.

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

1. **The Ministry of Justice and Public Administration** should consider the Initiative to amend the Criminal Code and initiate work to harmonise Serbian legislation with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.
2. **The Government** should ensure full exercise and protection of the rights of LGBT persons, in particular their physical and mental integrity and freedom of assembly, and to enable the Pride Parade to be held.
3. **The Government** should propose to the National Assembly a law that would govern the provision of free legal assistance, to improve the position of all vulnerable groups, including in particular the victims of domestic violence.
4. **The Ministry of Education, Science and Technological Development** should propose amendments to the Law on Fundamentals of the Education System to include in the text of the Law an explicit prohibition of discrimination based on sexual orientation and gender identity.
5. **The Ministry of Education, Science and Technological Development**, in cooperation with the **Ministry of Justice and Public Administration**, should lay down detailed criteria for recognition of forms of discrimination by the staff, the pupils or third parties in education institutions, including in particular discrimination based on the sexual orientation and gender identity of a pupil, a teacher or another member of school staff.
6. **The Ministry of Education, Science and Technological Development** should include in the curricula and syllabuses of primary and secondary schools, and subsequently also the textbooks, content that would acceptably, but professionally cover all major issues relating to the rights of the LGBT population.
7. **The Ministry of Justice and Public Administration, the Ministry of Labour, Employment and Social Policy and the Ministry of Education, Science and Technological Development** should prepare draft legislation to regulate the legal consequences of sex and gender reassignment.
8. **The Ministry of Labour, Employment and Social Policy** should prepare and submit to the Government a Draft Law on Amendments to the Law on Gender Equality, to define the mechanisms of gender equality protection in local self-governments, the manner of choosing a mechanism and appropriate sanctions in case a mechanism is not chosen or if the provisions of the law are violated.
9. **The Ministry of Labour, Employment and Social Policy, the Ministry of Interior, the Ministry of Health and the Ministry of Justice and Public Administration** should provide trainings for implementation of the protocols governing the actions taken in response to cases of domestic violence and intimate partner violence against women, international documents, laws and implementing regulations to protect women against domestic violence and intimate partner violence.

10. **The Ministry of Justice and Public Administration and the Republic Secretariat for Legislation** should propose measures for the introduction of gender-sensitive language in the work of public authorities, including the drafting of laws and other instruments.
11. **The Ministry of Labour, Employment and Social Policy** should, in cooperation with local self-governments, put in place measures to provide adequate shelter services to victims of acute domestic violence.
12. **The Ministry of Regional Development and Local Self-Government** should, in the process of supervision of local self-governments, order the establishment of permanent working bodies or appointment of gender equality officers and equal opportunities officers, in accordance with the Law on Gender Equality.
13. **The Ministry of Labour, Employment and Social Policy – Gender Equality Directorate** should continually oversee the implementation of gender equality and equal opportunity policies at local self-governments and national authorities.
14. **The Human Resources Management Office** should include gender equality issues in the technical training material for all public administration staff.
15. **The Ministry of Health** should put in place measures to provide gynaecological tables for the provision of health care and prevention services to women with disabilities at all levels of health care.

2.4. RIGHTS OF PERSONS WITH DISABILITIES

I BACKGROUND

1. State's achievements

- 1.1. A new Bylaw on Technical Standards of Accessibility has been enacted.¹¹⁶
- 1.2. The Action Plan on Implementation of the Strategy for Improving the Status of Persons with Disabilities in the Republic of Serbia for the period 2013-2015 has been adopted.¹¹⁷
- 1.3. The Law on the Protection of Persons with Mental Disorders has been enacted.¹¹⁸

2. Results achieved by the Protector of Citizens

- 2.1. Acting on his own initiative, the Protector of Citizens issued an Opinion to the Ministry of Construction and Urban Planning, pointing out that the then-applicable Bylaw on Technical Standards of Accessibility must be harmonised with the UN Convention on the Rights of Persons with Disabilities¹¹⁹, the Law on Prevention of Discrimination against Persons with Disabilities¹²⁰, other positive legislation and international standards of accessibility.
- 2.2. The investigations launched by the Protector of Citizens against the Ministry of Labour, Employment and Social Policy contributed towards improved operations of that authority in terms of timelines of its actions and improved exercise of the rights of citizens with disabilities.
- 2.3. In 2013, the Protector of Citizens received 341 complaints with regard to the rights of persons with disabilities. In the same period, he completed the investigations in a total of 297 cases, received in 2013 and in earlier years. He identified a total of

116 Official Gazette of RS No. 72/09, 81/09-corrigendum 64/10 YC, 24/11 and 121/12.

117 Official Gazette of RS No. 73/13.

118 Official Gazette of RS No. 45/13.

119 Official Gazette of RS - International Treaties, number 42/09.

120 Official Gazette of RS No. 33/06.

41 different violations of rights. For the purpose of rectifying the omissions, he issued 15 recommendations, 6 of which (40%) have been implemented. In the same period, investigations were closed in 27 cases (9.09%), because the authorities concerned rectified the omissions upon learning they were being investigated by the Protector of Citizens.

3. Shortcomings at the national level

- 3.1. The enacted Law on the Protection of Persons with Mental Disorders¹²¹ does not provide a basis for a comprehensive reform of mental health care, as explained in the Opinion on the Draft Law issued by the Protector of Citizens.
- 3.2. There is still no clear commitment and no clear plan for the “deinstitutionalisation” process.
- 3.3. The system of community-based support services for persons with disabilities is insufficiently developed.
- 3.4. Implementation of the Law on Planning and Construction¹²² and the Bylaw on Technical Standards of Accessibility has been inconsistent and local self-government inspectorates do not conduct sufficient inspections in the process of new construction and adaptation/annexation of old buildings from the aspect of accessibility.

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

- 4.1. No actions have been taken to implement the following proposals for improving the citizens’ position in relation to public authorities set out in the 2012 Annual Report of the Protector of Citizens:
 - The Ministry of Labour, Employment and Social Policy should, independently and in cooperation with other public authorities:
 - Prepare and propose to the competent authority effective affirmative action measures to put the enterprises which employ and rehabilitate persons with disabilities on an equal footing with other companies;
 - Develop new professional rehabilitation measures and additional training of job-seeking persons with disabilities, in accordance with labour market demand;
 - Develop community-based support systems and services for persons with disabilities.
 - The Ministry of Health should, independently and in cooperation with other public authorities, form a working body in charge of developing the process of deinstitutionalisation, i.e. transformation of the existing residential health care and social security institutions for persons with mental disorders. This work must involve also

121 Official Gazette of RS No. 45/13.

122 Official Gazette of RS No. 72/09, 81/09-corrigendum, 64/10-Decision of the Constitutional Court, 24/11, 121/12, 42/13-Decision of the Constitutional Court, 50/13-Decision of the Constitutional Court and 98/13-Decision of the Constitutional Court.

the Ministry of Labour, Employment and Social Policy, the Ministry of Education, Science and Technological Development, the Ministry of Finance, experts and civil society organisations.

- The Ministry of Education, Science and Technological Development should improve the education system with regard to persons with disabilities, because the extremely unfavourable qualifications structure is one of the main reasons behind the unemployment and social exclusion of persons with disabilities.
 - The Republic Pension and Disability Insurance Fund should amend the Bylaw on Formation and Operation of Expert Review Bodies of the Republic Pension and Disability Insurance Fund¹²³ and adopt other relevant secondary legislation to ensure that the procedures of obtaining first- and second-instance expert opinions are free from the identified shortcomings relating to time limits, clarity, completeness and provision of evidence to support the opinions of expert review bodies.
- 4.2. The National Assembly has not debated the Bills amending the Labour Law and the Law on Financial Support to Families with Children, submitted by the Protector of Citizens¹²⁴ with the support of 60,000 citizens, while the Government gave an opinion that the Bill Law on Financial Support to Families with Children should not be enacted.¹²⁵

5. Explanation

Having adopted the Opinion of the Protector of Citizens and passed a new Bylaw on Technical Standards of Accessibility, which regulates in detail the technical standards of accessibility and develops technical urban planning conditions applicable to public areas, traffic areas, pedestrian areas and building access routes, the Ministry of Construction and Urban Planning created assumptions for unhindered exercise of the rights of persons with disabilities. The existence of an accessible physical environment is a precondition for the exercise of the recognised rights and for implementation of the basic principles of non-discrimination and equality of persons with disabilities.

The Strategy for Improving the Status of Persons with Disabilities in the Period 2007-2015 sets improving the status of persons with disabilities to equal citizens who enjoy all rights and responsibilities as its objective, with two-year action plans. Acting on own initiative, in 2012 the Protector of Citizens issued a Recommendation to the Ministry of Labour and Social Policy in connection with its untimely preparation of action plans for implementation of the Strategy. The first two-year Action Plan was adopted in 2013 for the period 2013-2015 and it sets out specific measures and activities that need to be taken in the last two years of implementation of the Strategy.

The Ministry of Health rejected the Opinion of the Protector of Citizens given in the process of drafting of the Law on the Protection of Persons with Mental Disorders, in which

123 Official Gazette of RS Nos. 59/08, 75/08, 24/11 and 7/12.

124 Enactments of the Protector of Citizens No. 218-3/13, ref. No. 12808 and 12809 of 07 May 2013, available at <http://www.ombudsman.rs/index.php/lang-sr/zakonske-i-druge-inicijative/2825-2013-05-14-07-58-42> and <http://www.ombudsman.rs/index.php/lang-sr/zakonske-i-druge-inicijative/2826-2013-05-14-08-12-28>.

125 For more details, see the section of this Report dealing with child rights.

the Protector of Citizens pointed out the proposed arrangements different substantially from the Mental Health Care Development Strategy.¹²⁶ According to the Strategy, “reform in the field of mental health should be supported by changes in legislation, in particular with regard to the protection of rights and needs of persons with mental disorders and real empowerment of those in charge of planning mental health services”.¹²⁷ The Opinion also pointed out that the Draft Law dealt with the rights of persons with mental disorders exclusively in medical terms, thus neglecting the aspects of protection of human rights, including the right to social inclusion and the right to treatment in the least restrictive environment.

In the Republic of Serbia there is no clear commitment and plan for implementing the “deinstitutionalisation” process that would incorporate the core principles of the process of removing institutionalised persons with disabilities from health care and social security institutions. There is no body that would coordinate the implementation of this process to ensure it is implemented with full respect for the human rights of the deinstitutionalised persons. By enacting the Law on Ratification of the Convention on the Rights of Persons with Disabilities, the Republic of Serbia recognised the rights of persons with disabilities guaranteed by that international treaty, including the right of persons with disabilities to live in the community, to have the possibility to choose their place of residence and to choose with whom they live, i.e. the right not to be forced to live in certain living conditions.



Image 5 – Monitoring the process of de-institutionalization in Serbia

¹²⁶ Official Gazette of RS No. 8/07.

¹²⁷ Page 7, section 3, part 3.1, available at: <http://www.zdravlje.gov.rs/tmpmz-admin/downloads/zakoni1/Strategija%20Razvoja%20Zastite%20Mentalnog%20Zdravlja.pdf>

Improvement of the status of persons with disabilities and their full social inclusion will depend on the support the government is willing to provide through the establishment of various systems of support to persons with disabilities. Judging from the conversations that the Protector of Citizens had with decision-makers in more than twenty local self-governments and employees in centres for social work, it would appear that support to persons with disabilities is partly provided through social security and education systems, but it is insufficient to ensure their equal participation in the social life. Development of different forms of support through the systems of social security, health care, education and employment is a precondition for elimination of discrimination and combating prejudice.

Although the applicable regulations stipulate that design and construction activities must ensure free access, movement, stay and work of persons with disabilities, children and the elderly, i.e. that the construction of new activities and reconstruction of existing ones must take into account the standards of accessibility to persons with disabilities, inconsistent implementation of regulations pertaining to accessible environments hampers or completely precludes the exercise of these basic rights.

II COMPLAINTS

With regard to the rights of persons with disabilities, the Protector of Citizens received 339 complaints and investigated 2 cases on his own initiative. These complaints accounted for 6% of the total number of complaints received by the Protector of Citizens in 2013. The number of complaints in this year was 22.66% higher than the year before.

**Chart 15 – Rights of persons with disabilities
– Number of complaints received compared with 2012**

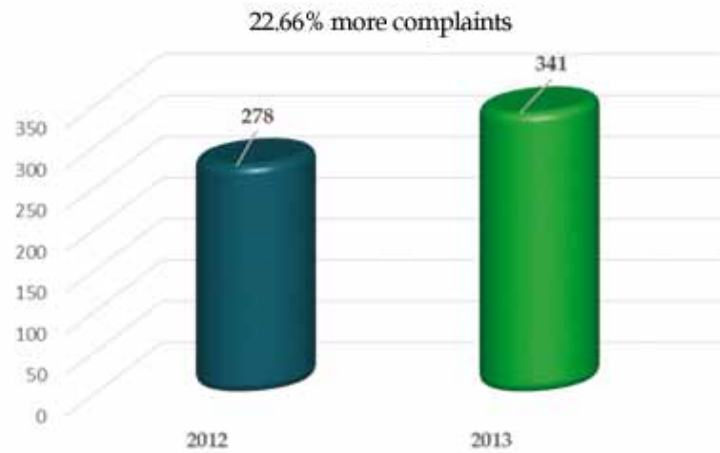
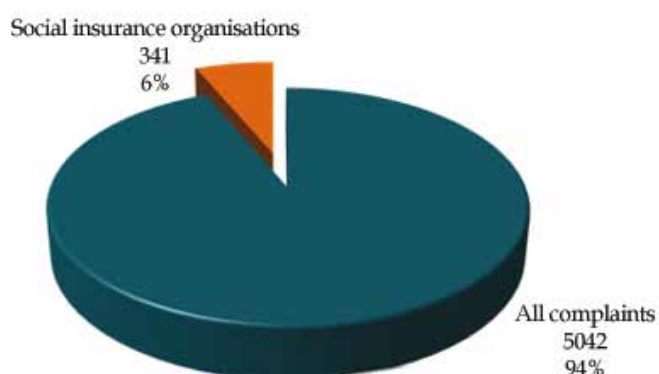
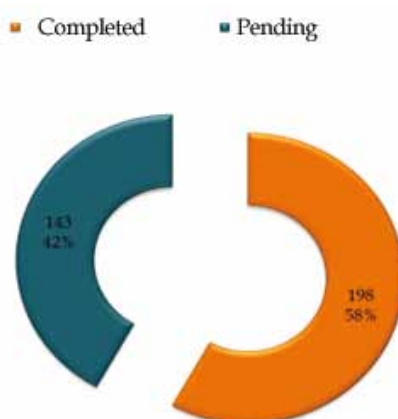


Chart 16 – Share of complaints concerning the rights of persons with disabilities in the total number of complaints received



In 2013, the Protector of Citizens received a total of 198 cases related to the rights of persons with disabilities, with 143 pending from earlier years.

Chart 17 – Rights of persons with disabilities – handling of cases in 2013



In 2013, the Protector of Citizens completed a total of 297 cases. Of that number, 198 were received in 2013, while the remaining ones were carried forward from earlier years.

Table 28 – Rights of persons with disabilities – outcome of cases handled in 2013 and in earlier years

Dismissed complaints	163	54.88%
Unfounded complaints	84	28.28%
Omissions admitted and rectified by the authorities without conducting full investigation - no need to issue recommendations (closed investigations)	27	9.09%
Cases covered by recommendations	11	3.70%
Complaint dropped by complainant	8	2.69%
Opinions	3	1.01%
Total	297	100%

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

**Table 29 – Rights of persons with disabilities
– reasons for dismissal of complaints in 2013**

Declined jurisdiction by PoC - referred to competent authority	79	48.47%
premature complaint - complainant advised on available remedies	48	29.45%
Incomplete complaint	22	13.50%
Belated complaint	8	4.91%
Within the competence of a local ombudsman	4	2.45%
Unauthorised complainant	2	1.22%
Total:	163	100%

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

As can be seen in Table 30, in 77.92% of the dismissed complaints, the Protector of Citizens provided the citizens legal advice in the exercise of their rights before competent authorities.

**Table 30 – Rights of persons with disabilities – assistance
provided in the form of legal advice**

	number	percentage
Dismissed complaints	163	100%
Declined jurisdiction - complainant referred to competent authority	79	48.47%
Premature complaint - complainant advised on available remedies	48	29.45%
Total: assistance provided in the form of legal advice	127	77.92%

Pursuant to the complaints received in 2013 and in earlier years, the Protector of Citizens issued a total of 15 recommendations to public authorities in connection with 8 cases. As of 31 December 2012, the competent authorities have implemented six recommendations, while the remaining ones are still pending implementation.

Table 31 – Rights of persons with disabilities – compliance with recommendations issued in 2013

Recommendations	number	percentage
Total	15	100
Implemented	6	40.00
Unimplemented	0	0
Implementation pending	9	60.00

In the sector of rights of persons with disabilities, 421 different violations of rights have been identified pursuant to 341 complaints. The largest number of complaints pointed to violations of economic and social rights, including in particular the right to pension and disability insurance and the right to social security. The complaints also pointed to numerous violations in the field of good governance, such as administrative silence and denial of due process.

Table 32 – Rights of persons with disabilities – violations of rights reported by complainants

Economic, social and cultural	156	37.05%
Special rights of persons with disabilities and the elderly	136	32.30%
Right to good governance	90	21.38%
Civil and political	39	9.26%
Total	421	100%

Table 33 shows the structure of special rights based on the 136 recorded violations of these rights.

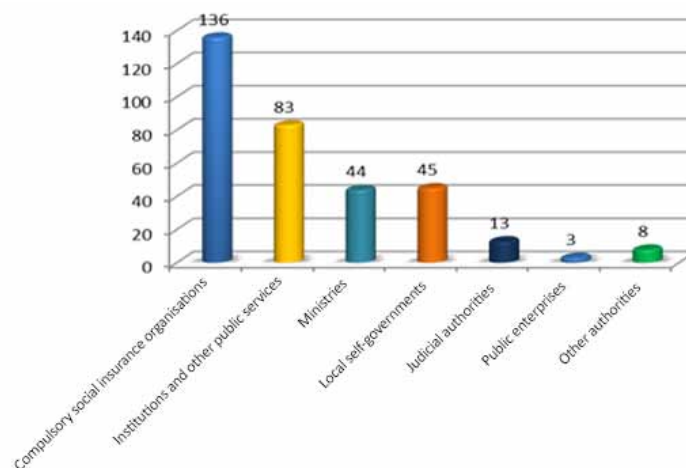
Table 33 – Violations of special rights of persons with disabilities, their number and percentage

Type of right violated	Number	%
Entitlement to financial support for assistance with activities of daily living	27	19.85%
Entitlement to an allowance for assistance with activities of daily living	17	12.50%
Right to employment and professional rehabilitation	14	10.29%
Entitlement to an allowance for physical impairment	11	8.09%
Discrimination based on disability	9	6.62%
Entitlement to an increased allowance for assistance with activities of daily living	9	6.62%
Architectural access to buildings	9	6.62%
Right to equal accessibility of services	8	5.88%
Right to customs and fiscal relief and benefits	7	5.15%

Right to the status of a veteran of war	6	4.41%
Rights arising from the status of a veteran of war	6	4.41%
Right to public transport discounts and benefits	6	4.41%
Right to orthopaedic aids	3	2.21%
Right to orthopaedic aids	3	2.21%
Right to public transport discounts and benefits for carers of persons with disabilities	1	0.74%
Total	136	100%

Most of the complaints pointed to violations of rights of persons with disabilities by the Republic Pension and Disability Insurance Fund, the Ministry of Labour, Employment and Social Policy and social security institution, which was to be expected given that persons with disabilities exercise the majority of their rights through those institutions, as can be seen in Chart 18.

Chart 18 – Authorities and organisations most frequently complained against by the citizens in the field of rights of persons with disabilities



III OTHER ACTIVITIES

Public hearing at the National Assembly

The Protector of Citizens, together with the Committee on Human and Minority Rights and Gender Equality of the National Assembly, held a public hearing dedicated to issues of relevance for the achievement of full social inclusion of persons with disabilities held in psychiatric hospitals and social security institutions after the transformation of those institutions. Their return to their primary social environment is a complex process, one that requires various forms of community-based support and services, which in turn requires a number of activities to be taken across all levels of government. The public hearing was attended by representatives of line ministries (Ministry of Health, Ministry of Labour,

Employment and Social Policy, Ministry of Education, Science and Technological Development, Ministry of Justice), representatives of the City of Belgrade, directors of social security institutions and psychiatric institutions and representatives of international organisations, civil society organisations and the professional community.

After the hearing at the National Assembly, the Protector of Citizens discussed the same issues with the city councils of Novi Sad, Nis and Kragujevac.

Roundtables at local self-governments in Serbia

In 2013, the Protector of Citizens, in cooperation with the Office of the UN High Commissioner for Human Rights (OHCHR), organised roundtables in four local self-governments (Bor, Novi Pazar, Kragujevac and Belgrade) on the topic "Issues of Relevance for Improving the Situation of Persons with Disabilities and Systems of Community-based Services and Support". The roundtables were attended by representatives of local self-governments from Borski, Zajecarski, Zlatiborski and Raski Districts, representatives of centres for social work and medical centres, directors of social security institutions and psychiatric hospitals (or general hospitals) and civil society organisations protecting and promoting the rights of persons with disabilities. The meetings were also attended by representatives of the Ministry of Labour, Employment and Social Policy, the Ministry of Health and the Ministry of Education, Science and Technological Development.

Advisory Body for Persons with Disabilities and the Elderly

The sessions of the Advisory Body of the Protector of Citizens for Persons with Disabilities and the Elderly¹²⁸ in 2013 contributed to identification of the issues faced by persons with disabilities and supported the successful work of the Protector of Citizens in the field of protection and promotion of rights of persons with disabilities and the elderly.

IV TYPICAL CASES

Information to be obtained from persons without the capacity to contract only in the presence of their guardians

In order to rectify the shortcomings identified in the operations and actions of a Police Administration, which had been pointed out by the guardian of a person without the capacity to contract, the Protector of Citizens issued a recommendation in which he reminded of the need to consistently apply Article 48 of the Law on Police¹²⁹ and Article 12 paragraph 2 of the Bylaw on Police Authorities¹³⁰ which governs special cases of taking statements and stipulates that a person without the capacity to contract can be called to make a statement only through his/her guardian.

128 Members of the Council are Gordana Rajkov, Dr. Damjan Tatić, Ivanka Jovanović, Vidan Danković, Dragana Ćirić Milovanović, Miodrag Počuć and Dr. Miloš Nemanjić.

129 Official Gazette of RS No. 101/05, 63/09-Decision of the Constitutional Court and 92/11.

130 Official Gazette of RS No. 54/06.

The Police Administration concerned informed the Protector of Citizens it had taken steps to implement the recommendation and ensure lawful and proper acting of police officers. Furthermore, it stated that the deputy chief of the Police Administration had sent a dispatch to the heads of all organisational units within the Administration to apprise them of the recommendations issued by the Protector of Citizens.

*Sending of entire case file prevents deciding on an appeal lodged
by the same person in a different administrative matter*

Pursuant to a complaint which alleged that the Directorate of the Republic Pension and Disability Insurance Fund had not decided on an appeal lodged by the complainant for more than a year, the Protector of Citizens found during the investigation of legality and regularity of work of the said authority that the citizen concerned, before lodging an appeal in the administrative matter relating to the determination of the level of his physical impairment, had lodged an appeal with the Directorate in the administrative matter relating to the determination of his capacity as an insured person based on his status of an independent professional, which had been rejected. After he lodged an appeal with the Administrative Court to quash the second-instance decision, the Directorate sent his entire case files to the Administrative Court, which prevented it from deciding on his subsequently lodged appeal in a different administrative matter. The Protector of Citizens issued a recommendation to this authority to create the files of its beneficiaries in accordance with the Instructions on Office Management in Public Authorities, which would enable it to send to courts only the individual file sheets relating to the administrative matter deliberated by the court in the specific case, rather than sending the entire files, while the authority itself would be able to decide on potential appeals lodged by the same beneficiary in a different administrative matter.

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

1. **The Ministry of Health** should initiate the reform of mental health care and propose mental health care and prevention systems, in particular through further development of community-based mental health treatment and care.
2. **The Government** should pass clear decisions and plans for transformation of residential and psychiatric institutions.
3. **The National Assembly** should debate the Bills of amendments to the Labour Law and the Law on Financial Support to Families with Children submitted by the Protector of Citizens.
4. **The Ministry of Construction and Urban Planning** should, in cooperation with local self-governments, organise trainings for the employees of municipal and city bodies responsible for design approval, issuing of zoning and building permits and certificates of occupancy, for inspectorates and for the professional community (licensed designers, contractors...) to ensure through education and familiarisation with the applicable regulations that no new buildings are inaccessible and to adapt the already constructed buildings to the adopted principles and standards.

5. **Local self-governments** should ensure more efficient operations of competent inspectorates and more effective oversight of their work with regard to authorities with the mandate to directly influence the *de facto* implementation of laws and implementing regulations which impose a duty to adhere to the standards of accessibility.
6. **The Ministry of Labour, Employment and Social Policy** should, independently and in cooperation with other public authorities, ensure a financially sustainable system of community-based support services for persons with disabilities.
7. **Local self-governments** should develop systems of community-based support to persons with disabilities.

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

USE OF POLICE POWERS

I BACKGROUND

1. State's achievements

- 1.1. In its public announcements, the Ministry of Interior has been paying more attention to the presumption of innocence of the citizens against whom police powers are used on reasonable suspicion they have committed a criminal offence.
- 1.2. The Ministry of Interior has provided training to police officers on the topics of treatment of persons in custody and protection from abuse.
- 1.3. The Ministry of Interior has improved the position of persons in police custody, including by providing them with regular meals and introducing electronic records of supervisory visits to persons in custody.

2. Results achieved by the Protector of Citizens

- 2.1. The recommendation of the Protector of Citizens improved the work of the Ministry of Interior in terms of respecting the presumption of innocence of persons deprived of liberty on reasonable suspicion they have committed a criminal offence.
- 2.2. Cooperative dialogue, as an organised, regular form of preventive and educational cooperation, has been established between the Protector of Citizens and the Ministry of Interior. It takes place in the form of regular periodic meeting with police chiefs and officers from the police administrations and stations subject to control. The dialogue examines modalities of compliance with the recommendations of the Protector of Citizens, which results in their more effective implementation and improvements in the treatment of persons in custody.
- 2.3. In compliance with the recommendations issued by the Protector of Citizens, police administrations have applied for the necessary funds from competent authorities in order to bring their detention rooms in compliance with the applicable standards.

- 2.4. In compliance with the recommendations issued by the Protector of Citizens, police stations have stopped using inadequately equipped rooms for police detention.
- 2.5. Compliance with the recommendations issued by the Protector of Citizens has improved considerably the position of persons in police custody, including by providing them with regular meals and introducing electronic records of surveillance visits to persons in custody.

3. Shortcomings at the national level

- 3.1. The Ministry of Interior does not exercise to the full extent its role in the fight against impunity, both with respect to committers of criminal offences outside its ranks and those who serve in the police force.
- 3.2. Many detention rooms in police stations are still not up to applicable standards.
- 3.3. The Instructions on Treatment of Persons Brought in by Police and Persons in Custody contain provisions that are contrary to the applicable regulations and standards.
- 3.4. Police officers in certain police stations violate the privacy of persons in custody by attending their medical examinations and taking their medical records.

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

- 4.1. The Ministry of Interior has not named the police officers who violated the right to physical and mental integrity of a citizen who was the right of a citizen who had been exposed to torture during arrest, commitment and detainment by the police.
- 4.2. The Ministry of Interior has not taken all available measures and activities to bring police detention rooms in full compliance with the applicable regulations and standards.
- 4.3. Police officers in certain police stations violate the privacy of persons in custody by attending their medical examinations and taking their medical records.

5. Explanation

In accordance with the recommendation of the Protector of Citizens¹³¹, the Ministry of Interior has been paying more attention in its public announcements to the presumption of innocence of the citizens against whom police powers are used on reasonable suspicion they have committed a criminal offence. Unlike earlier years, in 2013 the Protector of Citizens did not receive a single complaint against violation of the presumption of innocence in the Ministry's announcements. The respect for the presumption of innocence also rectified the shortcoming in the work of the Ministry which resulted in the violation of a broader right – the right to fair trial, to which the Protector of Citizens pointed in his recommendation and previous Annual Reports¹³².

131 Case No. 12-902/13.

132 2012 Annual Report of the Protector of Citizens is available at: <http://www.ombudsman.rs/attachments/Redovni%20godisnji%20izvestaj%20zastitnika%20gradjana%20za%202012%20godinu%20-%20final.pdf>; 2012 NPM Annual Report is available at: http://www.ombudsman.rs/attachments/2902_izvestaj_%20NPM_%202012.pdf.

The Protector of Citizens investigated a number of cases involving substantiated allegations of bodily harm caused to citizens through improper use of police powers. The Ministry failed to adequately (in sufficient detail, impartially, swiftly and efficiently) investigate those cases and the perpetrators have not been punished.¹³³ In view of these facts, it would appear that timely and thorough measures are not always taken to investigate all substantiated allegations of ill-treatment and determine the individual responsibility of police officers, in both subjective and objective terms. This undermines compliance with the duty of public authorities to fight against impunity for torture.

Rather worryingly, recommendations have not been followed in cases where the Protector of Citizens found citizens had been tortured in police custody and recommended that the Ministry investigate the responsibility of the police officers involved. In this context, it is rather telling that even the competent public prosecution office, which had been informed of this case by the Protector of Citizens, found no grounds for criminal prosecution of the police officers involved.

During the reporting period, the Protector of Citizens pointed out repeatedly that the Instructions on Treatment of Persons Brought in by Police and Persons in Custody contained a number of provisions that conflict with the applicable regulations and standards (competences of control mechanisms, compulsory tying of hands during transport/transfer, compulsory attendance of police officers during medical examinations of persons in custody, optional installation of alarm systems for alerting the police officer on duty if video surveillance is installed). These omissions have created uncertainty among police officers as to the correct use of police powers. The Protector of Citizens is of the opinion that the Instructions should be harmonised with the applicable regulations and standards without further delay.

In 2013, just as in previous years, the Ministry of Interior did not take all necessary measures and activities to make the police detention rooms compliant with the applicable regulations and standards. Notwithstanding the large number of reports¹³⁴ and recommendations¹³⁵ submitted by the Protector of Citizens to the Ministry in recent years, many of those rooms are still completely inadequate, with identified shortcomings in terms of size, dilapidation, lack of hygiene, dampness, lack of lightning, lack of natural air flow, lack of heating, unavailability of running water and toilets etc. Some police chiefs have made praiseworthy efforts to improve the existing situation within the available means immediately upon receiving the recommendations made by the Protector of Citizens.

The situation has improved compared with the previous reporting period in that, in 2013, persons held in police custody were given meals, with funding provided in the budget for this purpose. Furthermore, special electronic records of surveillance visits to persons in custody by police officers have been introduced (to register all relevant events and actions taken against persons in custody, e.g. visits, meals, health examinations etc.).

133 Case No. 12-1782/10; 12-3518/1; 12-926/12.

134 Recommendations given by the Protector of Citizens in the capacity of NP M in the reports on visits to police administrations/stations are available at: <http://www.ombudsman.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji>.

135 In 2013, the Protector of Citizens issued 45 recommendations to police administrations and stations in connection with improvements in the material conditions of accommodation.

6. Typical cases

Lack of fight against impunity for torture¹³⁶

The Protector of Citizens found in an investigation that a complainant's right to physical and mental integrity had been violated because he had been exposed to torture during arrest, commitment and detainment by the police. The police was issued a recommendation to determine the responsibility of the police officers involved. The case was also notified to the competent public prosecution office.

The period left for compliance with the recommendation expired during the reporting period. The Ministry of Interior failed to implement the recommendation and provided no response to the recommendations sent to it. The competent public prosecution office notified the Protector of Citizens it had found no grounds for criminal prosecution of the police officers involved.

7. Proposals for improving the citizens' position in relation to government authorities

1. **The Ministry of Interior** should fully exercise its role in the fight against impunity for any form of abuse in connection with the use of police powers.
2. **The Ministry of Interior** should, without further delay, provide the necessary resources for bringing all detention rooms at police stations in compliance with the applicable standards.
3. **The Ministry of Interior** should, without further delay, harmonise the Instructions on Treatment of Persons Brought in by Police and Persons in Custody with the applicable regulations and standards.
4. **The Police Directorate** should ensure that police officers are not present at medical examinations of persons in custody, except in cases where this is required by a physician who has had access to all relevant information.
5. **The Police Directorate** should ensure that police officers do not access without authorisation the medical records of examinations and health care services provided to persons in custody.
6. **The Police Directorate** should ensure that police officers always demand of physicians to instruct them in clear language on the required measures and activities they should take to protect the health of persons in custody and that they make written notice of such instructions.

ENFORCEMENT OF DETENTION MEASURES

II BACKGROUND

1. State's achievements

- 1.1. Certain sections of the District Prison in Belgrade and the Juvenile Correctional Facility in Valjevo have been refurbished, thus providing proper accommodation for detainees in accordance with the applicable standards.

¹³⁶ Case No. 12-2379/11.

- 1.2. For the first time, detainees have the right to a conjugal visit in a separate room of the correctional facility, without the presence of prison guards or other inmates.

2. Results achieved by the Protector of Citizens

- 2.1. In accordance with the recommendations of the Protector of Citizens, a section of the detention unit in the District Prison in Belgrade¹³⁷ and a section of and the Juvenile Correctional Facility in Valjevo¹³⁸ have been refurbished, thus providing proper accommodation for detainees in accordance with the applicable standards.



Image 6 – Adapted part of the detention unit of the District Prison Belgrade

- 2.2. As a result of recommendations issued by the Protector of Citizens in connection with improvement of the accommodation conditions in the District Prison in Belgrade, the largest detention unit in the Republic of Serbia, a special room has been designated in that facility for conjugal visits, visits by children and visits by other close persons, without the presence of prison guards or other inmates.

3. Shortcomings at the national level

- 3.1. Accommodation conditions in certain detention units of penal institutions do not comply with the applicable standards.
- 3.2. Detainees are as a rule not allowed to spend the spare time during the day outside their cells, in communal areas with other detainees who have not been segregated under court orders.

137 2012 Annual Report of the Protector of Citizens, available at: <http://www.ombudsman.rs/attachments/Redovni%20godisnji%20izvestaj%20zastitnika%20gradjana%20za%202012%20godinu%20-%20final.pdf>.

138 Recommendation No. 12-1949/13 of 11 July 2013.

- 3.3. Detainees are usually not allowed to work or to participate in social and cultural activities.
- 3.4. Insufficient attention is paid to the issues involved in the grouping of inmates by dormitories (in terms of prior convictions, types of criminal charges, whether they smoke or not etc.).
- 3.5. Much of the District Prison in Belgrade, the largest detention unit in Serbia, is still used to provide housing to the families of past and present prison employees.

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

- 4.1. Accommodation conditions in certain detention units of penal institutions have still not been brought in compliance with the applicable standards.
- 4.2. Insufficient attention is paid to the issues involved in the grouping of inmates by dormitories (in terms of prior convictions, types of criminal charges, whether they smoke or not etc.).
- 4.3. The issue of the District Prison in Belgrade, the largest detention unit in Serbia, remains unresolved, as much of its useful area is still used to provide housing to the families of past and present prison employees.

5. Explanation

In a number of visits to detention units at penal institutions, it was found that the conditions of accommodation and other living conditions of detainees in certain detention units still do not comply with the applicable standards. Certain detention units are overcrowded and detainees do not have a minimum of eight cubic metres and four square metres of space at their disposal in the dormitories. In some cases, detainees sleep on triple bunk beds. Certain rooms in detention units are in an extremely poor condition, dilapidated, dirty and unaired, which is particularly aggravating for non-smokers, who are often lumped in the same room with smokers. Certain rooms also do not have sufficient natural light and the artificial lighting is unsatisfactory, to the extent that any reading becomes impossible without risking permanent damage to one's eyesight. Certain detention units face a huge problem with decrepit sanitation facilities.

Detainees spend the whole day locked up in their cells/dormitories. They are as a rule not allowed to spend the spare time during the day outside their cells, in communal areas with other detainees who have not been segregated under court orders. In most cases, detainees are not allowed to work or to participate in social and cultural activities. Although detainees are allowed under applicable regulations to spend at least two hours outdoors every day, certain detention units do not have the capacities to enable them to exercise this right, so the time spent outdoors is sometimes shorter than one hour. The existing outdoor walking areas do not have appropriate canopies to protect the inmates from precipitation. Furthermore, opportunities for physical exercise are scarce, especially in inclement weather.

It is common for detainees with no prior convictions to be placed in the same dormitory with repeat offenders and not enough attention is paid to grouping detainees together

according to the type of criminal charges brought against them. In this context, of particular concern is the placement of juvenile detainees together with adults. This is not in compliance with the applicable standards and may have far-reaching adverse consequences for the detainees.

Investigating a large number of complaints in which the complainants alleged that detention for years on end violated their human rights and threatened their marriages and families, the Protector of Citizens succeeded through cooperative dialogue with the District Prison in Belgrade and the Administration for Enforcement of Penal Sanctions in securing the allocation of special rooms in the District Prison in Belgrade for conjugal visits and visits by children and other close persons.

Women under detention are placed in detention units of penal institutions all over Serbia. Their relatively small numbers per detention unit result in a situation where some of them are in virtual solitary confinement during their detention, which can be a long time. Solitary confinement is a disciplinary measure or special measure of limited duration used in the system of penal sanctions, which speaks volumes of the negative effects of such detention arrangements on the women's wellbeing.

6. Typical cases

A detainee is allowed a conjugal visit in a separate room within the correctional facility, without the presence of prison guards or other inmates¹³⁹

The Protector of Citizens received complaints from a number of detainees who alleged that the length of their trials and the years upon years of detention threatened to disrupt their marriages and families. Within the scope of his powers, using the mandate to act pre-emptively by providing good service and mediating to improve the work of public authorities and promote the protection of human rights and freedoms, the Protector of Citizens succeeded through cooperative dialogue with the District Prison in Belgrade and the Administration for Enforcement of Penal Sanctions in securing the allocation of special rooms in the District Prison in Belgrade for conjugal visits and visits by children and other close persons.

Once a room for conjugal visits was provided, the competent court allowed in mid 2013 for the first time ever a conjugal visit to a detainee in a separate room of the correctional facility, without the presence of prison guards or other inmates. The citizen in question has been in detention for more than five years!

7. Proposals for improving the citizens' position in relation to government authorities

1. **The Administration for Enforcement of Penal Sanctions** should upgrade the inadequately equipped detention units and bring them in compliance with the applicable regulations and standards.

139 Case No. 12-1847/13.

2. **The Administration for Enforcement of Penal Sanctions** should allow detainees to spend the spare time during the day outside their cells, in communal areas with other detainees who have not been segregated under court orders.
3. **The Administration for Enforcement of Penal Sanctions** should allow detainees to work and to participate in social and cultural activities.
4. **The Administration for Enforcement of Penal Sanctions** should pay more attention to the issues involved in the grouping of inmates by dormitories, taking into account their prior convictions, types of criminal charges, whether they smoke or not etc.
5. It is necessary to address the issue of the **District Prison in Belgrade**, the largest detention unit in Serbia, where much of the useful area is still used to provide housing to the families of past and present prison employees.

ENFORCEMENT OF PRISON SENTENCES

I BACKGROUND

1. State's achievements

- 1.1. A major step forward has been made in the fight against impunity for torture when the Constitutional Court of the Republic of Serbia delivered a judgement in which it found an inmate's right to inviolability of physical and mental integrity had been violated while he served a prison sentence.¹⁴⁰
- 1.2. The Strategy of Development of the System for Enforcement of Penal Sanctions in the Republic of Serbia by 2020 has been adopted.¹⁴¹
- 1.3. The Administration for Enforcement of Penal Sanctions improved the accommodation conditions for persons serving prison sentences, primarily through reconstruction and adaptation of certain accommodation facilities.
- 1.4. The network of offices for alternative enforcement of penal sanctions has been extended.

2. Results achieved by the Protector of Citizens

- 2.1. Taking into account the identified case of torture and the recommendation of the Protector of Citizens issued to competent authorities¹⁴², the Constitutional Court of the Republic of Serbia delivered a judgement in 2013 by which it found an inmate's right to inviolability of physical and mental integrity had been violated while he served a prison sentence.
- 2.2. Acting on recommendations of the Protector of Citizens, the penal institutions/ Administration for Enforcement of Penal Sanctions adapted some of their accommodation facilities.

140 Одлука the Constitutional Court of the Republic of Serbia No. Уж- 4100/11.

141 Government's Decision 05 number: 021-10982/13.

142 Case No. 12-3630/11.

3. Shortcomings at the national level

- 3.1. The penal institutions/Administration for Enforcement of Penal Sanctions do not exercise their role in the fight against impunity for ill-treatment to the full extent.
- 3.2. Efficiency of the existing control/oversight mechanisms applicable to the penal institutions/Administration for Enforcement of Penal Sanctions has not been increased. The Supervision Unit has not been separated from the Administration for Enforcement of Penal Sanctions and attached to the Ministry of Justice and Public Administration, which would have enabled it to oversee the work of the Administration as a whole.
- 3.3. Certain accommodation facilities at the penal institutions remain non-compliant with the applicable standards.
- 3.4. Many persons serving prison sentences are not able to spend their spare time during the day outside the dormitories, in communal areas with other inmates.
- 3.5. In spite of a major step forward in terms of occupational engagement of inmates, many of them are still without work.
- 3.6. A large number of persons serving prison sentences who have severe mental disorders are still placed in regular prison facilities.
- 3.7. There is no fully functional and motivating categorisation and assignment of inmate privileges.
- 3.8. Numerous shortcomings persist in the provision of health care to persons serving prison sentences and in the procurement of medicines and treatment.
- 3.9. Although improved, individual and group correctional sessions with inmates are not sufficient and systematic enough in many of the penal institutions.
- 3.10. Health care services in penal institutions report to those institutions, i.e. to the Administration for Enforcement of Penal Sanctions, instead of to the Ministry of Health.
- 3.11. There is no adequate post-release community outreach to help released convicts settle.
- 3.12. The Law on Probation has not been enacted to systematically, with a view to protecting the society from crime, regulate the organisation, implementation and supervision of penalties that provide an alternative to detainment and imprisonment, the supervision of persons on probation, the provision of post-release support and re-socialisation and provision of assistance to victims, injured parties and their families.

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

- 4.1. The penal institution/Administration for Enforcement of Penal Sanctions has not complied with the recommendation of the Protector of Citizens to determine the responsibility of law enforcement officers for the violations of rights of the inmate who had been exposed to torture.
- 4.2. Efficiency of the existing control/oversight mechanisms applicable to the penal institutions/Administration for Enforcement of Penal Sanctions has not been increased. The Supervision Unit has not been separated from the Administration for Enforcement of Penal Sanctions and attached to the Ministry of Justice and

Public Administration, which would have enabled it to oversee the work of the Administration as a whole.

- 4.3. The penal institutions/Administration for Enforcement of Penal Sanctions are/is facing difficulties in their efforts to implement the recommendations of the Protector of Citizens relating to improvements of accommodation facilities.
- 4.4. The penal institutions/Administration for Enforcement of Penal Sanctions are/is facing difficulties in their efforts to implement the recommendations of the Protector of Citizens relating to increased occupational engagement, more intensive individual and group correctional sessions and preparation of inmates for release.
- 4.5. The penal institutions/Administration for Enforcement of Penal Sanctions are/is facing difficulties in their efforts to implement the recommendations of the Protector of Citizens relating to improvements in health care services provided to persons serving prison sentences.
- 4.6. The penal institutions/Administration for Enforcement of Penal Sanctions have/has not complied with the recommendations of the Protector of Citizens which call for removal of inmates with severe mental disorders from regular correctional facilities.
- 4.7. The recommendation of the Protector of Citizens to transfer the responsibility for the health care services in penal institutions from those penal institutions and the Administration for Enforcement of Penal Sanctions to the Ministry of Health.
- 4.8. The Law on Probation has not been enacted.

5. Explanation

In 2012, the Protector of Citizens found a complainant's right to physical and mental integrity had been violated while he served a prison sentence because he had been exposed to torture. A recommendation was submitted to the oversight body to investigate the responsibility of the officers involved¹⁴³, but the said body has not done so. A notice supported by relevant documents in connection with this case was submitted to the public prosecution office, but the prosecution office stopped its investigation during the reporting period. As there was no adequate response from competent authorities, the complainant filed a constitutional appeal, pursuant to which the Constitutional Court filed a judgement in mid 2013, ruling that the inmate's right to inviolability of physical and mental integrity had been violated during incarceration.¹⁴⁴ The said decision, together with the recommendation issued by the Protector of Citizens, was a major step forward in the fight against impunity for torture in the Republic of Serbia.

The Administration for Enforcement of Penal Sanctions and the penal institutions should, in their future work, fully exercise their role in the fight against impunity for torture by taking all necessary measures to prevent any ill-treatment and by conducting timely and thorough procedures to investigate all substantiated allegations of ill-treatment and determine the individual (subjective and objective) responsibility of their officers.

To that end, it is necessary to reinforce the mandate and powers of the existing internal control mechanism (Supervision Unit), including by separating it from the Administration for Enforcement of Penal Sanctions and attaching it to the Ministry of Justice and Public

143 Case No. 12-3630/12.

144 Decision of the Constitutional Court of the Republic of Serbia No. Уж- 4100/11.

Administration. This will not only enable better supervision of the Administration as a whole, but also provide a mechanism capable of making a significant contribution to prevention of ill-treatment in the prison system.

In the course of 2013, adaptation work was carried out in certain accommodation facilities in a number of penal institutions, including the District Prison in Belgrade, Penal-Correctional Facility Sremska Mitrovica, Penal-Correctional Facility Nis, Juvenile Penal-Correctional Facility in Valjevo, the District Prison in Cacak and the District Prison in Negotin, which brought those facilities in compliance with the applicable standards.



Image 7 – Overcrowded room in Correctional Institution for juveniles in Valjevo

In spite the reduction in the total number of incarcerated persons due to the earlier amnesty, the adaptation work carried out in certain accommodation facilities and the visible efforts of the Administration for Enforcement of Penal Sanctions and prison wardens to improve the organisation of their work, large Penal-Correctional Facilities¹⁴⁵ remain overcrowded. Many rooms remain dilapidated and incompliant with the material conditions and other living requirements in accordance with the applicable standards.

Many persons serving prison sentences are not allowed to spend their spare time during the day outside of dormitories, in communal areas together with other inmates.¹⁴⁶ This is not done even in the Penal-Correctional Facility Belgrade, a newly-built prison(?!), where the cell blocs have no communal areas, so the inmates spend all their time locked in the cells (except two hours outdoors every day).

145 Penal-Correctional Facility Sremska Mitrovica, Penal-Correctional Facility Pozarevac-Zabela and Penal-Correctional Facility Nis.

146 E.g. in Pavilion VII of the Penal-Correctional Facility Pozarevac-Zabela and Pavilion II of the Penal-Correctional Facility Nis.

Notwithstanding the *de facto* great improvement in the occupational engagement of the inmates¹⁴⁷, many of those serving prison sentences still have no work. Further efforts are needed to intensify active individual and group correctional sessions between the tutors and the inmates to create opportunities for inmates to progress to a group with higher privileges due to good behaviour, in a manner that would reduce the currently large number of inmates who are released from the penal institutions directly from the prison wards.

The programs prepared for the purpose of providing post-release social support remain too general, which leaves released inmates to fend for themselves and thus increases the threat of repeat offending by persons who are ill-prepared for the life outside of prison.

Numerous shortcomings persist in the provision of health care services to and procurement of drugs and treatment for incarcerated persons. Medical examinations at admission are superficial and there are no unified protocols. Regular medical examinations of inmates are generally not performed in periods shorter than three months and ill persons do not receive daily visits from physicians. It is common for therapy to be administered by non-medical staff. Also, non-medical staff tends to be present at medical examinations even when health care professionals do not demand it, which violates the inmates' privacy and their right to confidentiality of health-related information. Health care services in penal institutions still report to those institutions, i.e. to the Administration for Enforcement of Penal Sanctions, instead of to the Ministry of Health.

It is necessary to make additional efforts to provide accommodation and assistance appropriate to the needs of persons with disabilities. In particular, it is necessary to adapt the sanitation facilities, install the necessary ramps and adapt door width to the width of wheelchairs. A particular problem is posed by the fact that persons with severe mental disorders are still placed in regular correctional facilities, where they are not able to receive treatment and therapy. Such persons should be transferred to the Special Prison Hospital or an in-patient health care facility within the penal institution concerned (insofar as these can provide proper conditions for their treatment) or to another health care institution.

In one women's prison, all inmates, regardless of the treatment group to which they are allocated, and all women incarcerated for misdemeanours are placed in closed-type facilities, surrounded by high walls.¹⁴⁸

In spite of the recommendation given by the Protector of Citizens¹⁴⁹, the Law on Probation has not been enacted to protect the society from crime, regulate the resocialisation and committers of criminal offences and their reintegration in the community and to provide assistance to victims, injured parties and their families.

6. Typical cases

Violation of the right to health care¹⁵⁰

The Protector of Citizens received a complaint filed by the mother of an incarcerated person, in which she pointed out his deteriorating health and alleged his right to health care had been violated because the Penal-Correctional Facility in Sremska Mitrovica had not

147 E.g. in the Penal-Correctional Facility Sremska Mitrovica there are about 700 inmates.

148 Report on the Visit to Women's Penal-Correctional Facility No. 71-66/13 of 24 December 2013.

149 2012 Annual Report of the Protector of Citizens is available at: <http://www.ombudsman.rs/attachments/Redovni%20godisnji%20izvestaj%20zastitnika%20gradjana%20za%202012%20godinu%20-%20final.pdf>

150 Case No. 12-3677/13.

allowed him to undergo a necessary specialist blood vessel examination with colour Doppler ultrasound. After the launch of an investigation into the legality and regularity of its work, the penal institution in question notified the Protector of Citizens an appointment had been made for a specialist examination of the person in question and subsequently informed the Protector that the examination was completed. The omission identified in the complaint was thus rectified and the Protector of Citizens therefore closed the investigation procedure.

Improved accommodation at the Juvenile Penal-Correctional Facility in Valjevo¹⁵¹

The complainant stated he was serving his sentence in inadequately equipped ground-floor rooms of the Juvenile Penal-Correctional Facility in Valjevo, explaining the rooms were small, unhygienic, dilapidated, unaired and insufficiently lit. The Protector of Citizens visited the complainant and ascertained the complainant's allegations in person. Accordingly, the Protector of Citizens issued a recommendation to the penal institution concerned to rectify certain shortcomings. Acting pursuant to the recommendation, the penal institution began upgrading the facilities with the applicable standards without delay. In a follow-up visit, the Protector of Citizens will seek to determine whether the recommendation has been fully implemented.

7. Proposals for improving the citizens' position in relation to government authorities

- 1. The Administration for Enforcement of Penal Sanctions** should continue upgrading the accommodation facilities in penal institutions to bring them in compliance with the applicable standards.
- 2. Penal institutions** should enable all incarcerated persons to spend their spare time during the day outside their dormitories, in communal areas with other inmates.
- 3. Penal institutions** should continue providing more opportunities for occupational engagement to incarcerated persons.
- 4. Penal institutions** should intensify individual and group correctional sessions between tutors and inmates. The system of subsequent categorisation of inmates needs to be improved.
- 5. Penal institutions** should improve the provision of health care services, both in terms of treatment and examination and in terms of therapy and procurement of medicines.
- 6. The Administration for Enforcement of Penal Sanctions** should ensure that persons with severe mental disorders serving prison sentences are transferred from regular correctional facilities and provided with health care appropriate to their disease and their treatment needs.
- 7. The health care services within penal institutions** should be part of the health care system and report to the Ministry of Health.
- 8. Penal institutions** should conduct regular periodic supervision of the expert work of health care services.

151 Case No. 12-1949/13

9. **The Administration for Enforcement of Penal Sanctions** should increase the number of staff in charge of correctional work at certain penal institutions, while the work of tutors should not be burdened with duties outside of the penal institution (e.g. enforcement of "house arrest").
10. **Penal institutions** should introduce programs of preparations for release and introduce special pre-release units where inmates would prepare for living as free citizens.
11. **The Ministry of Justice and Public Administration** should prepare and submit to the Government a Draft Law on Probation and improve the post-release outreach system for former inmates.
12. **The Ministry of Justice and Public Administration** should transfer the Supervision Unit from the Administration for Enforcement of Penal Sanctions to ensure that the work of the Administration as a whole is supervised by a dedicated organisational unit within the Ministry.

PSYCHIATRIC INSTITUTIONS AND SOCIAL SECURITY INSTITUTIONS

I BACKGROUND

1. State's achievements

- 1.1. The Law on Protection of Persons with Mental Disorders has been passed.¹⁵²
- 1.2. The Bylaw on the Type and Detailed Conditions for Formation of Organizational Units and Community-Based Mental Health Protection has been passed.¹⁵³
- 1.3. The Bylaw on Detailed Conditions for Use of Physical Restraint and Solitary Confinement of Persons with Mental Disorders Hospitalized for Treatment in Psychiatric Institutions has been passed.¹⁵⁴

2. Results achieved by the Protector of Citizens

- 2.1. By his recommendations, reports¹⁵⁵ and advocacy measures, the Protector of Citizens contributed to passing of the Law on Protection of Persons with Mental Disorders.
- 2.2. In accordance with recommendations and other efforts of the Protector of Citizens¹⁵⁶, the Bylaw on the Type and Detailed Conditions for Formation of Organizational Units and Community-Based Mental Health Protection has been passed.
- 2.3. During the public debate on the Draft Law on Protection of Persons with Mental Disorders, an intervention of the Protector of Citizens was accepted, implying that formation of special units for community-based mental health protection should be mandatory instead of being optional.

152 Official Gazette of RS No. 45/13.

153 Official Gazette of RS No. 106/13.

154 Official Gazette of RS No. 94/13.

155 2012 Annual Report of the Protector of Citizens and 2012 NPM Annual Report

156 2012 Annual Report of the Protector of Citizens and 2012 NPM Annual Report

- 2.4. In accordance with the shortcomings identified in recommendations and reports of the Protector of Citizens¹⁵⁷ in connection with the procedure and recording of physical restraint of anxious or violent patients, the Minister of Health passed the Bylaw on Detailed Conditions for Use of Physical Restraint and Solitary Confinement of Persons with Mental Disorders Hospitalized for Treatment in Psychiatric Institutions.

3. Shortcomings at the national level

- 3.1. The time limits for implementation of the process of deinstitutionalization in treatment of persons with mental disorders specified by the Action Plan of the Strategy for the Development of Mental Health Protection in the Republic of Serbia are not complied with.¹⁵⁸
- 3.2. A number of patients who do not need further hospital treatment are still hospitalized in large psychiatric hospitals because conditions have not been provided for their community-based care.
- 3.3. The Law on Protection of Persons with Mental Disorders envisages solitary confinement of persons with mental disorders hospitalized for treatment in psychiatric institutions.
- 3.4. A number of users are still placed in residential social security institutions exclusively conditions have not been provided for their community-based care.
- 3.5. Asylum-type residential social security institutions are not only inappropriate for provision of care to users, but also have a lack of employees - physicians, pedagogues and care-givers.
- 3.6. There are no visible activities which would lead to adjustment of the number of users of residential social security institutions with the limitations specified by the law within stipulated time limits.
- 3.7. In certain social security institutions certain users are constantly kept in solitary confinement, which means that they are being abused.
- 3.8. Freedom of movement is restricted to a number of persons placed in various residential social security institutions (they are locked), many of them are occasionally physically restrained (they are tied), without any valid legal ground or stipulated appropriate procedure.

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

- 4.1. In 2013, no recommendation or other enactment issued by the Protector of Citizens remained unimplemented.

5. Explanation

In accordance with the recommendations given in the reports of the Protector of Citizens¹⁵⁹, the Law on Protection of Persons with Mental Disorders was passed in

157 2012 Annual Report of the Protector of Citizens and 2012 NPM Annual Report.

158 Official Gazette of RS No. 08/13.

159 2012 Annual Report of the Protector of Citizens and 2012 NPM Annual Report.

2013¹⁶⁰. The Protector of Citizens welcomes its passing, although certain arrangements have been adopted which are not compliant with the Opinion of the Protector of Citizens issued to the Draft Law.¹⁶¹ The intervention of the Protector of Citizens to make the formation of special units for community-based mental health protection mandatory instead of optional was accepted. At the end of the reporting period, the Bylaw on the Type and Detailed Conditions for Formation of Organizational Units and Community-Based Mental Health Protection was also passed. Passing of these regulations established the legal framework for deinstitutionalization in treatment of persons with mental disorders. The Protector of Citizens believes that to that end, all necessary activities should be implemented without delay. The time limits for rationalization of the services in secondary and tertiary psychiatric institutions and for focusing on day hospitals and out-patient treatment, specified in the Action Plan of the Strategy for the Development of Mental Health Protection in the Republic of Serbia¹⁶², expired as early as in 2008. The time limit for introduction of the services for community-based mental health protection will expire in 2014.



Image 8 – Boy in isolation – The home for children and young people with a learning disability Veternik

160 Official Gazette of RS No. 45/13.

161 Case 15–4286/12.

162 Official Gazette of RS No. 08/07.

Previous reports of the Protector of Citizens¹⁶³ and the above Strategy stated that large psychiatric hospitals are asylums for removal of persons with mental disorders from the society, as well as that most of them are institutionalized for years, mostly due to social reasons. Long-term hospitalization of patients in dislocated psychiatric hospitals, particularly taking into account the accommodation conditions that do not comply with the applicable standards, can as a system be the source of individual cases of torture and in any case it implies inhuman and degrading treatment. In view of the foregoing, the Protector of Citizens will closely monitor the stipulated deinstitutionalization procedure, i.e. community-based care for persons with mental disorders.

The provisions regulating the measure of solitary confinement have been introduced into the Law on Protection of Persons with Mental Disorders. This is not compliant with the applicable standards. Solitary confinement of persons with serious or acute mental disorders is not allowed¹⁶⁴, and regardless of its duration, it implies cruel, inhuman or degrading treatment.¹⁶⁵ In particular, use of solitary confinement must not be a practice in psychiatric institutions in Serbia. Therefore the Protector of Citizens believes that the Law should be amended by deletion of the provision on solitary confinement of persons with mental disorders.



Image 9 – Psychiatric Hospital Kovin

In his previous annual report, the Protector of Citizens pointed out the identified shortcomings in the work of psychiatric hospitals in connection with tying of anxious/violent

163 2012 Annual Report of the Protector of Citizens and 2012 NPM Annual Report.

164 Report of the UN Committee against Torture, the 47th and the 48th sessions, UN Doc A/67/44 (2012).

165 Report of the UN Special Rapporteur for Torture for 2012, UN Doc A/22/53 (2013).

patients and the records kept about this. With the aim to rectify these irregularities and due to the lack of clear procedures, the Bylaw on Detailed Conditions for Use of Physical Restraint and Solitary Confinement of Persons with Mental Disorders Hospitalized for Treatment in Psychiatric Institutions was passed in the reporting period. The Protector of Citizens welcomes the passing of the Bylaw with the aim to regulate physical restraint. The measure of physical restraint should be implemented to the lowest possible extent, taking into account that any form of restraint of persons with mental disorders, even for a short period of time, could mean torture and abuse.¹⁶⁶

In spite of the fact that solitary confinement of persons with mental disorders hospitalized for treatment in psychiatric institutions is envisaged by the Law, the Protector of Citizens believes that any kind of solitary confinement of such persons should not have been regulated in detail by the Bylaw because such treatment is not compliant with the applicable standards. As is the case with the Law, the applicable Bylaw should also be amended by deletion of the provisions on solitary confinement of persons with mental disorders hospitalized for treatment in psychiatric institutions.

During the reporting period, the Protector of Citizens issued a recommendation¹⁶⁷ stating that in case there is a doubt in the relevance of a patient's declaration of will, i.e. his ability to judge, such person should not be hospitalized on the basis of the declaration of consent for admission in the hospital. These persons should be hospitalized in accordance with the regulations providing for involuntary admission of persons with mental disorders, i.e. involuntary commitment to a psychiatric institution.

A number of users are still placed in residential social security institutions exclusively conditions have not been provided for their community-based care. The users placed in such asylum-type institutions are excluded from normal social environment and in time lose their social and other skills and become less capable of independent living. All this, taking into account also the accommodation conditions which do not comply with the applicable standards, can, as a system, be the source of individual cases of torture and is in any case inhuman and degrading treatment.

The existing residential social security institutions are not only inappropriate for provision of care to users, but also have a lack of employees, primarily physicians, pedagogues and care-givers, and there are also no visible activities which would lead to adjustment of the number of users of these institutions with the limitations specified by the law within stipulated time limits. Taking this into account, the Protector of Citizens believes that activities on deinstitutionalization should be intensified without delay, i.e. activities on the reduction of capacities and closing of the existing residential social security institutions, as well as on community-based care for their users.

In certain social security institutions certain users are constantly kept in solitary confinement. Solitary confinement of persons with serious or acute mental disorders is not allowed¹⁶⁸; isolation of such persons, regardless of its duration, implies cruel, inhuman or degrading treatment.¹⁶⁹ It is necessary to stop the practice of solitary confinement of users immediately.

¹⁶⁶ Report of the UN Special Rapporteur for Torture for 2012, UN Doc A/22/53 (2013),

¹⁶⁷ Case No. 12-907/12.

¹⁶⁸ Report of the UN Committee against Torture, the 47th and the 48th sessions, UN Doc A/67/44 (2012).

¹⁶⁹ Report of the UN Special Rapporteur for Torture for 2012, UN Doc A/22/53 (2013).

Freedom of movement is restricted to a number of persons placed in various residential social security institutions (they are locked), many of them are occasionally physically restrained (they are tied), without any valid legal ground or stipulated appropriate procedure. Such treatment is justified by the fact that these persons are deprived of ability to work, i.e. that it is in their interest. It is necessary to pass regulations which would regulate the terms and procedures for deprivation of liberty and physical restraining of users in residential social security institutions.

6. Typical cases

Omissions in hospitalization of persons with mental disorders¹⁷⁰

The Protector of Citizens found in an investigation that the complainant was taken to a psychiatric hospital by the police and the emergency medical assistance unit because of disturbance of peace, with a referral from a physician of the emergency medical care unit for inpatient treatment of psychomotor agitation, aggressive behaviour and a suicide threat. The complainant was hospitalized for treatment for nine months in a closed unit of the hospital.

Taking into account the psychical condition of the complainant, which casts a shadow of doubt the relevance of her declaration of will at the moment when she was brought to the hospital by the police, the Protector of Citizens found that hospitalization of the complainant on the basis of her declaration of consent for admission in the hospital was illegal.

A recommendation was issued to the hospital to hospitalize patients in the future cases, when there are reasons to doubt the relevance of the declaration of will of a citizen, i.e. to doubt their judging ability, exclusively in accordance with the regulations providing for involuntary admission of persons with mental disorders, i.e. their involuntary commitment to a psychiatric institution.

7. Proposals for improving the citizens' position in relation to government authorities

1. **The Ministry of Health** should without any further delay implement all necessary activities targeted at rationalization of services in secondary and tertiary psychiatric institutions, focusing on day hospitals and out-patient treatment and should initiate intensive activities on the introduction of the services of community-based mental health protection.
2. It is necessary to delete the provisions on solitary confinement from the Law on Protection of Persons with Mental Disorders and the Bylaw on Detailed Conditions for Use of Physical Restraint and Solitary Confinement of Persons with Mental Disorders Hospitalized for Treatment in Psychiatric Institutions.
3. **Psychiatric institutions** should not hospitalize persons only on the basis of the declaration of consent for admission in the hospital if there are reasons to doubt the relevance of their declaration of will, i.e. their judgement abilities.

¹⁷⁰ Case No. 12-907/12.

4. **The Ministry of Labour, Employment and Social Policy** should without any further delay intensify the activities on comprehensive deinstitutionalization, i.e. reduction of capacities and closing of the existing residential social security institutions, as well as on community-based care for their users.
5. **Residential social security institutions** should immediately stop the practice of solitary confinement of their users.

TREATMENT OF ASYLUM-SEEKERS

I BACKGROUND

1. State's achievements

- 1.1. A Project Group has been formed at the national level to improve the treatment of asylum-seekers.
- 1.2. The Commissariat for Refugees and Migrations provided accommodation for a large number of persons who expressed their intent to seek asylum in Serbia.
- 1.3. The Ministry of Interior and the Commissariat for Refugees and Migrations fully exercise their statutory powers in the process of readmission of Serbian nationals deported from Western European countries.

2. Results achieved by the Protector of Citizens

- 2.1. Through investigations and preventive action, the Protector of Citizens identified omissions and drew the attention of relevant institutions and the public to the increasing challenges and issues associated with the treatment of asylum-seekers and irregular migrants.
- 2.2. Provision of good services and mediation by the Protector of Citizens contributed to the formation of a Project Group at the national level tasked with improving the treatment of asylum-seekers.
- 2.3. In accordance with the recommendations of the Protector of Citizens, the Commissariat for Refugees and Migrations improved the accommodation services provided to persons who expressed intent to seek asylum in Serbia.

3. Shortcomings at the national level

- 3.1. The Ministry of Interior does not act in compliance with the applicable regulations when it finds a foreign national residing in the territory of the Republic of Serbia without valid documents and without proper legal grounds.
- 3.2. The Ministry of Interior has not formed an Asylum Office, a unit with appropriate human resources and technical capacities capable of performing its function in accordance with the law.
- 3.3. The police are extremely inefficient in the process of registration of foreign nationals who expressed intent to seek asylum and in the procedures of granting asylum.

3.4. The Commissariat for Refugees and Migrations has not provided accommodation in the asylum centres for all persons who expressed intent to seek asylum in Serbia.

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

4.1. The Commissariat for Refugees and Migrations has not provided accommodation in the asylum centres for all persons who expressed intent to seek asylum in Serbia, in accordance with the recommendation given by the Protector of Citizens.

4.2. In spite of a recommendation given by the Protector of Citizens, Asylum Centres have continued with the practice of keeping rooms and/or beds for asylum-seekers who were “on leave”.

5. Explanation

In the course of 2013, the Protector of Citizens focused in particular on the situation of asylum-seekers in the Republic of Serbia and on reception of Serbian nationals repatriated from Western European countries under readmission agreements.

After a number of visits to asylum centres, the Protector of Citizens prepared reports¹⁷¹ which highlighted specific irregularities, including in particular the need to provide accommodation and various forms of care to all persons who arrive at such a centre, including in particular families with children. Namely, during the visits, a large number of migrants who received no care or accommodation at all was noticed in the nearby woods around the Asylum Centre in Bogovadja – on average more than 200 them.



Image 10 – Asylum seekers in Bogovadja

171 Cases No. 71-59/13 and No. 12-2255/13.

The Protector of Citizens recognised the issue was not restricted solely to accommodation of persons who expressed intent to seek asylum in Serbia at the asylum centres; instead, there was a fundamental problem with numerous omissions in the work of the Ministry of Interior with irregular migrants found in the country. As a rule, police officers fail to search them, ask for their identity, photograph them and take their biometric data (fingerprints etc.) and to transfer them to a shelter for foreigners or, if they expressed intent to seek asylum in Serbia, to one of the asylum centres. Furthermore, the Ministry has not formed an Asylum Office, a unit with appropriate human resources and technical capacities capable of performing its function in accordance with the law.

Provision of good services and mediation by the Protector of Citizens with a view to improving the work of public administration and promoting the protection of human rights and freedoms contributed to the formation of a Project Group at the national level tasked with improving the treatment of asylum-seekers.

On the basis of the numerous illegalities and irregularities identified during the reporting period, the Protector of Citizens issued a systemic recommendation to the Ministry of Interior and the Commissariat for Refugees and Migrations, with the aim of rectifying the identified irregularities and improving the work in this field.¹⁷²

During 2013, the Protector of Citizens made four visits to “Nikola Tesla” Airport to find facts about the treatment of persons repatriated on the basis of decisions of competent authorities of countries with which Serbia signed readmission agreements. No irregularities were found in the process of reception of those persons by the Ministry of Interior and the Commissariat for Refugees and Migrations is taking all measures within its sphere of competence to provide the necessary support.

6. Typical cases

Keeping rooms and beds at an Asylum Centre for asylum-seekers “on leave”¹⁷³

During his visit to the Asylum Centre in Bogovadja, the Protector of Citizens was greeted by the sight of a large number of families with children who were not accommodated at the Centre, spending their days and nights in the yard of the Centre instead, or in many cases even in the nearby woods. There were more than 200 such persons. However, during a tour of the facilities inside the Centre, the Protector of Citizens saw a number of empty rooms and beds. It was explained to him those were kept for asylum-seekers who had been allowed several days’ leave.

172 Case No. 75-6/14.

173 Case No. 71-176/12.



Image 11 – Protector of Citizens in the Asylum Centre in Bogovadja

The Protector of Citizens issued a recommendation to the Centre to stop the practice of keeping rooms and beds for asylum-seekers “on leave” and to use any vacant space to immediately accommodate those asylum-seekers who are waiting for admission at the Centre. He explained that asylum-seekers are not entitled to their own room or bed at the Centre, but only to shelter in general, noting it was out of place to keep rooms or beds for absent asylum-seekers in a situation of shortage of beds.

The Asylum Centre has not complied with the recommendation of the Protector of Citizens and has continued with this practice throughout the reporting period.

7. Proposals for improving the citizens’ position in relation to government authorities

1. **The Ministry of Interior** should ensure that police officers, upon finding a foreign national without identity documents or any foreign national staying illegally in Serbia, search such person, ask for their identity, photograph them and take their biometric data, enter those data in relevant records and to transfer them to a shelter for foreigners or, if they expressed intent to seek asylum in Serbia, to one of the asylum centres.
2. Any foreign national staying illegally in Serbia will be expelled without undue delay, for which purpose adequate funding will be provided in the national budget.
3. **The Commissariat for Refugees and Migrations** should provide accommodation and various forms of care to all foreign nationals referred/brought to asylum centres.
4. **The Ministry of Interior** should form an Asylum Office, a unit independent from the Border Police Administration with appropriate human resources and technical capacities capable of performing its function in accordance with the law.

5. **The Ministry of Interior** should ensure that, upon the formation of the Asylum Office, due process is observed in response to asylum applications and that the need for restricting the asylum-seeker's movement is assessed on a case-by-case basis.
6. **Asylum centres** shall discontinue the practice of granting asylum-seekers leave outside the centres and the practice of keeping rooms and beds for foreign nationals who left the centre for any reason whatsoever.
7. **The Ministry of Interior** should ensure the expulsion from Serbia of any foreign national who does not apply for asylum within the specified period, whose asylum application is dismissed or rejected or whose case has been closed.

II COMPLAINTS

In the field of rights of persons deprived of liberty, the Protector of Citizens received 290 complaints, with 7 more cases investigated on own initiative.¹⁷⁴ Those 290 complaints accounted for 5.89% of the total number of complaints received by the Protector of Citizens in 2013. The number of complaints in 2013 was about 25% lower than in the previous year.

Chart 19 – Rights of persons deprived of liberty – number of complaints received compared with 2012

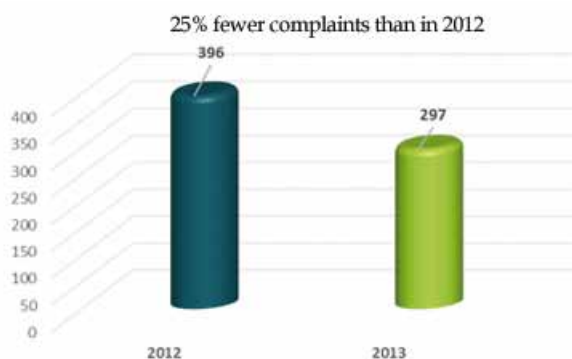
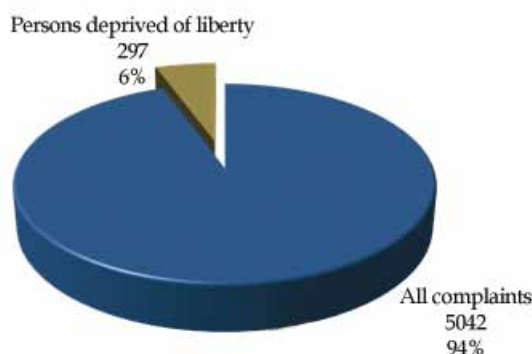


Chart 20 – Rights of persons deprived of liberty – complaints in this field as a share of total complaints



¹⁷⁴ For the purposes of this Report, cases initiated on own initiative are deemed to be complaints.

In 2013, the Protector of Citizens received a total of 297 cases in the field of rights of persons deprived of liberty. He has completed 192 cases received in 2013, while the remaining 105 are still pending.

**Chart 21 – Rights of persons deprived of liberty
– handling of cases in 2013**



In the reporting period, the Protector of Citizens completed a total 365 cases. Of that number, 192 were received in 2013, while the remaining ones were carried forward from earlier years.

**Table 34 – Rights of persons deprived of liberty – outcome
of cases handled in 2013 and in earlier years**

Dismissed complaints	185	50.68%
Unfounded complaints	91	24.93%
Complaint dropped by complainant	42	11.51%
Omissions admitted and rectified by the authorities without conducting full investigation - no need to issue recommendations (closed investigations)	31	8.49%
Cases covered by recommendations	11	6.29%
Complaints giving rise to recommendations	14	3.84%
Death of the complainant	2	0.55%
Total	365	

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

**Table 35 – Rights of persons deprived of liberty – reasons
for dismissal of complaints in 2013**

Declined jurisdiction by PoC - referred to competent authority	83	44.86%
premature complaint - complainant advised on available remedies	73	39.46%
Incomplete complaint	17	9.19%
Anonymous complaint	8	4.32%
Belated complaint	4	2.16%
Total:	185	

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

As can be seen in Table 2, in 84.32% of dismissed complaints the Protector of Citizens gave the citizens legal assistance in the exercise of their rights before the competent authorities.

**Table 36 – Rights of persons deprived of liberty
– assistance provided in the form of legal advice**

	number	percentage
Dismissed complaints	185	100%
Declined jurisdiction - complainant referred to competent authority	83	44.86%
Premature complaint - complainant advised on available remedies	73	39.46%
Total: assistance provided in the form of legal advice	156	84.32%

Pursuant to the complaints received in 2013 and in earlier years, the Protector of Citizens issued a total of 12 recommendations to public authorities in connection with 14 cases. As of 31 December 2012, the competent authorities have implemented 8 recommendations, seven have not been implemented, while the remaining ones are still pending implementation.

Note: the Protector of Citizens, acting in the capacity of the National Preventive Mechanism, issued a total of 263 recommendations in the field of rights of persons deprived of liberty in 2013, which means the total number of recommendations in this field was 275.

**Table 37 – Rights of persons deprived of liberty – compliance
with recommendations issued in 2013**

Recommendations	number	percentage
Total	12	100
Implemented	8	66,67
Unimplemented	1	8,33
implementation pending	3	25,00

In this field, 319 different violations of rights have been identified pursuant to 297 complaints. The largest number of complaints pointed to violations of civil and political rights, special rights of persons deprived of liberty and economic and social rights. However, some of the complainants also complained against violations of the right to good governance.

Table 38 – Rights of persons deprived of liberty – violations of rights reported by complainants

Civil and political	116	39.06%
Special rights of persons deprived of liberty	112	37.71%
Economic, social and cultural	91	30.64%
Right to good governance	62	20.88%
Total	319	

The most frequently violated civil and political rights of persons deprived of liberty were the right to a fair trial and the right to a trial within a reasonable time, the right to protection against torture and inhuman and degrading treatment and the right to inviolability of physical and mental integrity.

Table 39 – Special rights of persons deprived of liberty, their number and percentage

Type of right violated	Number	%	Type of right violated	Number	%
Accommodation	16	14.29%	Right to receive parcels and remittances	4	3.57%
Right to transfer	11	9.82%	Amnesty	4	3.57%
Placement	11	9.82%	Hygiene	4	3.57%
Meals and canteen	9	8.04%	Suspension of prison sentence	3	2.68%
Right to stay in a separate room	9	8.04%	Right to submission, complaint and appeal by a convicted person	3	2.68%
Disciplinary procedure	7	6.25%	Free time outside enclosed spaces	3	2.68%
Special rights of a convicted person	7	6.25%	Clothes, underwear, footwear	1	0.89%
Categorisation	7	6.25%	Isolation	1	0.89%
Parole	5	4.46%	Right to phone calls	1	0.89%
Right to receive visits	5	4.46%	Right of leave	1	0.89%

Most of the complaints pointed to violations of rights by institutions in charge of enforcing penal sanctions. As many persons deprived of liberty complain against the actions of judicial authorities, including in particular cases of violation of the right to a fair trial, judicial authorities account for a large number of their complaints. As regards ministries, the largest numbers of complaints related to the Ministry of Interior and the Ministry of Justice.

III OTHER ACTIVITIES

In connection with the recommendations and reports issued in 2013, the Protector of Citizens launched a process of permanent cooperative dialogue with the Administration for Enforcement of Penal Sanctions Ministry of Justice and Public Administration, the Penal-Correctional Facility in Sremska Mitrovica, the Ministry of Health, the Special Psychiatric Hospital "Sveti Vracevi" in Novi Knjazevac, the Ministry of Interior, the Police Administration of the City of Belgrade and the Commissariat for Refugees and Migrations.

On the UN International Day in Support of Victims of Torture, the 26th of June, the National Assembly held a public hearing of the Annual Report submitted by the Protector of Citizens in his capacity of the National Preventive Mechanism.

A roundtable on the topic "Prevention and Punishment for Torture" was held in December. The roundtable was attended by members of all competent public authorities and the professional community and dealt with the challenges faced by the Republic of Serbia in the prevention of torture and punishment of committers of the criminal offence of abuse.



Image 11 – Roundtable on Impunity

The Protector of Citizens took a number of activities to protect the rights of asylum-seekers. In line with his commitment to improving the actions taken by public authorities in this field, the Protector of Citizens participated in a number of meetings with members of international organisations and the civil sector. The Protector of Citizens took part in several meetings of the Project Group (and subgroup) of the Government of the Republic of Serbia formed to address the issue of asylum-seekers.

With the aim of promoting the work of the Protector of Citizens and prevention of torture, the Deputy Protector of Citizens in charge of protection of persons deprived of liberty delivered a lecture to the students of the University School of Law, the University School of Medicine and the University School of Special Education and Rehabilitation, as well as a lecture at the Physicians' Chamber of Kragujevac.

During 2013, the Protector of Citizens participated in the projects of the civil society organisations with which he cooperates in the prevention of abuse.

Within the framework of the Torture Prevention and Victim Rehabilitation Programme, implemented by the International Assistance Network (IAN), a seminar titled "Institution and Freedom – about the Deinstitutionalisation Process and Experiences from Italy" and a conference titled "Prevention of Torture and Rehabilitation of Victims" were held. Under the

project “United against Torture”, the Protector of Citizens participated together with IAN in the consultations on the Platform for the Role and Cooperation of Civil Society Organisations in the Work of NPM and helped organise the seminar *The Role of Civil Society and Experts in the Work of NPM – Experiences and Challenges*. Within the framework of the project “United against Torture”, the Protector of Citizens participated in public debates about torture and the NPM organised for students and inhabitants of a Roma settlement.

Together with the Helsinki Human Rights Committee in Serbia, the Protector of Citizens took part in the projects “Strengthening the National Preventive Mechanism and Advocating the Rights of Institutionalised Persons” and “Prison System Reform in Serbia 2012-2013”. Within the framework of these projects, two study visits to the Netherlands were organised for the NPM staff, trainings were held for the staff of closed-type institutions in Nis, Belgrade and Novi Sad on the subject “The Role and Importance of the National Preventive Mechanism in the Prevention of Torture” and a conference was held under the title “Cooperation between the Civil Society and the State in the Deinstitutionalisation Process”. In cooperation with the Mental Disability Rights Initiative of Serbia (MDRI-S), the Protector of Citizens held a seminar titled “The Role of Various Stakeholders in Monitoring and Protection of Rights of Children with Developmental Disorders and Adults with Disabilities in Closed-type Institutions”.

IV NATIONAL PREVENTIVE MECHANISM

Under the Law on Amendments to the Law on Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁷⁵, enacted on 28 July 2011¹⁷⁶, the Protector of Citizens is mandated to perform the tasks of the National Preventive Mechanism against Torture (hereinafter referred to as “NPM”), in cooperation with the ombudsmen of Autonomous Provinces and associations whose statutes envisage the objective of promoting and protecting human rights and freedoms. During the reporting period, the Protector of Citizens in the capacity of NPM cooperated with the Provincial Ombudsman of the Autonomous Province of Vojvodina and nine non-governmental organisations in charge of systemic monitoring of the situation of persons deprived of liberty in specific areas under relevant agreements, including: the Belgrade Centre for Human Rights (in the field of use of police powers), JUKOM (in the field of detention), the Helsinki Committee in Serbia (in the field of enforcement of penal sanctions), the International Assistance Network (in the field of rights of persons with mental disorders in detention), MDRI (in the field of rights of persons with disabilities in social security institutions), the Victimology Society of Serbia (in the field of rights of women in the prison system), the Human Rights Centre of Nis (in the field of rights of persons with disabilities in the prison system), the Human Rights Committee of Valjevo and Dialogue Valjevo (in the field of rights of juveniles in the prison system).

In 2013, NPM made 78 visits to institutions where persons deprived of liberty are held. These included 44 police stations, 11 prisons, 2 psychiatric hospitals, 1 residential social security institution, 15 private homes for the elderly and 2 asylum centres. In addition, the Protector of Citizens also performed 4 monitoring procedures in case of persons repatriated in the readmission at the “Nikola Tesla” Airport. On the basis of these visits, the NPM sends reports

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

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

to the visited institutions with recommendations for rectifying the identified shortcomings that result or may result in torture or ill-treatment. In 2013, the Protector of Citizens made 29 reports of visits in which he issued a total of 275 recommendations to competent authorities.

In connection with the recommendations and reports issued in 2013, the NPM launched a process of permanent cooperative dialogue with the Administration for Enforcement of Penal Sanctions Ministry of Justice and Public Administration, the Penal-Correctional Facility in Sremska Mitrovica, the Ministry of Health, the Special Psychiatric Hospital "Sveti Vracevi" in Novi Knjazevac, the Ministry of Interior, the Police Administration of the City of Belgrade and the Commissariat for Refugees and Migrations.

As regards regional cooperation, in March 2013 the NPM held a meeting in Belgrade in which the NPM Network of Southeast European Countries was formed¹⁷⁷. The next meeting of the NPM Network, held once again in Belgrade in October, members of the Medical Group gathered to analyse the current situation in the region, the role of physicians in the work of NPMs and the applicable standards in the field of protection of the right of persons deprived of liberty to health care.

On the UN International Day in Support of Victims of Torture, the 26th of June, the National Assembly held a public hearing of the 2012 Annual NPM Report, attended by representatives of all relevant public authorities, independent authorities, international organisations, the professional community and the civil society.

A roundtable on the topic "Prevention and Punishment for Torture" was held in December. The roundtable was attended by members of all competent public authorities and the professional community and dealt with the challenges faced by the Republic of Serbia in the prevention of torture and punishment of committers of the criminal offence of abuse. Implementation of the conclusions and recommendations of this roundtable will be monitored systematically in 2014.

What next – the future of NPM

In the past period, the Protector of Citizens developed a work methodology and conducted a number of activities in his capacity as NPM. The NPM has so far visited more than 140 institutions and produced reports of those visits, with the aim of preventing ill-treatment. About 600 recommendations for rectification of the identified shortcomings have been issued and nearly all of them have been accepted. The Protector of Citizens launched a cooperative dialogue with the visited institutions to ensure compliance with the recommendations. In his capacity as NPM, the Protector of Citizens established cooperation with the Provincial Ombudsman and 14 non-governmental organisations. He has developed excellent cooperative relations with numerous NPMs and is the founder of the NPM Network of Southeast European Countries, which has been joined by NPMs outside the region. He has also published several publications on the prevention of torture. Numerous workshops and conferences have been held and a public hearing has been convened at the National Assembly in connection with the previous annual report of the NPM. The NPM maintains permanent contact with the UN Subcommittee on the Prevention of Torture. All of this has been

¹⁷⁷ Members of the network are: NPM of Albania, NPM of Croatia, NPM of Macedonia, NPM of Montenegro, NPM of Serbia, NPM of Slovenia and the Ombudsman of Bosnia and Herzegovina. In October they were joined by NPM of Austria.

achieved because the Protector of Citizens, in this initial stage, redirected his other available resources allocated for his general competences to the duties of the NPM. As a consequence, other duties of the Protector of Citizens were performed with reduced resources in order to keep the NPM commitments.

The Protector of Citizens is disappointed to note that conditions have not been provided for further operation of the NPM with the same volume of work and with the same quality in accordance with the Optional Protocol. Namely, efficient operation of the NPM under the current circumstances would require an autonomous organisational unit to be set up within the Secretariat of the Protector of Citizens, staffed with minimum five employees and provided with independent funding estimated by the Protector of Citizens at about 10% of the Protector's budget. In view of these considerations, until all necessary conditions are provided for proper operations of the NPM, the Protector of Citizens will be forced to reduce the volume of his activities in the role of the NPM. If the required capacities are not provided, this will harm the national interest of protecting and promoting respect for human rights.

2.6. SECTORS OF EDUCATION AND SCIENCE, YOUTH AND SPORT, CULTURE, INFORMATION AND INFORMATION SOCIETY AND INTELLECTUAL PROPERTY

EDUCATION AND SCIENCE

I BACKGROUND

1. State's achievements

- 1.1. The Law on Primary Education was adopted.¹⁷⁸
- 1.2. The Law on Secondary Education was adopted.¹⁷⁹
- 1.3. The Law on Adult Education was adopted.¹⁸⁰
- 1.4. The Law on Amendments to the Law on Fundamentals of the Education System was adopted.¹⁸¹
- 1.5. The Law on Amendments to the Law on Higher Education was adopted.¹⁸²
- 1.6. The Law on Amendments to the Law on Pupil and Student Standard was adopted.¹⁸³
- 1.7. The Ministry of Education, Science and Technological Development intensified its work on passing and harmonization of secondary legislation.

2. Results achieved by the Protector of Citizens

- 2.1. By launching an investigation of regularity and legality of the work of the Ministry of Education, Science and Technological Development, the Protector of Citizens

178 Official Gazette of RS No. 55/13.

179 Official Gazette of RS No. 55/13.

180 Official Gazette of RS No. 55/13.

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

182 Official Gazette of RS No. 76/05, 100/07 - authentic interpretation, 97/08, 44/10, 93/12 and 89/13.

183 Official Gazette of RS No. 18/10 and 55/13.

contributed to intensification of the work of this Ministry on passing and harmonization of secondary legislation.

- 2.2. By complying with a recommendation issued by the Protector of Citizens, the Ministry of Education, Science and Technological Development rectified the irregularity which caused damage to a number of students of the Faculty of Architecture of the University in Belgrade.
- 2.3. After launching of investigations by Protector of Citizens, the Ministry of Education, Science and Technological Development, educational institutions and higher education institutions rectified irregularities in their work by sending replies and decisions on citizens' requests.
- 2.4. Public announcements of the Protector of Citizens provided more information on the case of "primary school graduation examination" to the citizens and emphasized a number of problems in organization of this examination.

3. Shortcomings at the national level

- 3.1. Ministry of Education, Science and Technological Development, educational institutions and higher education institutions do not decide on citizens' requests and do not always reply to them timely, efficiently and within the stipulated time limits.
- 3.2. The work of education inspectors is not always carried out timely and efficiently and supervisory powers the education inspector of the Ministry of Education, Science and Technological Development has over educational inspectors in local self-government units are not implemented.
- 3.3. The National Qualifications Framework in Serbia, i.e. the system of national qualifications from the first to the fifth level, has not been adopted.
- 3.4. The Law on Textbooks has not been passed, which would regulate the manner and the procedure of the assessment of quality, publishing, approval of textbooks and teaching materials and their purchase.¹⁸⁴

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

- 4.1. No actions have been taken to implement the following proposals for improving the citizens' position in relation to public authorities set out in the 2012 Annual Report of the Protector of Citizens:
 - Recommendation to ensure efficient and timely launching and carrying out of investigations with the aim to establish personal responsibility of employees in schools for violation of ban on violence, abuse and neglect, for negligence at work and for omissions in implementation of the measures to protect children from violence, abuse and neglect.¹⁸⁵

184 See more in the part of this Report dedicated to child rights.

185 The Annual Report of the Protector of Citizens for 2012, p. 159.

- Recommendation that the Ministry of Education, Science and Technological Development, educational institutions and higher education institutions act timely and efficiently on citizens' requests,
- Recommendation that the Ministry of Education, Science and Technological Development take appropriate measures to ensure efficiency of the work of the education inspectorate.

5. Explanation

Unlike the previous reporting periods, the cooperation between the Ministry of Education, Science and Technological Development and the Protector of Citizens has been significantly improved, both in terms of timeliness in submission of requested explanations and information and in terms of acting on recommendations issued by the Protector of Citizens. Unfortunately, the established cooperation was tainted by the public debate between the Ministry and the Protector of Citizens regarding numerous omissions made by the Ministry after it was found that there are possible irregularities in organization of the primary school graduation examination.

A day after the first primary school graduation examination was organized, it was clear that the test was distributed without authorisation, was available on the Internet and was illegally sold around schools. It was found that an employee in the printing office where the tests were printed violated the security procedures and took out copies of the tests. The Ministry decided not to take into account the results achieved at the primary school graduation examination for ranking of candidates for enrolment in secondary schools. This decision changed the criteria for scoring of pupils and thus also ranking for enrolment in secondary schools.

The Protector of Citizens focused on obvious unlawfulness and omissions of education authorities in addressing of this situation, but also on rejection of the competent authorities and their managers to take responsibility for the omissions made which would affect the entire generation of secondary school pupils. The worrying attitude of the Ministry towards its own responsibility culminated in an attempt to ban public criticism and to challenge the expertise and powers of the Protector of Citizens and other authorities to give their opinions on the omissions unprecedented in the history of Serbian education system.

The Ministry, educational institutions and higher education institutions often reply to citizens' requests too late. Although the authority of the Protector of Citizens indisputably contributed to completion of a number of procedures before this authority and these institutions, the Protector of Citizens believes that deciding and provision of information to the citizens must not wait until the Protector of Citizens responds on the citizens' complaints, but must instead be timely, efficient and in accordance with the time limits stipulated by the law.

Passing and harmonization of bylaws which regulate types of qualifications of teachers, assistant teachers, nursery-school teachers and technical staff for work in primary schools, secondary vocational schools and comprehensive secondary schools eliminated a significant cause of a number of issues in connection with the employment in the education sector. This secondary legislation is now being adjusted to the titles acquired in accordance with the Law on Higher Education and general enactments of higher education institutions.

Education inspectors in local self-government units often carry out inspections untimely, fail to carry out control inspections and rarely use other powers stipulated if an institution

under inspection rejects to comply with the required measures. On the other hand, the Ministry of Education, Science and Technological Development rarely uses the supervision powers it has as an authority which supervises the proper implementation of the law.

The National Qualifications Framework in Serbia (NQFS), as an instrument the implementation of which establishes the qualifications system adjusted to the requirements of social and economic development and improves the quality of education offer, was adopted for qualifications in higher education in 2010. However, NQFS has not been adopted for qualifications in the first five levels of education. Drafting of this document is underway, but the Minister of Education, Science and Technological Development also appointed the working group for the development of the Draft Single National Qualifications Framework.

The Ministry passed the Bylaw on Standards of Competences of Directors of Education Institutions¹⁸⁶, which ensured detailed regulation of training and examinations for directors of education institutions.

Examination periods, the amount of tuition fees, the service provided by higher education institutions, the issue of student scholarships and loans, as well as the issues of enrolment at various levels of studies are the problems most frequently reported to the Protector of Citizens by students.

The Protector of Citizens and the Ministry of Education, Science and Technological Development recognized the problem of the recognition of higher education certificates obtained abroad. At meetings of these two authorities, the Ministry emphasized that in passing of the new Law on Higher Education, special attention would be paid to the issue of the recognition of higher education certificates obtained abroad in the Republic of Serbia.

II TYPICAL CASES

Recommendation issued by the protector of citizens resulted in inspection of the work of the faculty of architecture

The Protector of Citizens identified an omission in the work of the Ministry of Education, Science and Technological Development because the Ministry failed to carry out an inspection of the work of the Faculty of Architecture of the University in Belgrade upon reports sent by students. A recommendation was issued to the Ministry to act on reports without delay, to carry out an inspection of the work of the Faculty and to take measures from its sphere of competence. The Ministry informed the Protector of Citizens that it carried out the inspection, identified omissions in the work of the Faculty and ordered the Faculty to rectify them.

Endorsement and publishing of an international agreement is a condition for its implementation

The Protector of Citizens found that the Agreement on Mutual Recognition of Education Documents and Regulation of Status-Related Issues of Pupils and Students, concluded between the Republic of Serbia and Republika Srpska has not been endorsed and published in the "Official Gazette of the Republic of Serbia". A recommendation was issued to the Ministry of

186 Official Gazette of RS No. 38/13

Education, Science and Technological Development to take measures with the aim to endorse and publish this Agreement and that in the future it does not act according to the international agreements which have not been endorsed and published in accordance with the Constitution of the Republic of Serbia. The Ministry prepared the draft law on endorsement of this Agreement, which was submitted to the Ministry of Foreign Affairs.

The case of primary school graduation examination in 2013

The end of school year 2012/13 was marked by the annulment of results of the primary school graduation examination, which includes examination in Serbian language/mother tongue and mathematics. The result of the primary school graduation examination is one of the key criteria for ranking for enrolment in secondary schools. The tests for primary school graduation examination found their way to the public before the examination was organized, which had to be prevented, but since it was not prevented, the examination had to be organized again with new assignments within the shortest possible period of time. The Ministry of Education, Science and Technological Development denied for days that the tests reached the public and spent valuable time during which another examination could be organized and after it was publicly proven that the tests reached the public, it denied any responsibility for that, although the Minister appointed his assistant as the president of the Republic Commission for organization of primary school graduation examination and delegated him by an official enactment the duty, the authority and the resources to ensure secrecy of tests.

The Ministry failed to respond when it was possible to eliminate or mitigate the consequences of omissions without causing additional damage to pupils and the Protector of Citizens, for the first time since this institution has been formed, was unable to recommend measures for rectification of omissions because any recommendation would lead to additional violations of child's rights and would have consequences on children who already suffered the damage. Due to the constant rejection of the Minister of Education to accept that the Ministry made any omission in its work, the Protector of Citizens publicly said that responsibility for the huge damage and violation of pupils' rights must be sought at the highest level of the Ministry. During the reconstruction of the Government which was carried out soon after this, another person was appointed as the Minister.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION
IN RELATION TO THE AUTHORITIES

1. **The Ministry of Education, Science and Technological Development** should prepare and submit to the Government the Draft Law on Higher Education.
2. **The Ministry of Education, Science and Technological Development** should regulate the procedure of recognition of foreign higher education certificates by the Draft Law on Higher Education.
3. **The Ministry of Education, Science and Technological Development** should propose and **the competent authority** should adopt the single National Qualifications Framework in Serbia, i.e. **the competent authority** should adopt the National Qualifications Framework in Serbia – the system of national qualifications from the first to the fifth level.

4. **The Minister of Education, Science and Technological Development** should pass a bylaw which would regulate training and examinations for directors of education institutions.
5. **The Ministry of Education, Science and Technological Development** should ensure timely and efficient actions of education inspectors.
6. **The Ministry of Education, Science and Technological Development** should ensure timely and efficient replies to all requests sent both to the Ministry and education institutions and higher education institutions within the time limits specified by the law.
7. **The Ministry of Education, Science and Technological Development** and **education inspectorates of local self-government units** should at much larger extent control actions of education institutions in cases of violence over pupils.
8. **The Ministry of Education, Science and Technological Development** and **education inspectorates of local self-government units** should ensure efficient and timely launching and carrying out of procedures with the aim to establish personal responsibility of employees in schools for violation of ban on violence, abuse and neglect, for negligence at work and for omissions in implementation of the measures to protect children from violence, abuse and neglect.
9. **The Ministry of Education, Science and Technological Development** should prepare text of a new law regulating approval, publishing and purchase of textbooks and other teaching materials, taking into account opinions of the professional community.

YOUTH AND SPORT

I BACKGROUND

1. State's achievements

- 1.1. The working version of the Draft Law on Amendments to the Law on Prevention of Doping in Sports was prepared and was made available for consultation.
- 1.2. The Decree on National Recognitions and Financial Awards was passed.¹⁸⁷
- 1.3. The Bylaw on Operating Licence for Sport Experts was passed.¹⁸⁸
- 1.4. The Bylaw on Professional Training for Certain Technical Tasks in Sport was passed.¹⁸⁹

2. Results achieved by the Protector of Citizens

- 2.1. By launching investigation of legality and regularity of the work of the Ministry of Youth and Sport, the Protector of Citizens emphasized that the procedure on the Public Call for Proposal of Candidates for Membership in the Youth Council should be transparent and the Call should be available to all potential candidates.

187 Official Gazette of RS No. 8/13.

188 Official Gazette of RS No. 7/13.

189 Official Gazette of RS No. 7/13.

- 2.2. After investigation of legality and regularity of the work of the Ministry of Youth and Sport, an administrative authority passed the Bylaw on Operating Licence for Sport Experts and the Bylaw on Professional Training for Certain Technical Tasks in Sport.

3. Shortcomings at the national level

- 3.1. Competition procedure for selection of members of the Government's Youth Council is not transparent enough.
- 3.2. The field of contracting between sport clubs/organizations with underage athletes is not regulated to the detriment of children-athletes as economically incomparably weaker party.

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

- 4.1. The Protector of Citizens submitted to the Ministry of Youth and Sport the Initiative to amend the Law on Sport.

5. Explanation

After analysing the implementation of the Law on Prevention of Doping in Sport so far, the Ministry of Youth and Sport identified shortcomings and vagueness and initiated the work on amendments to the Law on Prevention of Doping in Sport. These amendments are also targeted at harmonization of Serbian regulations with the International Convention against Doping in Sport¹⁹⁰ and the World Anti-Doping Code¹⁹¹.

On the basis of the Law on Sport, on proposal from the Ministry of Youth and Sport, the Government passed the Decree on National Recognitions and Financial Awards¹⁹², which specifies in detail the terms and conditions of and the amount of national sport recognitions and financial awards. The Protector of Citizens expressed his opinion long ago that the content of the recognition cannot be a lifelong income in a certain significant amount, without taking into account the relevant circumstances (social status, commerciality of sport etc.) and that the total amount of national recognition, which is increased by each national success in sport, would reach a point when it would put at risk financing of other aspects of sport such as sport for all, school sport, sport infrastructure etc., but this opinion has not been fundamentally recognized even during the reporting period.

After the Protector of Citizens launched investigation of legality and regularity of the announcement of the Public Call for Proposal/Application of Candidates for Membership in the Youth Council and after a meeting was held between representatives of the Protector of Citizens and the Ministry of Youth and Sport, the Ministry cancelled the Public Call, taking into account the remark made by the Protector of Citizens that the Call was announced in violation of the Law on Youth. The Ministry of Youth and Sport did not make the new Public

190 Available at: <http://www.mos.gov.rs/јавна-расправа.361.html>.

191 Available at: <http://www.mos.gov.rs/јавна-расправа.361.html>.

192 Official Gazette of RS No. 8/13.

Call for Proposal/Application of Candidates for Membership in the Youth Council, published on 7 June 2013, transparent enough and available to all potential candidates.

Taking into account that a large number of children at early age choose to actively take up sports and particular vulnerability of children who in sport may be exposed to various forms of exploitation, the Protector of Citizens concluded that the Law on Sport should be amended by the provisions which regulate the field of contracting between children athletes and sport organizations, with the aim to better protect children and prevent exploitation children athletes. Because of this, the Protector of Citizens submitted to the Ministry of Youth and Sport the Initiative to amend the Law on Sport.

After the Protector of Citizens launched investigation of legality and regularity of the work of the Ministry of Youth and Sport because it failed to pass relevant secondary legislation in the field of sport, the Ministry of Youth and Sport passed the Bylaw on Operating Licence for Sport Experts and the Bylaw on Professional Training for Certain Technical Tasks in Sport which regulate the terms for issuing and withdrawal of operating licences for sport experts, as well as terms regarding equipment and human resources for professional training.

II TYPICAL CASES

Ministry passed Secondary Legislation in the Field of Sport

The Protector of Citizens received a complaint against the work of the Ministry of Youth and Sport which indicated the problem the students in higher vocational sport schools face because secondary legislation has not been passed to regulate the terms for professional training for work in the field of sport.

After an investigation was launched, the Ministry passed bylaws which regulate professional training and work of sport experts.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION IN RELATION TO THE AUTHORITIES

1. **The Ministry of Youth and Sport** should improve the transparency of public calls and competitions.
1. **The Ministry of Youth and Sport** should amend the Law on Sport and should regulate the field of contracting between sport clubs/organizations and underage athletes.

CULTURE AND INFORMATION

I BACKGROUND

1. State's achievements

- 1.1. The Draft Law on Electronic Media has been prepared.
- 1.2. The Draft Law on Public Media Services has been prepared.
- 1.3. The "independent" Commission for Investigation of Murders of Journalists has been formed.

2. Results achieved by the Protector of Citizens

- 2.1. In the recommendations issued to the Ministry of Culture and Information, the Protector of Citizens emphasized the need to improve the competition procedure for awarding recognition for outstanding contribution to the national culture and culture of national minorities.
- 2.2. By his actions, the Protector of Citizens prompted public authorities to control compliance of media reporting with the Law on Public Information to a larger extent.

3. Shortcomings at the national level

- 3.1. Shortcomings in the media regulations result in insufficient transparency of ownership over the media and preferential market position for the media supported for public sources.
- 3.2. Privatization of the media founded by local self-governments, which was specified by the law, was terminated and possible new legal arrangement has not been passed.
- 3.3. An adequate model for the exercise of the right to information as one of minority rights has not been introduced. The legal consistency of the arrangement is disputable, according to which founders of the media can be National Councils of National Minorities, while an alternative arrangement which would preserve that minority right has not been found.
- 3.4. Journalists are still in certain cases exposed to attacks and threats. Certain journalists are under police protection for years.
- 3.5. The work of the "independent" Commission for Investigation of Murders of Journalists has not resulted in the arrest of the committers or instigators.
- 3.6. The decree regulating detailed conditions for and the manner of awarding of recognition for outstanding contribution to the national culture and culture of national minorities¹⁹³, for which Protector of Citizens found that it contains deficiencies, is still in effect.
- 3.7. The authorities controlling the implementation of the Law on Public Information do not carry out their function fully and timely.

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

- 4.1. There are no recommendations or other acts of the Protector of Citizens that have not been implemented in this sector.

5. Explanation

The Ministry of Culture and Information prepared the Draft Law on Electronic Media and the Draft Law on Public Services and initiated public debates for these laws. In that manner, it provided an opportunity for the expert society and the general public to give their opinions about these texts of laws.

193 Official Gazette of RS No. 36/10.

The independence of the Commission for Investigation of Murders of Journalists and non-existence of conflict of interests of the member of the Commission are disputable because high representatives of executive authorities are included in its composition, among which are also the authorities that are competent for investigation of murders and it would be expected that such authorities are subject to review by the Commission.

The Protector of Citizens found that the Decree on Detailed Conditions for and the Manner of Awarding of Recognition for Outstanding Contribution to the National Culture and Culture of National Minorities contains legal shortcomings which prevent participants in a competition from receiving individual decisions with instructions on legal remedy in connection with applications for the award of recognition for outstanding contribution to the national culture and culture of national minorities. The Protector of Citizens recommended to the Ministry of Culture and Information to propose to the Government amendment to the Decree which would provide the following to each participant in a competition: to receive a decision of the Commission on Determining Proposals for the Award of Recognitions pursuant to applications with explained reasons and facts which were relevant for such decision; and to use a legal remedy against the Commission's decision with which he/she is not satisfied.

The Ministry of Culture and Information expressed willingness to initiate passing of secondary legislation regulating this field after amendments are made to the Law on Culture¹⁹⁴ which would improve the provisions regulating the award of recognition for outstanding contribution to the national culture, taking into account the recommendations issued by the Protector of Citizens.

II TYPICAL CASES

Ministry acts on reports of trade unions after launching of investigation

The Protector of Citizens received a complaint against the actions taken by the Ministry of Culture and Information pursuant to reports against unlawful acting of the bodies of the institution Ensemble "Kolo", as well as against non-compliance between the Statute of the institution and the law.

After investigation was launched by the Protector of Citizens, the Ministry took all the measures specified by the law and new bodies of the institution were elected and the new Statute passed, while the procedure before the Protector of Citizens was closed.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION IN RELATION TO THE AUTHORITIES

2. **The Ministry of Culture and Information** should specify clear criteria and rules for the award of recognition for outstanding contribution to the national culture and cultures of national minorities.
3. **The Ministry of Culture and Information and the Republic Broadcasting Agency** should intensify control, particularly *ex officio*, and take all measures specified by the law in cases when the media act in violation of the law during reporting.

194 Official Gazette of RS No. 72/09.

2.7. HEALTH SECTOR

I BACKGROUND

1. State's achievements

- 1.1. The Law on Patients' Rights was passed.¹⁹⁵
- 1.2. The Law on Exercise of Right to Health Care of Children, Pregnant Women and Nursing Mothers was passed.¹⁹⁶
- 1.3. The Bylaw on the Manner of Acting on Complaints, the Form and Content of the Protocol and the Report of the Advisor of Protection of Patients' Rights was passed.¹⁹⁷
- 1.4. The Bylaw on the Form and Content of Official Identity Document of the Advisor for Protection of Patients' Rights was passed.¹⁹⁸
- 1.5. The Bylaw on the Manner and Procedure of Protection of the Rights of Insured Persons.¹⁹⁹

2. Results achieved by the Protector of Citizens

- 2.1. Most of the proposals and suggestions the Protector of Citizens gave in his opinion on the Draft Law on Patients' Rights were included in the text of the Law on Patients' Rights.
- 2.2. On the initiative of the Protector of Citizens, replacement of the existing health insurance documents was suspended.
- 2.3. Argued warnings of the Protector of Citizens about the abuse of additional work in health institutions contributed to the submission of the Draft Law on Amendments to the Law on Health Care²⁰⁰ to parliamentary procedure.

195 Official Gazette of RS No. 45/13.

196 See the part on gender equality of this Report.

197 Official Gazette of RS No. 71/13.

198 Official Gazette of RS No. 71/13.

199 Official Gazette of RS No. 68/13.

200 Available at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/5076-13.pdf.

- 2.4. The Protector of Citizens recommended to the Ministry of Health²⁰¹ to ensure adequate premises for admission of and communication with patients during working hours.

3. Shortcomings at the national level

- 3.1. According to the Euro Health Consumer Index for 2013 (EHCI 2013), the Republic of Serbia scored last for the second year in a row among the countries the health systems of which are included in the survey.²⁰²
- 3.2. Due to late payment of contributions by employers and lack of efficient mechanism for cooperation and exchange of information between the competent authorities, the right to health insurance and health care of a number of employees and their families is not protected at the moment, regardless of the constitutional guarantees.
- 3.3. A significant number of Serbian citizens do not receive timely and quality health care.
- 3.4. Patients are not sufficiently informed about their rights and health professionals do not invest enough efforts to change such situation.
- 3.5. Health care is not equally available to all citizens of the Republic of Serbia, while the citizens living at great distances from administrative centres or in rural areas have least access to health care.
- 3.6. As in the previous years, the position of employees in the health care sector is burdened by a number of problems.

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

- 4.1. No action have been take to implement the following proposals for improvement of the position of citizens in relation to administrative authorities included in the Annual Report of the Protector of Citizens for 2012:
- Proposal for the Ministry of Health to improve its operations with the aim to ensure promptness in its work, to improve communication with the citizens and to ensure smooth and timely provision of information to patients and citizens, both in direct communication and by telephone and other available means of communication.
 - Proposal for the Republic Health Insurance Fund and the Tax Administration of the Ministry of Finance exercise their statutory powers and exchange information of payment of insurance contributions in an updated manner.

5. Explanation

The Law on Patients' Rights, in the passing of which the Protector of Citizens actively participated with most of his proposals and suggestions largely adopted, extended the range of patients' rights and introduced new mechanism for the protection of those rights.

201 Available at: <http://www.ombudsman.rs/index.php/lang-sr/2012-02-07-14-03-33/3133-2013-12-30-19-23-29>.

202 Available at: http://www.parlament.gov.rs/21._sednica_Odbora_za_zdravlje_i_porodicu.20697.941.html.

Passing of this Law eliminated the deficiencies of the previous mechanism for the protection of patients' rights through consulting the protector of patients' right, which was regulated by only one article of the Law on Health Care as the right to objection. The Law on Patients' Rights stipulates that local self-government authorities will become competent for the protection of patients' rights and will appoint advisors competent for the protection of patients' rights. An advisor cannot be an employee in a health institution the operations of which he/she should control, which reduces the risk of partiality and lack of objectivity.

The Draft Law on Amendments to the Law on Health Care, which has been in the parliamentary procedure since 2013, stipulates amendments to, i.e. repeal of the applicable provision of the Law on Health Care which regulates the manner of organization and carrying out of additional work. The organized carrying out of additional work in health institutions is repealed. Carrying out of additional work for another employer, outside regular working hours in the duration of maximum one third of full working hours is left as a possibility only for health professionals, but not for paramedics or other persons employed in a health institution, as stipulated by the currently applicable legal provisions.

The Bylaw on the Manner and Procedure of Protection of the Rights of Insured Persons introduces the new internal control mechanism for protection of the rights of persons insured with the Republic Health Insurance Fund. A person appointed by the Fund will be competent exclusively for the protection of the rights of insured persons in health institutions with which the Fund concluded contracts on the provision of health care to insured persons.

At its session held on the initiative of the Protector of Citizens, the Parliamentary Health and Family Committee concluded to suspend replacement of the existing health insurance documents by plastic health insurance cards by 2016. To ensure this, it was agreed that the Ministry of Health propose postponing of the issuance of plastic health insurance cards from 2014 to 2016 or 2017.

The lack of adequate premises where the Ministry of Health would in an appropriate manner inform patients about their rights, duties and the manner of the exercise of rights and duties, as well as about other issues from the sphere of competence of this Ministry prompted the Protector of Citizens to issue a recommendation in connection with that to this public authority.

Public authorities do not ensure protection of the right of employees and their family members to health insurance. The right to health insurance was suspended to a number of citizens due to late payment of contributions by employers. For other citizens this right is at risk because it directly depends on whether the payer of "their" contributions will begin paying the public revenues regularly, how efficient administrative authorities are in their work and whether they belong to a vulnerable group whose right to health care the Republic of Serbia unconditionally protects.

Most of individual issues the citizens report also include the essential problems – lack of financial funds and (trained) human resources. After the Law on Patients' Rights entered into force, more rights have been guaranteed to the citizens. In practice, due to lack of financial funds, problems in organization of the work and lack of trained human resources, such rights are not sufficiently exercised. The efficiency of the exercise of citizens' right to health care mostly depends on the organization of work with patients and technical equipment and human resources. There are examples of certain health institutions which have state-of-the-art medical devices, but such devices are not used due to the lack of human resources trained to operate them.

The citizens do not have enough knowledge about health care and health insurance rights, such as the rights in case of appointment of certain specialist and consultative and diagnostic examinations, for which forming of the “waiting list” is not stipulated, nor are they sufficiently informed about the mechanisms for protection of patients’ rights and rights of persons insured with the Republic Health Insurance fund, while health institutions and the Ministry of Health do not invest efforts in changing of such situation.

Health professionals faced similar problems again in this reporting period. There are still the so-called contracted and uncontracted employees, i.e. employees whose salaries and other emoluments are provided from the funds of the Republic Health Insurance Fund and employees whose salaries are provided from the funds of individual health institutions and payments of these salaries depend on the earnings made by a health institution through the provision of health services in the market. The citizens report abuse of fixed-term employment, disputable entering into employment and determination of the number of specializations which are not appropriate for the actual needs of health institutions and patients, which may result in deterioration of the organization of the work of health institutions and difficult exercise of the rights of individual patients.

IV TYPICAL CASES

Urgent direct supervision in a health institution by the protector of citizens

It was reported in a complaint that in the Post Coronary Care Unit II of the Emergency Centre men and women are placed in the same hospital rooms in inappropriate conditions. Immediately after the receipt of the complaints, the Protector of Citizen conducted an on-site inspection of the Post Coronary Care Unit II of the Emergency Centre of the Clinical Centre of Serbia. Since the irregularities stated in the complaint were not found during the inspection, it was concluded that there were no grounds to take other measures from the sphere of competence of the Protector of Citizens.

Replacement of health insurance cards was suspended on initiative of the protector of citizens

Considering that there are other citizens’ health insurance rights which are not exercised or are not fully exercised, the respect of which is much more important than replacement of the existing health insurance documents by plastic health insurance cards for the issuance of which the citizens should pay a fee in the amount of RSD 500.00, the Protector of Citizens required from the competent authorities, primarily the Republic Health Insurance Fund and the Ministry of Health, to provide arguments which justify appropriateness of this replacement of documents. Statements of the Republic Health Insurance Fund that the replacement of health insurance cards is a duty of the Republic of Serbia arising from the EU accession process were denied by the EU Delegation to Serbia in its answer to the Protector of Citizens. For that reason, the Protector of Citizens required a session of the parliamentary Health and Family Committee to be held with the aim to address the issues of the replacement of health insurance cards responsibly and through institutional arrangements. The conclusion of the session was to suspend the replacement of health insurance cards by 2016 or 2017, while the Ministry of Health has a duty to prepare appropriate amendments to regulations.

*Cooperation with other authorities in deciding
on legality of operations of a health institution*

In own initiative investigation, on the basis of the information published in the media that “due to the recommendations made by the Protector of Citizens in connection with additional work in health institutions, certain health professionals in the Cardiology Clinic of the Clinical Centre of Serbia are no longer motivated to care for patients with acute myocardial infarction”, the Protector of Citizens required from the officials of the Republic Health Insurance Fund, the Ministry of Health and the Anti-Corruption Agency to take appropriate measures within their competences and powers specified by the law to investigate these statements. On the basis of the results of inspection these authorities carried out, which were submitted to the Clinical Centre of Serbia, criminal charges were filed against abuses in additional work against 15 employees in the Clinical Centre of Serbia.

V. PROPOSALS FOR IMPROVING THE CITIZENS' POSITION
IN RELATION TO THE AUTHORITIES

1. The Republic Health Insurance Fund and the Tax Administration should act promptly and cooperate efficiently in the execution of tasks from their spheres of competence in the field of compulsory social insurance, in accordance with their existing legal duties.
2. The Tax Administration should without delay start the implementation of the measures provided by the law against employers whose health insurance contribution payments are past due.
3. The Ministry of Health and the Republic Health Insurance Fund should in cooperation find a better systemic way to refer the citizens (particularly children) to treatment abroad when this is necessary.
4. The Ministry of Health should intensify carrying out of inspection.
5. The Ministry of Health and the Republic Health Insurance Fund should explain the nature (binding or non-binding) of the rules contained in treatment protocols and bylaws which bind physicians to comply with procedures and use drugs/medical devices even when they believe such drugs/medical devices are not appropriate for health needs of a specific patient.
6. By carrying out inspections, the Republic Health Insurance Fund and the Ministry of Health should ensure that health institutions comply with the law and issue stipulated certificates to patients in case they are not able to provide health services in an appropriate manner and /or within an appropriate time limit.
7. It is necessary to eliminate deficiencies which cause forming of waiting lists.
8. It is necessary to eliminate by inspections the practice of illegal “additional” work in health institutions, during which health services included in compulsory health insurance are provided, for the provision of which patients have to wait.
9. Justifiability and effects (the Protector of Citizens considers them to be negative) of the legal arrangement, according to which additional work in the health care system is organized in the manner and under the conditions different from those applied to additional working other professions and fields, should be considered.

10. The Ministry of Health should supervise efficient protection of patients' rights and smooth functioning of the newly formed protection mechanisms, in accordance with the Law on Patients' Rights.
11. The Ministry of Health and the Republic Health Insurance Fund should ensure more information to patients on their health insurance and health care rights.
12. The Ministry of Health should ensure that health institutions organize their work in the manner which provides the highest possible respect of patients' time and their right to available and high-quality health care.

2.8. SOCIAL SECURITY AND PENSION AND DISABILITY INSURANCE SECTORS

SOCIAL SECURITY

I BACKGROUND

1. State's achievements

- 1.1. The Bylaw on Licencing of Social Security Organizations was passed²⁰³,
- 1.2. The Bylaw on Detailed Terms and Conditions and Standards for Provision of Social Security Services was passed²⁰⁴,
- 1.3. The Bylaw on Licencing of Professionals in Social Security was passed.²⁰⁵

2. Results achieved by the Protector of Citizens

- 2.1. In his opinion issued to the Republic Housing Agency, the city of Belgrade and the Ministry of Urban Planning and Construction,²⁰⁶ the Protector of Citizens emphasized the need for administrative authorities to develop social housing programs for the most vulnerable citizens in Serbia.
- 2.2. The investigation of regularity and legality of operations of administrative authorities initiated by the Protector of Citizens urged the administrative authorities to rectify omissions in their operations in deciding on social security rights.

3. Shortcomings at the national level

- 3.1. Parents with children who need constant care and assistance do not have at their disposal adequate services in the field of health care, social security, education and

203 Official Gazette of RS No. 42/13.

204 Official Gazette of RS No. 42/13.

205 Official Gazette of RS No. 42/13.

206 Opinion of the Protector of Citizens No. 16-3902/12 of 28 October 2013, ref. No. 31199, available at: <http://www.zastitnik.rs/index.php/lang-sr/2011-12-11-11-34-45/3073-2013-11-04-12-29-49>.

local community services, nor are support and assistance ensured to them when they provide such services themselves.²⁰⁷

- 3.2. When deciding on the rights in the field of social security, the competent institutions and authorities do not act timely, efficiently and in accordance with the social security principles.
- 3.3. The decisions on social security rights are not clearly and understandably explained with valid arguments.
- 3.4. Almost one fourth of municipalities and cities do not have a developed social security services system financed from the budget of local self-government units.²⁰⁸
- 3.5. The Law on Social Housing²⁰⁹ does not clearly and precisely regulate the duties and responsibilities of housing policy implementers at the national and local levels or their interrelations in achievement of the objectives set by the law, which prevents the citizens from exercising their rights specified by this Law.

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

- 4.1. The Protector of Citizens submitted to the National Assembly proposals for amendments to the Labour Law and the Law on Financial Support to Families with Children.²¹⁰

5. Explanation

By the Bylaw on Licencing of Social Security Organizations, the Bylaw on Detailed Terms and Conditions and Standards for Provision of Social Security Service and the Bylaw on Licencing of Professionals in Social Security the Ministry of Labour, Employment and Social Policy defined detailed terms and conditions for issuing and renewal and suspension and withdrawal of licences for professionals, organizations and social security service providers and specified terms and conditions and standards for provision of the services. This ensured application of the licencing system introduced by the Law on Social Security and provided opportunities for improvement and standardization of the quality in social security in Serbia.

Socially vulnerable citizens are not able to pay rent and costs of housing and in addition to apartments leased or sold under non-profit terms for the purpose of social housing, other forms of sheltered housing have not been developed, nor are there alternative solutions. The Protector of Citizens issued his opinion to the Republic Housing Agency, the city of Belgrade and the Ministry of Urban Planning and Construction in which he emphasized that the most vulnerable population groups in Serbia cannot obtain adequate housing individually and under the market conditions or to cover the costs arising from the conclusion of apartment lease contracts allocated on the basis of compliance with specified conditions of social housing and are therefore at constant risk of being homeless. The Protector of Citizens pointed out that the Republic Housing Agency, together with the Ministry of Urban Planning and Construction and with local self-government, should without delay take all measures to

207 See in detail in the part of this Report dedicated to child rights.

208 Available at: www.zavodsz.gov.rs/index.php?option=com_content&task=view&id=2458&Itemid=245.

209 Official Gazette of RS No. 72/09.

210 See more in the part of this Report dedicated to legislative initiatives.

establish and develop social housing programs and in that way provide sheltered housing for the most vulnerable citizens in Serbia.

The Protector of Citizens believes that the Law on Social Housing does not clearly and precisely define the duties and responsibilities of housing policy implementers at the national and local levels, that their interrelations are not regulated and that the manner of financing of social housing programs, which prevents the citizens from appropriate exercise of the rights specified by this Law.

Although the authority of the Protector of Citizens indisputably contributed to the closure of acting on citizens' requests for the exercise of social security rights by the administrative authorities before the completion of the Ombudsman's control procedure, the Protector of Citizens thinks that authorities should decide on the social security before response of the Protector of Citizens pursuant to a complaint by a party to the procedure and that deciding must be timely and efficient and completed within the time limits specified by the law because these citizens belong to particularly vulnerable population group.

In 2013, the Protector of Citizens again found that in deciding on the social security rights the administrative authorities do not act timely, promptly and efficiently, which causes social vulnerability and leads to social vulnerability of social security users as a particularly vulnerable population group.

The decisions on social security rights are not argued. Although the decisions formally contain explanations, the statements contained in them do not provide minimum information on the facts which have been established, in which manner they have been established, by which means, how they were assessed and how substantive law has been applied to them and because of that clients cannot understand them.

The main social security services provided at the local level are the services of day care and the services of assistance and care at home, followed by the services of support for independent living. However, in 37 local communities in Serbia no social security service is financed from the budget of local self-government units²¹¹.

II TYPICAL CASES

Passing of decision only after initiation of investigation

The Protector of Citizens received a number of complaints in which the citizens expressed their dissatisfaction by failure of social work centres and the Ministry of Labour, Employment and Social Policy to act on submitted requests and legal remedies within the time limit specified by the law.

After initiation of investigation of legality and regularity of operations by the Protector of Citizens, two social work centres (Bujanovac and Paracin) and the competent ministry notified the Protector of Citizens that they decided on requests and complaints filed by complainants. The investigation of legality and regularity of operations was therefore terminated.

211 Available at: www.zavodsz.gov.rs/index.php?option=com_content&task=view&id=2458&Itemid=245.

Actions taken by the protector of citizens contributed to the provision of assistance and support to a socially vulnerable person by the competent authorities

The Protector of Citizens received a complaint against the operations of the Social Work Centre Loznica and the Ministry of Labour, Employment and Social Policy because they failed to take measures from their spheres of competence in the exercise of the social security rights of a socially vulnerable person.

After initiation of investigation of legality and regularity of operations, the Social Work Centre Loznica and the Ministry of Labour, Employment and Social Policy established cooperation with police, health institutions and judiciary authorities, instituted relevant legal proceedings, provided certain forms of financial assistance and finally prepared a support and service plan according to which further work with the beneficiary will be carried out. The user fully exercises all social security rights and services. The procedure before the Protector of Citizens was terminated.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION IN RELATION TO THE AUTHORITIES

1. **The National Assembly** should consider draft laws amending the Labour Law and the Law on Financial Support to Families with Children submitted by the Protector of Citizens.
2. **The Ministry of Labour, Employment and Social Policy** should ensure that in the procedure of deciding on social security rights the first-instance administrative authorities timely identify the needs of users, provide social security services in accordance with their functions, jointly, efficiently, coordinatedly and in the best interest of users and that they pass decisions within the time limit specified by the law.
3. **The Ministry of Labour, Employment and Social Policy** should conduct second-instance proceedings efficiently, timely and in accordance with the principles of social security and administrative proceedings and should pass decisions in the time limits specified by the law.
4. **The Ministry of Labour, Employment and Social Policy** should ensure that decisions social security rights are clear, fully argued, understandable to clients and that they contain all the elements specified by the law.
5. **Local self-government units** should increase the number of social security services financed from the budget of local self-government units with the aim to improve the position of citizens who need such services.

PENSION AND DISABILITY INSURANCE

I BACKGROUND

1. State's achievements

- 1.1. In 2013, the National Assembly twice amended the Law on Pension and Disability Insurance.²¹²

212 Official Gazette of RS No. 62/13.

2. Results achieved by the Protector of Citizens

- 2.1. Owing to the recommendations the Protector of Citizens issued to the Republic Pension and Disability Insurance Fund (hereinafter referred to as "the Fund"), the operations of the Fund was further improved and legal and efficient exercise of pension and disability insurance rights was ensured.
- 2.2. Acting on the recommendations the Protector of Citizens issued to the Fund helped to improve organization of the work and expedite the procedures to exercise pension and disability insurance rights.
- 2.3. By his recommendation issued to the Fund to determine *ex officio* new amounts of pensions, as from the date of qualifying for retirement, for all former employees in the company "Robne kuce Beograd", for whom salaries and pension and disability insurance contributions were paid and not just for those who filed requests, the Protector of Citizens pointed to the Fund the duty to ensure equal treatment for all beneficiaries in the same legal situation.

3. Shortcomings at the national level

- 3.1. The normative framework has not yet been established, which would provide an efficient mechanism to address the issue of overpaid amounts of pensions, as well as the issues of passing of decisions on definite pension amount, which replace provisional decisions on retirement.
- 3.2. The Ministry of Labour, Employment and Social Policy does not supervise legality of operations and enactments of the Fund, in connection with the recommendations the Protector of Citizens issued to the Fund.
- 3.3. Suspension of payment of pensions to insured persons who made the whole or a part of insurance service on the territory of Kosovo and Metohia, i.e. inability to pay pensions in arrears to insured persons is still one of the system problems in the Republic of Serbia.

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

- 4.1. No actions have been taken to implement the following proposals for improving the citizens' position in relation to public authorities set out in the 2012 Annual Report of the Protector of Citizens:
 - The work of the Fund should be further improved because the required level of timeliness of action has not been fully achieved and communication with the citizens should also be further improved.
- 4.2. The Fund did not implement the recommendation issued by the Protector of Citizens about payment of new amount of pensions to former employees in the company "Robne kuce Beograd".
- 4.3. The recommendations issued to the Fund with the aim to improve its work and speed up its acting on citizens' requests for the exercise of pension and disability insurance have not been fully complied with.

4.4. The Government did not take all necessary activities to address the issue of “Kosovo pensions”, which the Protector of Citizens emphasized in its opinion as early as in 2012.

5. Explanation

In 2012 and 2013 it was found that the Fund rectified the irregularities indicated in recommendations in most of the cases. Investigating further the citizens’ complaints, the Protector of Citizens observed new irregularities in operations of the fund, which resulted in issuing of new recommendations to the Fund, with the aim to further improve its operations and legal and efficient exercise of pension and disability insurance rights. Due to the identified problems, a number of pensioners must repay overpaid amounts of pensions, which results in legal uncertainty and seriously threatens their livelihood.

It was found that the Fund still has not *ex officio* issued decisions determining the overpaid amount of pensions or decisions on the definite pension amount and it also improperly uses the institute of providing evidence, in cases when fact should be established or evidence should be provided in order to decide on requests.

Recommendations were issued to the Fund to issue a decision determining the amount of overpaid amount of pension in each individual case when it decides whether there is a need to repay overpaid pensions or other benefits from pension and disability insurance, in which it would indicate the overpaid amount and the manner of its repayment; to act promptly and timely and to issue *ex officio* decisions on definite pension amount, i.e. upon closure of the procedure for the exercise of pension and disability insurance rights and that it uses the institute of providing evidence and passes a conclusion on the provision of evidence only in cases when there is a justified risk that evidence may not be provided later or that its provision would be difficult.

On the basis of complaints received after the recommendations were issued, it can be concluded that the Fund does not implement the recommendations, i.e. does not issue decisions determining the overpaid amount of pension; instead, it notifies insured persons about the existence of overpaid amount by the notification on the overpaid amount of pension or benefits. This practice the Fund explains by the fact that a separate decision determining the overpaid amount of pension is not issued in each case when an overpaid amount is identified, but only in cases when pensions or benefits were paid in the amount higher than the actual entitlement, i.e. when payment is made in an amount higher than the actual entitlement on the basis of a decision issued by the Fund which accurately determined the amount of pension.

The Fund partially complies with the recommendation on the issuing of decisions on definite pension amount, i.e. taking activities with the aim to reduce the number of provisional decisions on retirement and their replacement by decisions on definite pension amount in all cases which comply with the requirements. According to the Fund, the organizational unit which issued a provisional decision continues to gather *ex officio* the missing evidence, i.e. the data because of which a decision was temporary.

As regards the recommendation on inappropriate use of the institute of securing evidence, although the Fund in its explanation indicated that it fully accepts this recommendation, it has found that it does not comply with it, i.e. it still issues decisions on the provision of evidence in cases when fact should be determined or evidence should be presented.

In 2012 and 2013, the Protector of Citizens received complaints from former employees in the company “Robne kuce Beograd” against the actions of the Fund in determining

the new amount of pension, after salaries and pension and disability insurance contributions were paid to the Fund's account.

A new recommendation was issued to the Fund, which indicated that the Fund determined the new amounts of pensions successively on requests of beneficiaries instead *ex officio*. This means that the Fund did not treat equally the beneficiaries in the same legal situation.

The Fund did not implement the issued recommendation because it believes that the cases of determining of the new amounts of pensions, upon payment salaries and pension and disability insurance contributions, do not include the protection of public interest, which would provide the basis to initiate the procedures *ex officio*; instead, these cases include the protection of mainly private interests, as well as the personal right of a beneficiary, which means that there is no need to act *ex officio*.

In addition, the Fund does not believe that the beneficiaries whose cases it processed were in the same legal situation in terms of the right to determination of the new amount of pension regulated by the law. The Fund justifies this by the fact that taking into account the period expired from the date on which decision under which they were granted pensions became final and from the date when new evidence could be used to determine the new amount of pension beneficiaries were in different legal situations for assessment of legal conditions for the exercise of that right.

Although the Government initiated the addressing of the issue of "Kosovo pensions", suspension of payment of pensions to beneficiaries who made the whole or a part of insurance service on the territory of Kosovo and Metohia, i.e. inability to pay pensions in arrears to insured persons, is still one of the system problems in the republic of Serbia because it implies violation of the right to peaceful enjoyment of property.²¹³

II TYPICAL CASES

The amount of pension should be determined by the relevant administrative enactment

Through the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, the Protector of Citizens received a complaint lodged by a complainant from Srbac, Republika Srpska, who as a pensioner of the Republic of Serbia has been entitled to the minimum amount of pension since 1991. Since from January 2007 the complainant changed her place of residence, her pension was paid by the Directorate of the Republic Health Insurance Fund (her new place of residence was in the territory of Bosnia and Herzegovina). Due to the change of her place of residence, the complainant was no longer entitled to the minimum amount of pension and the Fund began to pay her pension in lower amount, without any enactment or notification on reasons for such decrease of pension.

A recommendation was issued to the Fund by which it was identified that the Fund made an omission in its work to the detriment of the right of the complainant because it failed to pass a relevant administrative act on the decrease of the amount of her pension, which made it more difficult for her to use legal remedy against the decision of administration in administrative proceedings. It was recommended to the Fund to determine the amount of the complainant's pension by the relevant administrative enactment without delay and to apologize for the omission made.

²¹³ Read more about the issue of "Kosovo pensions" in the Annual Report of the Protector of Citizens for 2012, p. 176-8.

The Directorate of the Fund notified the Protector of Citizens within the time limit stipulated to act on recommendations that the Branch Office for the city of Belgrade issued a decision by which it was determined that the complainant will no longer receive the minimum amount of old age pension and will begin to receive the adjusted amount of old age pension. The Decision was delivered to the complainant's home address with apologize from the Branch Office. This means that the Fund fully complied with the issued recommendation.

In spite of the recommendation of the protector of citizens, the fund exerted pressure on a citizen by a letter before action

Under a temporary decision, a complainant's entitlement to old age pension was recognised in 2008. By a decision of the same branch office, issued in 2013, the definite pension amount was determined for the complainant, which was lower than the amount determined by the temporary decision. The branch office notified the complainant by the invitation to repay overpaid pensions and benefits that a certain amount of her pension was overpaid, which she should repay.

The Protector of Citizens concluded that the complaint is lodged against the already identified omissions in the work of the Fund, i.e. obliging of the complainant to repay incorrectly calculated and paid amount of pension, without issuing a separate decision determining the overpaid amount of pension. It was requested from the Fund to implement the issued recommendations and to rectify irregularities.

The Fund **did not implement** the recommendations and did not issue a decision determining the overpaid amount of pension; instead, it sent a letter before action to the complainant and she agreed to repay the overpaid amount in monthly instalments.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION IN RELATION TO THE AUTHORITIES

1. **The Ministry of Labour, Employment and Social Policy** should, in cooperation with **the Fund**, amend the regulations with the aim to introduce an efficient mechanism to address the issue of overpaid pension amounts, by stipulating that decisions on definite pension amounts should be issued, which would replace temporary decisions on pension.
2. **The Ministry of Labour, Employment and Social Policy** should supervise the legality of operations and enactments of the Fund, in connection with the recommendations the Protector of Citizens issued to the Fund in accordance with Article 211 of the Law on Pension and Disability Insurance and in connection with Article 17 of the Law on Ministries.²¹⁴
3. **The Fund** should continue to take activities with the aim to improve its operations, to regularly update its registers and to ensure efficient acting on citizens' requests for the exercise of pension and disability insurance rights and should improve cooperation between branch offices and more efficient cooperation with foreign funds.

214 Official Gazette of RS Nos. 72/12 and 76/13.

2.9. LABOUR SECTOR

I BACKGROUND

1. State's achievements

- 1.1. The National Assembly adopted the Law amending the Labour Law.²¹⁵
- 1.2. At the 102nd session of the International Labour Conference, the International Labour Organization (ILO) and the Republic of Serbia signed a special agreement on cooperation titled "Decent Work Country Program for the Republic of Serbia 2013-2017."²¹⁶

2. Results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens made the importance of the proper implementation of the law in the field of labour more visible and alerted the competent oversight authorities.
- 2.2. The investigation of regularity and legality of operations of administrative authorities of the Protector of Citizens prompted the administrative authorities rectify omissions in their work when they decide on the right to work and rights arising from work.

3. Shortcomings at the national level

- 3.1. The Republic of Serbia does not take necessary measures against employers that fail to comply with their duties, so their employees cannot exercise the compulsory pension, disability and health insurance rights guaranteed by the Constitution of the Republic of Serbia.
- 3.2. Cooperation between the Tax Administration, the Republic Pension and Disability Insurance Fund, the Republic Health Insurance Fund and labour inspectorates is not effective and efficient, while the exchange of information between them is insufficient and not frequent enough, which decreases the efficiency of their work and the level of the exercise of taxpayers' rights.

215 See more in the part of this Report dedicated to gender equality.

216 Available at: <http://www.minrzs.gov.rs/sektor-za-rad-program.php>.

- 3.3. Control of implementation of the existing regulations in the field of labour is untimely, inefficient and ineffective.
- 3.4. There is still a number of cases of informal employment of citizens, which can rarely be identified in investigation of an employer's work.
- 3.5. When first-instance public administration authorities decide on labour rights, they often do not respect legal opinions and instructions of second-instance authorities.
- 3.6. Depoliticising the public administration has not been carried out, which has a negative impact on appointment of civil servants in the authorities and their position at work and in connection with work.
- 3.7. The law which would precisely regulate actions of the labour inspectorate was not passed.
- 3.8. The most recent amendments to the Law on Tax Procedure and Tax Administration²¹⁷ additionally decreased the level of the exercise of employees' rights guaranteed by the Constitution.
- 3.9. Infringement proceedings against those who violate labour legislation – from filing of an infringement report to a valid and enforceable judgement – are time consuming, inefficient and ineffective and therefore cannot ensure swift and appropriate sanctions for violations.
- 3.10. Employment relationships in public authorities and organizations are confusedly regulated, with legal and factual inequality of rights and duties of employees hired by the same employer (directly or indirectly) and legal uncertainty.
- 3.11. The issue of collection of war reparations for victims of World War II has not been addressed, nor is information on the operations of the former and forming of the new Commission on the Issues of Assessment of War Reparations available to the public.

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

- 4.1. No actions have been taken to implement the following proposals for improving the citizens' position in relation to public authorities set out in the 2012 Annual Report of the Protector of Citizens:
 - Proposal to amend in order to ensure the exercise of employees' rights in cases when employers failed to carry out their duties and pay contributions.
 - Proposal that, with the aim to ensure more efficient actions of the labour inspectorate, the Ministry of Labour, Employment and Social Policy increase the number of inspectors, extend the competences of the labour inspectorate, improve technical working conditions and propose amendments to regulations to ensure more efficient detection of informal employment and punishment of employers.
 - Proposal for the labour inspectorate to take greater initiative and launch investigations *ex officio* when there are enough facts which indicate the need to carry out an inspection²¹⁸.

217 The Law on Amendments to the Law on Tax Procedure and Tax Administration ("Official Gazette of RS", No. 47/13).

218 The Annual Report of the Protector of Citizens for 2012, p. 185.

4.2. The National Assembly did not consider the Draft Law amending the Labour Law submitted by the Protector of Citizens with support from 60,000 citizens.²¹⁹

5. Explanation

Amendments to the Labour Law²²⁰ pertaining to the protection of pregnant women and nursing mothers provided to better protection and higher security in terms of the labour-law status to this group of employed women. Employment cannot be terminated for a pregnant woman or a woman who is at sick leave to provide care or special care to her child, whether an employment contract is concluded for a fixed or indefinite term.

By implementation of the Decent Work Country Program concluded between the International Labour Organization (ILO) and the Republic of Serbia, special attention would be paid to the improvement of the existing employment programs for unemployed and employed women by assessing the availability of the measures targeted at female users and by designing the measures for improvement of the "rate of acceptance of the measures" by female users in the labour market, primarily through gender sensitive information on the existing employment and skills upgrading programs.

After the Protector of Citizens pointed to the possible irregularities and unlawfulness, the Administration Inspectorate of the Ministry of Justice and Public Administration carried out an extraordinary inspection at the Republic Geodetic Authority, identified irregularities in hiring of persons and in fixed-term employment and proposed measures to the Director.

The citizens do not have full confidence in the work of inspection authorities, they question impartiality of these authorities and see them as inefficient and passive actors in determining of facts.

The problems which the employed citizens faced during this reporting period are similar to those the citizens reported to the Protector of Citizens in 2012, taking into account that, except the protection of pregnant women and mothers who are on sick leave to provide care and special care to a child, no amendments were made in the field of labour law²²¹ and supervision of implementation of the existing regulations is still not efficient and effective enough. There are no clear criteria according to which a selection is made between applicants for the cases which are subject to the provisions of the Labour Law, citizens are hired without any legal basis (informal employment), while the exercise of their rights depend exclusively on the will of an employer. In addition, persons in fixed-term employment hold that status for years. Citizens report that they are exposed to abuse at work and they also point to arbitrariness and illegality in deciding on termination of employment. It was also observed that the citizens insufficiently use the existing legal possibilities to protect their rights (contacting the Commissioner for Protection of Equality, the labour inspectorate, the Republic Agency for Peaceful Settlement of Labour Disputes, requiring court protection). Because of their difficult financial situation and fear that they would lose their jobs, employees report their dissatisfaction only after they lose

219 See more in the part of this Report titled "Legislative Initiatives".

220 The Law amending the Labour Law (Official Gazette of RS No. 32/13)

221 The Protector of Citizens submitted the Draft Law amending the Labour Law. See more in the part of this Report titled "Legislative Initiatives".

such a job, when proving they were right becomes possible only in court proceedings which are time-consuming and include financial expenses.

The Protector of Citizens emphasized that the state has adopted the Public Administration Reform Strategy five years ago, in which one of the main objectives is depoliticization, which have not been achieved. The citizens report politicization in employment in the public sector, its impact on the status of an employee during employment (transfer, promotion) and also in deciding on termination of employment.

Employers still avoid their legal and agreed duties in terms of regular payment of salaries and other emoluments and in terms of timely payment of compulsory health insurance and pension and disability insurance contributions. The competent authorities (the labour inspectorate, the Tax Administration, republic health insurance and pension and disability insurance funds) are not efficient, diligent and effective and do not cooperate nor exchange information sufficiently and the citizens suffer due to their inefficiency.

The amendments to tax laws which introduced a statute of limitations on the calculation, collection and payment of unpaid compulsory social security insurance contributions palced employees' rights at serious risk. Employees are no longer able to enforce this right in a court, which could leave them permanently out this entitlement and with a gap in their years of service covered by insurance contributions. Such legal provision could legalize the rule that the law is not applied equally to everyone. The result of its implementation is denial of the right to pension and other social rights guaranteed by the state according to the Constitution.

Due to the lack of system support to persons who were imprisoned in German concentration camps during the World War II, the right to war reparations cannot be exercised. With the aim to address this issue, the Commission on the Issues of Assessment of War Damage Caused to Victims of World War II was formed in 2008 for the period of two years. The task of the Commission was to consider the issues regarding the assessment of war damage caused to natural persons during the World War II, who had their place of residence in the territory of the Republic of Serbia at that when the damage caused and war damage caused on the public property in the same territory. The Commission also had a task to consider the amount of necessary compensation and propose relevant measures with the aim to pay war reparations. According to the Government's decision on forming of the Commission, the Ministry of Labour, Employment and Social Policy provided expert and administrative and technical support to the Commission. Upon expiry of the period for which the Commission was formed, there are no further information on the results of its work or forming of the new commission.

The Law on Civil Servants²²² passed in 2005 regulates the rights and duties of civil servants. When this Law entered into force, the Law on Employment Relationships in Public Authorities was no longer applied to employment relationships in public authorities. However, the provisions of special laws which were based on the Law on Employment Relations in Public Authorities remained in the force. This is the case with the provisions of the Customs Law passed in 2003²²³, which stipulates that employees in the Tax Administration are subject to the regulations on employment relationships and salaries in public authorities, unless

222 Official Gazette of RS Nos. 79/05,81/05,83//05,64/07,116/08 and 104/09.

223 Official Gazette of RS Nos. 73/03,61/05,85/05-new law and 62/06-new law.

specified otherwise by that Law. The provisions of that Law specifically regulate the issues of disciplinary actions in a significantly different manner than the provisions of the Law on Civil Servants. The Law on Civil Servants allows for certain rights and duties of civil servants to be regulated differently by a special law, if it is required due to the nature of their tasks, but it does not allow the competences of the authorities in the civil servant system to be regulated differently by a special law (e.g. Government's appeal boards). In this case, the Customs Law and the Law on Civil Servants stipulated different arrangements for the authority competent to decide on appeals against decisions on the rights and duties of employees, i.e. civil servants. The legislator did not use an opportunity to address this divergence in the system even when the new Customs Law was passed in 2010. Namely, the Customs Law of 2010²²⁴ superseded the Customs Law of 2003, but the provisions regulating the issues of employment relationships (disciplinary responsibility and the competence to decide in this procedure) remained in effect.

All this results in different implementation of the regulations by different administrative authorities, which causes serious legal uncertainty for a person about whose rights decisions are being made and his/her inability to clearly understand his/her rights and their protection. It has particularly adverse impact since this is a disciplinary action regarding right to work as one of the fundamental rights of a citizen and his/her family guaranteed by the Constitution.

II TYPICAL CASES

Authorities rectified omission in their work upon initiation of investigation

Former employees in one primary school contacted the Protector of Citizens requesting the protection from "administrative silence" of the Ministry of education, Science and Technological Development in connection with their applications for severance pay due to retirement. After launching of investigation of legality and regularity of the work of the Ministry, the Protector of Citizens was informed that severance pay was paid to all former employees in that school.

Cooperation led to successful rectification of omissions

The Protector of Citizens received a complaint against violation of the rights arising from work (fixed-term employment and work under a service contract) in the Republic Geodetic Authority. The Protector of Citizens requested from the Ministry of Justice and Public Administration information in connection with the subject of the complaint. The Administration Inspectorate of the Ministry of Justice and Public Administration informed the Protector of Citizens that, when it received documents from the protector of Citizens, it carried out an extraordinary inspection in the Republic Geodetic Authority, established the facts and the circumstances and proposed implementation of measures.

224 Official Gazette of RS Nos. 18/10 and 111/12.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION
IN RELATION TO THE AUTHORITIES

1. **The National Assembly and the Government** should pass regulations which would ensure efficient and available mechanisms for the protection of employees' rights; timely and efficient supervision of implementation of the regulations providing for the fields of labour and employment relations; prompt, effective and consistent investigation of employers' responsibility and sanctioning in cases of violation of the law to the detriment of employees; and efficient mechanism of responsibility of control authorities for failure to act or untimely acting in cases of violation of employees' rights.
2. **The Ministry of Labour, Employment and Social Policy and the Ministry of Finance** should ensure efficiency of the existing control authorities and *ex officio* initiate and carry out controls to a larger extent.
3. **The Ministry of Labour, Employment and Social Policy** should establish constant social dialogue with representatives of employees and employers with the aim to ensure conditions for decent work.
4. **The Ministry of Labour, Employment and Social Policy** should, within the framework of inspection, pay special attention to timely detection of informal employment and taking of effective measures against employers who hire citizens in this manner.
5. **The Tax Administration, the Republic Pension and Disability Insurance Fund, the Republic Health Insurance Fund and the labour inspectorate** should establish effective, timely and efficient cooperation and diligently exchange information on the employees' rights arising from work.
6. **Public administration authorities**, when they carry out a repeated first-instance procedure on the basis of a decision of a second-instance authority, should fully comply with legal opinions and implement instructions of second-instance authorities.
7. **The Government** should make publicly available the results of the work of the Commission on the Issues of Assessment of War Damage caused to Victims of World War II and should establish clear and precise terms and mechanisms for collection of war damage caused to victims of the World War II.

2.10. INTERNAL AFFAIRS SECTOR

I BACKGROUND

1. State's achievements

- 1.1. In its public announcements, the Ministry of Interior has been paying more attention to the presumption of innocence of the citizens against whom police powers are used on reasonable suspicion they have committed a criminal offence.
- 1.2. The work of the Internal Control Department has been improved.

2. Results achieved by the Protector of Citizens

- 2.1. In accordance with the recommendation of the Protector of Citizens²²⁵, in its public announcements the Ministry of Interior has respected the presumption of innocence of persons deprived of liberty on reasonable suspicion they have committed a criminal offence.
- 2.2. In accordance with the recommendations of the Protector of Citizens²²⁶, the Ministry of Interior - Internal Control Department - Complaints and Submissions Bureau and the complaints commissions have been more efficient in rectifying the identified omissions in the work.

3. Shortcomings at the national level

- 3.1. Shortcomings persist in the actions of the complaints commissions and Internal Control Department of the police.
- 3.2. The Administrative Authority of the Ministry of Interior does not always act timely pursuant to citizens' request for granting or termination of citizenship of the Republic of Serbia.
- 3.3. The Ministry of Interior has not formed an Asylum Office as an independent organisational unit in accordance with the Law on Asylum.

225 Case No. 12-902/12.

226 Case No. 12-2715/11; No. 12-1984/11; No. 12-3518/12.

- 3.4. The Border Police Administration of the Ministry of Interior has been extremely inefficient in the process of registration of foreign nationals who expressed intent to seek asylum and in the procedures of granting asylum.
- 3.5. The Ministry of Interior does not allow police officers whose employment was terminated because criminal charges were filed against them, but who were subsequently exonerated in criminal trials, to return to work.

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

- 4.1. The Ministry of Interior does not act in accordance with the recommendation of the Protector of Citizens to provide reasoned responses to all complaints and submissions of citizens, specifying all relevant facts and circumstances and the reasons why specific views are taken in relation to the citizens' allegations.²²⁷

5. Explanation

A significant number of complaints in the internal affairs sector related to the actions of the Internal Control Department of the police and the complaints commissions dealing the complaints filed by citizens against the work of police officers. Upon investigation, the Protector of Citizens issued recommendations²²⁸ for rectification of the identified irregularities to the Ministry of Interior - Internal Control Department - Complaints and Submissions Bureau and the complaints commissions. As a rule, the Ministry acted timely pursuant to the recommendations and rectified the omissions in its work (providing reasoned responses to complainants instead of ready-made, unsubstantiated ones; implementing the complaints procedure; and deciding on citizens' complaints).

The following shortcomings persist in the investigation work of the police: suspension of complaints procedures pending the outcome of a procedure heard before another authority, unreasonable delays in the initiation of disciplinary procedures²²⁹ and failure of competent managers to act in accordance with the findings and proposals of the Internal Control Department of the police.²³⁰

In 2013, the Ministry improved its operations, in compliance with the recommendation issued by the Protector of Citizens²³¹, by paying due attention in its public announcements to the respect for the presumption of innocence of persons deprived of liberty on reasonable suspicion they have committed a criminal offence. Public authorities have a duty to respect the principle which dictates that everyone is considered to be innocent of a crime until his/her guilt is proven beyond doubt in accordance with the law, i.e. by a valid and enforceable court judgement. The respect for the presumption of innocence also rectified the shortcoming in the work of the Ministry which resulted in the violation of a broader right –

227 Case No. 111-2274/13.

228 Case No. 12-2715/11; No. 12-1984/11; No. 12-3518/12.

229 Case No. 12-926/12.

230 Case No. 12-3213/12.

231 Case No. 12-902/13.

the right to fair trial, to which the Protector of Citizens pointed in his recommendation and previous Annual Reports.²³²

The Protector of Citizens was contacted in 2013 by a number of citizens who complained against “administrative silence” in the procedures of granting or terminating citizenship. Upon launch of investigations into the legality and regularity of work, in most cases the Administrative Authority of the Ministry of Interior rectified the omissions and decided on the applications filed by the complainants; as a result, the Protector of Citizens closed the investigations.

To ensure respect for the rights of asylum-seekers and improve the work of the Ministry of Interior and the Commissariat for Refugees and Migrations of the Republic of Serbia, the Protector of Citizens, by providing good services, mediating and giving advice, contributed towards coordinated efforts of the competent authorities to improve the existing asylum system in the Republic of Serbia. In the reporting period, just as in the previous years since the effective date of the Law on Asylum²³³, the Ministry did not form an Asylum Office as an independent unit with appropriate human resources and technical capacities. Due to the fact that powers of the Asylum Office are exercised by several employees in the Asylum Division of the Department for Foreign Nationals of the Border Police Administration and the ever-increasing number of asylum-seekers, asylum procedures are inefficient and do not respond properly to the needs of asylum seekers.

During the reporting period, complaints received in the internal affairs sector included also those relating to violations of police officers’ right to work and of their rights arising from work. Similarly as in previous years, a certain number of former police officers contacted the Protector of Citizens to voice their dissatisfaction with the currently applicable regulations, which prevent employees of the Ministry from returning to work if their employment was terminated due to security threats, i.e. due to filing of criminal charges against them, although they were exonerated by valid and enforceable court judgements.

II TYPICAL CASES

Violation of principles of good governance by the Internal Control Department

The Protector of Citizens identified omissions in the work of the Internal Control Department of the police and the Complaints and Submissions Bureau of the Ministry of Interior, namely their failure to provide reasoned responses to complaints and submissions of citizens, specifying all relevant facts and circumstances and the reasons why specific views are taken in relation to the citizens’ allegations.

After the Protector of Citizens issued his recommendations, the Internal Control Department of the police and the Complaints and Submissions Bureau sent reasoned responses to the citizens’ allegations.

232 2012 Annual Report of the Protector of Citizens is available at: <http://www.ombudsman.rs/attachments/Redovni%20godisnji%20izvestaj%20zastitnika%20gradjana%20za%202012%20godinu%20-%20final.pdf>; 2012 NPM Annual Report is available at: http://www.ombudsman.rs/attachments/2902_izvestaj_%20NPM_%202012.pdf.

233 Official Gazette of RS No. 109/07.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION
IN RELATION TO THE AUTHORITIES

1. To improve its work and provide more efficient protection for citizens' rights, the **Ministry of Interior** continue developing and strengthening its control mechanisms, actions of its complaints commissions pursuant to citizens' complaints and actions of the Internal Control Department of the police; furthermore, it should timely initiate and conduct disciplinary procedures and competent senior officers should take action to comply with the proposals of the Internal Control Department of the police without delay.
2. **The Police Directorate of the Ministry of Interior** should form an Asylum Office as an independent organisational unit outside the mandate of the Border Police Administration and provide a sufficient number of authorised officers, give them adequate training and provide the necessary equipment for work, to achieve efficiency in the procedures of registration of foreign nationals who express intent to seek asylum and in the procedures of granting asylum.
3. **The Administrative Authority of the Ministry of Interior** should in the future timely act pursuant to citizens' request for granting or termination of citizenship of the Republic of Serbia.

2.11. SECTORS OF FINANCE, INDUSTRY AND COMMERCE, ECONOMY, REGIONAL DEVELOPMENT, PRIVATISATION, STATE-OWNED PROPERTY, NATIONAL EMPLOYMENT SERVICE, BANKRUPTCY AND PUBLIC PROCUREMENTS

FINANCE

I BACKGROUND

1. State's achievements

- 1.1. The Law on Amendments to the Law on Tax Procedure and Tax Administration²³⁴ has been enacted. The amendments provide for electronic filing of individual tax returns for withholding taxes and create assumptions for controlling the payment of contributions on the basis of capitation.

2. Results achieved by the Protector of Citizens

- 2.1. By sending recommendations to the Tax Administration on his own initiative, the Protector of Citizens shed light on a systemic omission reflected in the calculation of interest on outstanding tax liabilities using the compound method ("interest on interest"), even though this method was declared unconstitutional by a decision of the Constitutional Court.
- 2.2. The Protector of Citizens contributed to improved functioning of the Tax Administration with his recommendations which pointed to the need to collaborate with the competent authorities in order to specify clear, precise and predetermined criteria which courts would use when ordering the assessment of the market value of expropriated real property and which would govern the work of tax authorities when making such assessments.
- 2.3. By sending recommendations to a branch of the Tax Administration²³⁵, the Protector of Citizens helped rectify an omission reflected in the failure to submit an appeal for processing after 15 months of receipt.

234 Official Gazette of RS No. 47/13.

235 The Vozdovac Branch in this specific case.

3. Shortcomings at the national level

- 3.1. There is still no sufficiently efficient system of control in place that would enforce proper calculation and payment of compulsory social insurance contributions; as a result, the Tax Administration can neither collect the outstanding amounts nor adequately punish employers for their omissions.
- 3.2. A significant number of workers remained without the possibility to exercise their entitlement to old-age pension unless they pay the missing contributions out of their own pocket, because the Law on Conditional Write-Off of Interest and Standstill of Tax Debt²³⁶ provides for a standstill of principal tax debt from previous years, including debt for compulsory social insurance contributions²³⁷.
- 3.3. The Law on Amendments to the Law on Tax Procedure and Tax Administration²³⁸ introduced for the first time a statute of limitations on the ability of the Tax Administration to assess and collect compulsory social insurance contributions.
- 3.4. The Ministry of Finance does not respond timely to citizens' requests for opinions on the implementation of laws and other general instruments²³⁹. Indeed, in some cases its different organisational units tend to squabble over their respective mandates to issue such opinions.
- 3.5. The National Mortgage Insurance Corporation published contradictory information on its website and thus misled the citizens on the issue of subsidised home loans in 2014.
- 3.6. Citizens whose pecuniary claims against the Republic of Serbia have been awarded by a valid and enforceable court decision are facing problems with the collection of those amounts in enforcement procedures because the accounts allocated for those purposes are depleted.
- 3.7. The Republic of Serbia has still not signed a succession agreement with the countries successors to former SFR Yugoslavia that would regulate the exercise of rights of "depositors with frozen foreign exchange savings" in cases of those depositors who deposited their savings with banks headquartered in a Republic different from the one of their citizenship.²⁴⁰

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

- 4.1. No actions have been taken to implement the following proposals for improving the citizens' position in relation to public authorities set out in the 2012 Annual Report of the Protector of Citizens:
 - Immediately upon learning of any past-due taxes and ancillary tax charges, even in cases where tax debt is negligible, the Tax Administration should send letters of

236 Official Gazette of RS No. 119/12.

237 Article 2 paragraph 1 item 2 of the Law on Conditional Write-Off of Interest and Standstill of Tax Debt.

238 Article 20, Official Gazette of RS No. 47/13.

239 Article 80 of the Law on Public Administration, Official Gazette of RS No. 79/05, 101/07 and 95/10.

240 Article 21 paragraph 1 of the Law on Regulation of Public Debt of the Federal Republic of Yugoslavia arising from Citizens' Foreign Exchange Savings, Official Gazette of FRY No. 36/02 and Official Gazette of RS Nos. 80/04 and 101/05.

warning to the citizens, so as to prevent any significant compounding of interest through passage of time, all the more so because the citizens sometimes, having grown accustomed to the inactivity of tax authorities over the years, mistakenly believe they already settled their tax liabilities in full by earlier payments.

- 4.2. The Tax Administration rejected the recommendation of the Protector of Citizens to determine the exact number of cases, the identities of taxpayers and ancillary debtors and the actual amounts in cases where the amount of tax and ancillary tax-related charges collected was higher than that actually due as a result of application of the compound interest method ("interest on interest") after the publication of the relevant decision of the Constitutional Court, at which point any difference would be refunded to the citizens on request.
- 4.3. The Tax Administration rejected the recommendation to collaborate with the competent authorities in order to specify clear, precise and predetermined criteria which courts would use when ordering the assessment of the market value of expropriated real property and which would govern the work of tax authorities when making such assessments.
- 4.4. The Budget Inspectorate of the Ministry of Finance fails to keep up with the volume of work and does not efficiently supervise budget spending pursuant to reports filed by the citizens, as pointed out by the Protector of Citizens on earlier occasions.
- 4.5. When deciding on appeals against the decisions of branches, local offices and tax administrations of local self-governments, regional units of the Tax Administration exceed the statutory time limit for deciding, justifying their actions with a large inflow of cases and understaffing as issues of a systemic nature.
- 4.6. There have been no improvements in the labour law status of the employees of the Customs Administration, although encouraging signs were observed in early 2013.

5. Explanation

The Protector of Citizens sent a recommendation to the Tax Administration on his own initiative in connection with the calculation of interest on outstanding tax liabilities according to the compound method ("interest on interest") until as late as January 2013, although this method had been declared unconstitutional by Decision of the Constitutional Court I Uz. br. 28/09 of 12 July 2012. In addition to refunding the overpaid amount of tax to the taxpayers, the Tax Administration was also advised to continually keep up with the decisions of the Constitutional Court and take steps to bring the applicable regulations in compliance with the spirit of those decisions. Unfortunately, this recommendation was not welcomed by the Tax Administration, whose response first pointed to potential harmful effects for the budget of the Republic of Serbia and then referred to the opinion the Constitutional Court concerning the effects of its decisions, arguing that the Law on Tax Procedure and Tax Administration had not been subject to constitutional review – a fact that had never been contested. At the same time, the Protector of Citizens was asked "to harmonise his decision with the opinion of the Constitutional Court", which displayed a lack of understanding of the nature of the ombudsman institution and the essence and scope of his recommendations.

As a result of rejection of this recommendation, taxpayers from the second half of 2012 are still afforded less favourable treatment than debtors of commercial banks, as the amount they owe in interest to the Republic of Serbia is higher than what they would have owed to a private creditor. The Protector of Citizens notified the National Assembly, the Government and the public of this refusal to implement the recommendation, after which the Tax Administration issued a deliberately misleading announcement in which it stated it had stopped using the compound interest method on 1 January 2011, while in fact it applied that method up until 1 January 2013. For this reason, the Protector of Citizens demanded of the Minister of Finance to punish those responsible for this impudent misleading of the public²⁴¹. Furthermore, through direct contacts it was agreed that the Ministry of Finance would consider the possibility of on Amendments to the Law on Tax Procedure and Tax Administration to allow for refunding of overpaid taxes to the injured parties on their request. By the end of the reporting period, the Protector of Citizens received no information on the measures, if any, taken by the Ministry to implement the recommendation.

Complainants have also voiced their dissatisfaction with the work of the Tax Administration because of its inability to effectively punish employers for their failure to timely pay compulsory social insurance contributions. Citizens are often forced to borrow to be able to pay the contributions instead of their employers and thus earn their entitlement to old-age pension, in the hope that they would receive a refund when (and indeed if) the debt is collected from the employer.

The lack of equipment and insufficient human and material resources of the Tax Administration to conduct timely and comprehensive control operations result in a situation where reports of this kind filed by workers are not processed in the order of their arrival. Instead, tax authorities are advised to "(consider) the influence of the alleged irregularities on the amount of tax revenue, the available resources and, in particular, the reasons for inspecting the taxpayers".²⁴² Such views are unacceptable, not least because the legal system of the Republic of Serbia provides no other mechanism for the collection of compulsory insurance contributions. Selective handling of reports deprives citizens of their right to effective remedy and puts them in a hopeless situation.

In cases when the Tax Administration acts on workers' reports, it as a rule faces obstruction by employers, who deny facts relevant for taxation, refuse to provide relevant documents and often even refuse to participate in the inspection process. Liability for a tax infraction is not a sufficient deterrent to force them into compliance, which in some cases leaves the tax authorities unable to find even the basic facts relevant for the collection of contributions.

The Law on Conditional Write-Off of Interest and Standstill of Tax Debt provides for a standstill of principal tax debt, which is deemed to include also compulsory social insurance contributions. Workers' grievances in most cases refer to the provision which stipulates that tax authorities suspend any ongoing enforced collection procedures during the standstill. Arguably, it would have been better to provide for a different treatment of compulsory social insurance contributions, separate from other tax liabilities, or at least to stipulate that collection

241 Enactments passed in the investigation and the announcement of the Protector of Citizens are available at: <http://www.ombudsman.rs/index.php/lang-sr/2011-12-25-10-17-15/2011-12-25-10-13-14/3145-2014-01-10-15-49-37>.

242 Enactment of the Control Department of the Tax Administration Head Office No. 43-01166/12-18 of 24 May 2013.

of pension and disability insurance contributions has priority. By precluding enforced collection during a specified period, while at the same time prolonging the uncertainty as to the actual possibility of ever collecting the amounts due, the legislators have made the exercise of citizens' rights more difficult and less certain, hoping that taxpayers would settle their debts according to the schedule provided for by the law. As the economic realities often fly in the face of such expectations, there is reasonable concern that employers would be unwilling or unable to settle their debt in the specified periods, while in the meantime there is nothing that would stop them from selling or otherwise disposing of their assets.

Another legislative provision has resulted in a public outcry and prompted the Protector of Citizens to react²⁴³. Under Article 20 of the Law on Amendments to the Law on Tax Procedure and Tax Administration²⁴⁴, the provisions on the statutes of limitation applicable to tax assessment, collection and refund will in the future apply to compulsory social insurance contributions as well. In this way, employers will be permanently absolved from paying due contributions to the funds which are compulsory in nature, while employees will lose the possibility to have their rights arising from work recognised for the corresponding portion of their years of service if that happens.

The current situation regarding enforced collection of compulsory social insurance contributions is such that citizens are finding the exercise of their rights increasingly difficult and uncertain, forced as they are to deal not only with the arrogance and arbitrariness of employers and the poorly equipped, inefficient and inter supervisory authorities, but also with any number of obstacles deliberately placed before them by employers, as they opt to favour other interests as prevailing ones. Although the Republic of Serbia is constitutionally arranged as a state based on social justice²⁴⁵, it would appear that legislators often lose sight of the proclaimed constitutional principles and fail to address significant social issues in a systemic, principled and fair way. Instead, temporary solutions are hurriedly patched together, often lacking normative and IT support²⁴⁶ and even more often causing further disputes and dissatisfaction, both among taxpayers and among tax officials, because they are seldom thought through in sufficient detail to cover all situations that may occur in practice.

II TYPICAL CASES

Taxpayer forfeits the entitlement to conditional interest write-off and tax debt standstill as a result of selective interpretation of the law

The Protector of Citizens received a complaint from a sole trader who had paid his tax debt at a post office on Saturday, 30 March 2013, in order to qualify for the entitlements provided under the Law on Conditional Write-Off of Interest and Standstill of Tax Debt. Pursuant to a Resolution of the Government²⁴⁷, the time limit for settlement of tax debt had been

243 Announcement available at <http://www.ombudsman.rs/index.php/lang-sr/2011-12-25-10-17-15/2011-12-25-10-13-14/2875-2013-06-04-11-19-06>, accessed on 27 January 2014.

244 Official Gazette of RS No. 47/13.

245 Article 1 of the Constitution of the Republic of Serbia, Official Gazette of RS No. 98/06.

246 The Law on Conditional Write-Off of Interest and Standstill of Tax Debt took effect on 18 December 2012 and the Tax Administration Head Office provided its branches with provisional applications for calculating debt valuation with the consumer price index on 25 January 2013.

247 05 number 43-1688/13 of 28 February 2013.

extended until 31 March 2013 and would expire on Sunday. Although the complainant made the payment in time, the Vozdovac Branch of the Tax Administration refused to grant him the said entitlement because the post office where he made the payment transferred the amount to the Tax Administration on the first subsequent working day, i.e. on Monday 1 April 2013. By selectively interpreting the statutory provision²⁴⁸ which stipulates that the date of payment of tax is deemed to be the date when funds are transferred to the relevant public revenue payment account, the tax authority found that the complainant forfeited his entitlement, although no other payment options were available on Saturday, 30 March because the tax cash register was not open on that day. Upon launching of an investigation by the Protector of Citizens, the authority of second instance overturned the first-instance decision and correctly found that the complainant was eligible for debt rescheduling, because in situations such as this one the relevant time limit is deemed to expire on the first subsequent working day.²⁴⁹

*As economic hardships bite, citizens lay their hopes
on devaluated dinar savings*

Complainants often contact the National Bank of Serbia to ask about possibilities for receiving their dinar deposits made in the 1980s with commercial banks that have in the meantime been liquidated or filed for bankruptcy. News about repayment of the so-called “frozen foreign exchange savings” and the foreign exchange savings with “Jugoskandik” and “Dafiment” banks have prompted a number of citizens to file requests with the National Bank of Serbia for restitution of their fixed-term deposits in dinars. Even after they are told that the hyperinflation of the 1990s virtually ate away all dinar-denominated funds held by the citizens at the time, while interest rates paid at the time were insufficient to offset the effects of hyperinflation, the citizens find it hard to accept that their savings deposits can no longer be expressed in any currency. Explaining they had hoped to use their past deposits to solve their current financial issues, they file complaints against the National Bank of Serbia with the Protector of Citizens. All the Protector of Citizens can do is explain the answer already given by the NBS and refer the citizens to social security institutions for assistance.

III PROPOSALS FOR IMPROVING THE CITIZENS’ POSITION IN RELATION TO THE AUTHORITIES

1. **The Ministry of Finance** should take an active and engaged approach to citizens’ submissions and communicate with the citizens as required by the law.
2. **The Ministry of Finance** should timely act on requests for opinions on the implementation of laws and other general instruments.
3. **The Ministry of Finance** should, within its normative powers, keep up with the opinions voiced in the decisions of the Constitutional Court and take appropriate measures to harmonise its regulations.
4. **The Tax Administration** should organise its work to make it responsive to the citizens’ needs, which implies the provision of complete, precise and timely information

248 Article 68 paragraph 1 item 1 of the Law on Tax Procedure and Tax Administration.

249 Article 91 paragraph 2 of the Law on on General Administrative Procedure, Official Gazette of FRY No. 33/97, 31/01 and Official Gazette of RS No. 30/10.

on the basis, type and amount of tax liability, as well as on the rights the citizens have in the tax procedure.

5. **The Tax Administration** should pass first- and second-instance decisions within the time limits set by the law and in the form required by the law, to enable the citizens to seek review of the opinions of tax authorities through the use of available remedies.
6. **The Customs Administration** should ensure transparency in its work and improve communication with the citizens, in particular with regard to customs clearance of goods ordered from foreign countries and received by mail.
7. **The Customs Administration** should improve the exercise and protection of employment rights of customs officers and ensure compliance with the applicable regulations on public administration and civil servants.
8. **The National Mortgage Insurance Corporation** should act with caution when publishing information that may give rise to legal expectations and borrowing by the citizens. Preferably, any published information should always state the source.
9. **All direct and indirect budget spending units** should voluntarily pay their liabilities owed to citizens under valid and enforceable court decisions, without waiting for court execution proceedings, which only compound the total costs.

BANKRUPTCY, PRIVATISATION, NATIONAL EMPLOYMENT SERVICE

I BACKGROUND

1. State's achievements

- 1.1. The Government submitted to the National Assembly the bill for a new Law on Privatisation.²⁵⁰
- 1.2. The Government submitted to the National Assembly the bill for a new Law on Amendments to the Law on Bankruptcy.²⁵¹

2. Results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens has continued publicly warning and pointing to the consequences of failure to take measures provided by the law against those employers that avoid paying contributions to health and pension insurance funds, thus raising awareness of the scale and importance of this issue.
- 2.2. The Protector of Citizens has continued publicly warning about the responsibility of the state for the fact that companies in restructuring have not paid health and pension insurance funds to their employees for years.

250 The National Assembly of RS, Laws in parliamentary procedure, available at: <http://www.parlament.gov.rs/акти/закони-у-процедури/закони-у-процедури.46.html>.

251 The National Assembly of RS, Laws in parliamentary procedure, available at: <http://www.parlament.gov.rs/акти/закони-у-процедури/закони-у-процедури.46.html>.

3. Shortcomings at the national level

- 3.1. The Ministry of Economy has not complied with its obligation under the Decree on Recording Outstanding Due Liabilities of Socially-Owned Enterprises under Enforceable Judgements from employment relations and to propose to the Government the method of such payment within 90 days of completion of the debt recording.
- 3.2. Bankruptcy proceedings against companies before commercial courts still take too long, with a low percentage of successful cashing in and settlement of creditors' claims – even those of the second order – and with inadequate oversight of the authorities in charge of conducting the bankruptcy proceedings, in particular bankruptcy administrators.
- 3.3. There are no provisions that would regulate the powers and oversight of bankruptcy administrators for the purpose of more efficient and complete oversight of their actions and protection of parties in the bankruptcy proceedings²⁵², as explained by the Protector of Citizens in his opinion submitted to the Ministry of Economy in connection with the Bill on Amendments to the Law on Bankruptcy.
- 3.4. The Privatisation Agency has not completed privatisation processes in a large number of enterprises (153 of them according to the most recent available figures²⁵³), the majority of which are in restructuring and will probably go into bankruptcy.
- 3.5. Companies in restructuring exploit their status to avoid payments to creditors, as the Law does not allow execution and debt collection measures against such companies.
- 3.6. The Ministry of Economy did not accept the opinion²⁵⁴ of the Protector of Citizens concerning the need to modify the content of the provisions of the Bill on Privatisation which prohibit execution and debt collection and the need to include provisions that would define guarantees for recognition of employees' years of service based on the minimum wage in a manner that would be more beneficial to workers.
- 3.7. Due to the botchy budget revision of 2013, the government is unable to honour its commitments: after the organisation of Competitions for Professional Practice or Employment Subsidies, the National Employment Service was forced to withdraw from signing contracts with the selected candidates.

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

- 4.1. No actions have been taken to implement the following proposals for improving the citizens' position in relation to public authorities set out in the 2012 Annual Report of the Protector of Citizens:
 - In the future, the Privatisation Agency should respond to requests and questions submitted by citizens in accordance with the applicable regulations by passing

252 Article 20h of the Law on o privatisation.

253 Website of the Ministry of Economy, available at: <http://www.privreda.gov.rs/newsitem.php?h=1&id=8100>.

254 Opinion on the Draft Law on Privatisation, available at: http://www.ombudsman.rs/index.php/lang-sr_YU/2011-12-11-11-34-45/3132-2013-12-27-11-08-23.

relevant administrative instruments and composing written answers, as opposed to the current practice of merely answering the citizens' submission orally or by phone, with an official note made in writing.

- Oversight of bankruptcy administrators should be increased in terms of scope and coverage and made more active and effective, to ensure that bankruptcy proceedings are completed in as short periods as possible and with increased efficiency.²⁵⁵

5. Explanation

As regards bankruptcy proceedings and complaints against the work of the authorities in charge of conducting bankruptcy proceedings, it is evident that the situation in 2013 has not changed much compared with 2012. By far the most complaints against the work of bankruptcy judges and bankruptcy administrators are still filed by former employees of bankrupt debtors, who complain about the inability to collect their claims arising from employment relations (unpaid salaries, severance pays, compulsory social insurance contributions etc.). Bankruptcy proceedings often take far too long, the bankrupt's estate is usually small and difficult to cash in and the mode of operation of the authorities in charge of conducting bankruptcy proceedings causes resentment among bankrupt debtors, who quickly lose trust in their professionalism and impartiality. According to the allegations raised in the complaints received, circumstances that hinder successful conduct of bankruptcy proceedings and consequently also the exercise of citizens' rights include apparent lack of interest on behalf of the authorities in charge, i.e. denial of necessary assistance and information to bankrupt debtors, as well as insufficient attention to the management and preservation of the bankrupt's estate; in this context, attempts to lay the responsibility for the conduct of bankruptcy proceedings at the door of another authority are quite common. Certain improvement has been noted in the provision of information to the citizens on their procedural rights in bankruptcy proceedings. In the first half of 2013, the Protector of Citizens received several complaints from citizens who followed the instructions for complaining against the work of bankruptcy judges and bankruptcy administrators and first submitted their complaints against the work of the receivers to the Bankruptcy Supervision Agency, after which they submitted new complaints to the Protector of Citizens if they were not satisfied with the response of the Agency. However, the prevailing impression is that the oversight procedure is not sufficiently regulated and efficient, especially in cases where the Privatisation Agency is appointed as the bankruptcy administrator, and the only way to change this would be to change the legislation which regulates bankruptcy proceedings.

In this context, it should be noted that in 2013, unlike in 2012, there were no complaints from bankruptcy administrators about the work of the Bankruptcy Supervision Agency because of initiation of disciplinary procedures against them or because of its refusal to renew their licences. The reason for this should perhaps be sought in the reduced intensity of supervision by the Bankruptcy Supervision Agency, because in 2013 preparations were underway to pen amendments to the Law on Bankruptcy which would see the Agency disbanded and its powers transferred to new authorities.

The bill of the said Law was submitted to the National Assembly together with the new Law on Privatisation. Despite the shortcomings highlighted by the Protector of Citizens in

²⁵⁵ 2012 Annual Report of the Protector of Citizens, p. 91-2.

his opinion, the bill also contains certain improvements from the existing legal arrangements, such as reduced scope for arbitrariness in the appointment of bankruptcy administrators and a possibility for bankruptcy creditors to jointly appoint a bankruptcy administrator, or the provision which stipulates that all reports made by bankruptcy administrators are public documents and must be published regularly in the electronic form on the website of the supervision body, which would mark a positive step forward towards allowing all interested persons access to information on the work of a bankruptcy administrator in a bankruptcy proceeding.

In 2013, the Protector of Citizens saw an increase in the number of complaints submitted by citizens against companies in restructuring due to outstanding claims against those companies. Namely, implementation of Article 20h of the Law on Privatisation²⁵⁶ - which stipulates that, from the date of passing of a decision on restructuring to the date of passing of a decision on completion of restructuring, but in any case not later than 30 June 2014, an entity under privatisation and/or its assets cannot be subjected to enforced collection or any other execution measure for the purpose of settlement of claims, while any enforced collection procedures that may be underway must be suspended – resulted in a situation where numerous citizens, including in particular the employees and the creditors of companies in restructuring, are left with outstanding claims against such companies. As a result of this ban on enforced collection, many of them suffer serious financial problems or face significant deterioration of their quality of life. For this reason, more and more complaints are received in connection with this issue with the passage of time. It should be noted that, unlike in 2012, when the complainants usually identified both the company concerned and the Privatisation Agency as the entities responsible for their inability to collect their claims, in 2013 most of the complaints related only to the companies in question. Given that, according to the allegations put forth in the citizens' complaints and the information obtained by the media from sources at the Ministry of Economy, many companies in restructuring have not managed to stabilise their situation, it can reasonably be expected that the number of companies filing for bankruptcy would increase.

A number of new issues emerged in 2013, including in particular those relating to the implementation of the Decree on Recording Past-Due Liabilities of Socially-Owned Enterprises under Enforceable Judgments for Claims arising from Employment Relationships.²⁵⁷ Under the said Decree, the employees and former employees of socially-owned enterprises and companies with majority socially-owned capital who have been awarded claims from employment relationships under court judgments which became enforceable before 30 June 2011 – including the award of principal debt, interest calculated in accordance with the judgment and court fees – should have registered their claims with the Privatisation Agency by 31 December 2012,. After registering and processing data contained in the received reports and documents, the Agency is required under the said Decree to prepare a report on the total amount of registered liabilities and the amounts of liabilities by individual debtors. Furthermore, the Ministry in charge of economy is required to inform the Government on the amount of total recorded claims and propose a mode for their settlement within 90 days of expiration of the time limit for registration of claims. Several citizens contacted the Protector of Citizens after the process of registering claims had been completed and after the period of 90 days left to the Ministry had expired, seeking information on a timeframe

256 Law on Privatisation (Official Gazette of RS Nos. 38/01, 18/03, 45/05, 123/07, 30/10 and 93/12).

257 Decree on Recording Past-Due Liabilities of Socially-Owned Enterprises under Enforceable Judgements for Claims arising from Employment Relationships (Official Gazette of RS No. 23/12 and 87/12).

in which their claims would be settled. According to the currently available information, the Ministry has not fulfilled its obligations under the said Decree.

As regards the National Employment Service, the largest issue that emerged in 2013 concerned complaints filed by unemployed persons who had taken part in employment or internship programmes which the NES first initiated and then discontinued due to a lack of funding. The problem emerged as a result of amendments to the Law on Budget for 2013, which significantly reduced the amount of funds available for these purposes. Such actions harmed the participants in the competitions, who had initially been informed they were eligible for the programmes and that the NES would sign contracts with them, but no further action followed.

A new reason for complaints against the National Employment Service has emerged – the duty of unemployed persons to report in person at the National Employment Service every three months. This is a duty provided for in Article 32 of the Law on Employment and Unemployment Insurance²⁵⁸, which stipulates that an unemployed person has a duty to report in person at the National Employment Service in order to receive information about the conditions of employment and intermediation in employment, in accordance with an individual employment plan, at least once every three months or whenever invited by the National Employment Service. This provision appears to be inconveniencing unemployed persons in a number of different ways and the Article in question should therefore be amended with a view to introducing as more flexible period for unemployed persons to fulfil their duty to report in person (e.g. on any working day within a specified 10-day period every three or four months).

II TYPICAL CASES

Award of self-employment subsidies cancelled

The Protector of Citizens received a complaint which alleged that the Nis Branch of the National Employment Service had organised a competition for the award of self-employment subsidies for 2013, but then failed to follow it through. The complaint stated that a large number of citizens had initially been informed their applications were approved and they therefore incurred certain costs in order to prepare for their business. However, before the signing of the contracts, the National Employment Service informed them the procedure would be discontinued due to the current budget revision and their contracts would not be signed. After the launch of an investigation, the complainant informed the Protector of Citizens that the National Employment Service managed to obtain the necessary funds and that contracts were signed with and funding disbursed to all persons who complied with the requirements of the competition. Thus, the purpose of the investigation was achieved.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION IN RELATION TO THE AUTHORITIES

1. **The Government** should draft and propose to the National Assembly a new text of the Law on Bankruptcy, which would, in addition to the positive arrangements already included in the Bill, provide for more complete and more efficient supervision of bankruptcy administrators in the course of bankruptcy proceedings.

258 Law on Employment and Unemployment Insurance, Official Gazette of RS Nos. 36/09 and 88/10.

2. **The Government** should draft and propose to the National Assembly a new text of the Law on Privatisation, which would contain more clearly worded guarantees for the rights of employees at companies in restructuring, while at the same time preventing such companies from using their protected status to block the collection of their creditors' claims.
3. **The Privatisation Agency** should make further efforts and take appropriate measures and activities to complete the process of privatisation in those enterprises where it is still ongoing as soon as possible and with the best possible outcome.
4. Pursuant to requests filed and questions asked by citizens, **the Privatisation Agency** should in the future act in compliance with the applicable regulations and provide answers in writing to citizens, so as to avoid unnecessary filing of complaints with the Protector of Citizens due to administrative silence.
5. In the future, when conducting professional advancement programmes and self-employment subsidy programmes, **the National Employment Service** should make every effort to ensure it has at its disposal sufficient funding for the planned programmes and to refrain from initiating any programmes that may run into funding troubles.
6. **The Government** should draft and propose to the National Assembly an amendment of Article 32 of the Law on Employment and Unemployment Insurance, to make the existing arrangements less rigid and give unemployed persons more time to fulfil their duty to report at the National Employment Service.

2.12. JUSTICE SECTOR

I BACKGROUND

1. State's achievements

- 1.1. The National Judicial Reform Strategy for the Period 2013 – 2018 has been adopted.²⁵⁹
- 1.2. The Action Plan on Implementation of the National Judicial Reform Strategy for the Period 2013-2018 has been adopted.²⁶⁰
- 1.3. The Law on Amendments to the Law on Public Prosecution has been enacted.²⁶¹
- 1.4. The Law on Amendments to the Law on Judges has been enacted.²⁶²
- 1.5. The Law on Amendments to the Law on Organisation of Courts has been enacted.²⁶³
- 1.6. The Law on Seats and Territorial Jurisdictions of Courts and Public Prosecution Offices has been enacted.²⁶⁴

2. Results achieved by the Protector of Citizens

- 2.1. The State Prosecutorial Council accepted the opinion of the Protector of Citizens that it is required under the law²⁶⁵ to decide on every objection relating to non-appointment to a prosecutorial position and apologised to two candidates on whose objections it failed to decide, wrongfully believing it was unnecessary because the two candidates were appointed to lower-level prosecutorial offices outside their towns of residence in a subsequent job announcement.

259 Official Gazette of RS No. 57/13.

260 Official Gazette of RS No. 71/13.

261 Official Gazette of RS No. 116/08, 104/09, 101/10, 78/11 - new law, 101/11, 38/12 – decision of the Constitutional Court, 121/12 and 101/13.

262 Official Gazette of RS No. 116/08, 58/09 – decision of the Constitutional Court, 104/09, 101/10, 8/12 – decision of the Constitutional Court, 121/12, 124/12 – decision of the Constitutional Court and 101/13.

263 Official Gazette of RS No. 116/08, 104/09, 101/10, 31/11 – new law, 78/11 - new law, 101/11 and 101/13.

264 Official Gazette of RS No. 101/13.

265 Article 6 of the the Law on Public Prosecution (Official Gazette of RS No. 116/08,104/9,101/10, 78/11 - new law, 101/11, 38/12- decision of the Constitutional Court, 121/12 and 101/13).

- 2.2. Recommendations the Protector of Citizens issued to the Ministry of Justice and Public Administration because of non-compliance with the decisions of the Constitutional Court awarding the right to indemnification to appellants have resulted in measures to expedite the introduction of an appropriate legal framework for the enforcement of decisions of the Constitutional Court, which in turn will improve the respect for human rights in this field.

3. Shortcomings at the national level

- 3.1. No mechanism is in place to provide for a clear and predetermined procedure for exercising the right to indemnification awarded by decisions of the Constitutional Court.
- 3.2. The Ministry of Justice and Public Administration has not made the established mechanism for acting during direct supervision fully functional, which leads to unequal treatment of citizens and selective application of this mechanism.
- 3.3. Citizens still do not have sufficient access to free legal assistance, which acts as a barrier to access to justice, especially for the financially vulnerable.
- 3.4. The High Judicial Council, in its statements submitted to the Protector of Citizens after the launching of an investigation because of failure of its disciplinary bodies to act pursuant to citizens' complaints about the work of judges, continues to challenge the power of the Protector of Citizens to control the legality and regularity of work of the said authority.
- 3.5. Citizens' complaints against the work and actions of bailiffs have pointed to shortcomings in connection with legal protection and remedies, as well as in connection with the right to peaceful enjoyment of property.
- 3.6. The Republic of Serbia still has no efficient system of determining the responsibility of independent professionals (lawyers, private bailiffs) pursuant to citizens' report about their work.

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

- 4.1. No actions have been taken to implement the following proposals for improving the citizens' position in relation to public authorities set out in the 2012 Annual Report of the Protector of Citizens:
- In the work of court administrations, a functional mechanism should be put in place for direct supervision by the Ministry of Justice and Public Administration, in accordance with its statutory powers;
 - A Law on Free Legal Aid should be enacted in an expedited procedure;
 - Judgements of the European Court of Human Rights in Strasbourg which adjudicated that complainants were entitled to indemnification by the Republic of Serbia should be enforced.
- 4.2. The Ministry of Justice and Public Administration has not complied with the recommendations issued by the Protector of Citizens in 2013 because of non-compliance

with the decisions of the Constitutional Court awarding the right to indemnification to appellants.

5. Explanation

The National Judicial Reform Strategy for the Period 2013-2018 and the Action Plan on its implementation have been adopted. They are expected to improve the quality and efficiency of the judicial system, strengthen the independence and accountability of the judiciary and establish the rule of law and legal certainty.

Enactment of the Law on Amendments to the Law on Public Prosecution, the Law on Amendments to the Law on Judges, the Law on Amendments to the Law on Court Organisation and the Law on Seats and Territorial Jurisdictions of Courts and Public Prosecution Offices should contribute towards the establishment of an efficient and economical network of judges and public prosecution offices and improve the organisation of their work, thus allowing citizens better access to justice and respect for the right to a fair trial and the right to a trial within a reasonable time.

The amendments introduced by the said Laws are aimed at harmonising the said legislation with the Constitution of the Republic of Serbia, the 2013 Serbia Progress Report of the European Commission and the expertise provided by the Council of Europe. The Protector of Citizens welcomes in particular those arrangements envisaged by the said Laws that are aimed at establishing a more efficient mechanism for the exercise of the right to a trial within a reasonable time, given the frequency of violation of this citizens' right.

A noticeable step forward has been made in the transparency of drafting of legislation backed by the Ministry of Justice and Public Administration, which informs the professional community and takes into account its feedback to address the identified weaknesses of the country's legal and judicial systems. The contribution of the professional community to the legislative activity is crucial in devising optimum solutions and restoring citizens' trust in the efficiency and functionality of the judicial system.

As the said Laws will take effect on 1 January 2014, in 2013, similarly as in earlier years, a large number of citizens contacted the Protector of Citizens because of violations of the right to a trial within a reasonable time, violation of the right to a fair trial, non-enforcement of valid and enforceable court decisions, failure to act pursuant to decisions of the Constitutional Court and handling of citizens' complaints by the Ministry of Justice and Public Administration.

That the most recent decisions of the Constitutional Court which adjudicated on the constitutional complaints filed by judges and public prosecutors will not, at long last, end the dispute that has evolved over the "reformed reform" of the judiciary can be seen from the complaints relating to the enforcement of those decisions. The Protector of Citizens received complaints from two non-appointed deputy district prosecutors, who voiced their dissatisfaction because the State Prosecutorial Council failed after two full years to decide on their objections (converted constitutional appeals) to the decisions on their removal from office made by the first convocation of the State Prosecutorial Council. Contrary to the applicable legislation, the State Prosecutorial Council took the view that those objections were considered resolved, although no regulations that would govern the handling of such objections had been passed at the time when the complainants were appointed to prosecutorial

offices in a subsequent job announcement. After conducting an investigation, the Protector of Citizens issued recommendations to the State Prosecutorial Council, advising it to decide on the complainants' objections without delay and to send them a written apology because of the denial of their right to a decision on a remedy. Instead of deciding on the objections, the State Prosecutorial Council returned the case files without delivering a decision to the Constitutional Court – the very institution that forwarded it the objections for adjudication two years earlier. After initially challenging the competence of the Protector of Citizens to conduct such an investigation, the State Prosecutorial Council issued a written apology to the complainants, thereby partially complying with the recommendation.

Complaints in the field of the judiciary pursuant to which the Protector of Citizens can act if there are legal grounds for such acting relate to the work of the Ministry of Justice and Public Administration. The number of complaints against the work of the said Ministry received in 2013 was higher than in 2012. Citizens usually address the Ministry expecting it to conduct a supervision procedure by direct inspection of the case files covered by the complaint, which the Ministry invariably fails to do. Such actions of public authorities leave the citizens with failed expectations and render the supervisory role of the Ministry in judicial administration meaningless. The Protector of Citizens has already drawn the attention of the competent authorities to this issue in the past.²⁶⁶

The Law on Execution and Security²⁶⁷ introduced the institute of bailiffs in Serbia's legal system. Bailiffs began their work on 1 June 2012, immediately drawing complaints from the citizens. Many of the citizens' grievances concerned the procedures of enforced collection of public utility debt. The fee rates charged for the work of bailiffs are a threat to the livelihood of many citizens, in particular those who are already on the brink of poverty. The announced amendments to the Law on Execution and Security, which should address some of the issues identified in the work of bailiffs, have still not been enacted.

Citizens in whose cases the Constitutional Court adjudicated that their right to a trial within a reasonable time in reality still cannot enforce their right indemnification. The recommendations of the Protector of Citizens issued to the Ministry in connection with its failure to comply with the decisions of the Constitutional Court awarding the right to indemnification have not officially been implemented by the end of the reporting period. According to the said authority, a relevant legal framework for the enforcement of decisions of the Constitutional Court will be put in place to comply with those recommendations, which will improve the human rights situation in this field.

In this reporting period, the High Judicial Council continued to challenge the competence of the Protector of Citizens to handle complaints from non-appointed judges and citizens against the work of the disciplinary bodies of that Council.

Once again, problems have emerged in practice in connection with the citizens' request for legal aid (writing of submissions, representation before courts and other public authorities, interpretation of legal situations and applicable legislation etc.). This problem is particularly common in case of those who are financially less well-off and cannot afford the services of law firms, while on the other hand the legal aid offices of local self-governments place too complex eligibility requirements for their services, which the majority of the citizens do

266 E.g. 2012 Annual Report of the Protector of Citizens, p. 118.

267 Official Gazette of RS Nos. 31/11 and 99/11 - new law.

not meet. It should be noted that many local self-governments do not even have legal aid offices. The same problem is also faced by those citizens who are not socially vulnerable, but have nevertheless not succeeded in finding out which body, which procedure or which time limits apply in their specific case, even after addressing a number of different authorities and institutions. This shows that work on a Law on Free Legal Aid, a working draft of which is already in the pipeline, should be expedited.

Citizens' complaints against the work of the legal profession reveal there is no clearly demonstrated will to influence those members of independent professions who are guilty of unprofessional conduct. Although judicial reform and introduction of the rule of law implies active and equal participation of the independent professions, the overall impression is that bar associations are not sufficiently involved in the reform and introduction of the rule of law, i.e. respect for the right to a fair trial and the right to a trial within a reasonable time. The lack of sanctions and the untimely acting on disciplinary reports filed against attorneys cause mistrust among the citizens and create legal uncertainty.

II TYPICAL CASES

*Decisions of the Constitutional Court are final,
enforceable and universally binding*

The Constitutional Court upheld a constitutional appeal due to violation of the right to a trial within a reasonable time and awarded the appellant an amount as indemnification for non-financial damage. In accordance with the said decision of the Constitutional Court, the indemnity was to be paid from the allocation given to the Ministry of Justice and Public Administration in the national budget.

As the Ministry has no clear and predetermined procedure for exercising the right to indemnification and payment of amounts awarded by the Constitutional Court, the citizen was faced with additional requirements he had to comply with before receiving the indemnity for non-financial damage.

The Ministry refused to cooperate in the investigation conducted by the Protector of Citizens. The Protector of Citizens, without receiving a statement from the said authority, found that such course of action, without any legal justification and contrary to the principle of good governance, prevented the exercise of an awarded right and defeated the purpose of the Constitutional Court. The Ministry was advised to take measures to expedite the establishment of an appropriate legal framework for the enforcement of decisions of the Constitutional Court.

The Ministry partially complied with the recommendation.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION IN RELATION TO THE AUTHORITIES

1. **The Ministry of Justice and Public Administration** should ensure direct supervision of the work of court administrations, in accordance with the applicable legislation, to enable efficient handling of citizens' complaints and to ensure their expectations are met.

2. **The Ministry of Justice and Public Administration** should adopt secondary legislation to establish clear, predetermined and precise procedures for exercising the entitlement to indemnification awarded by decisions of the Constitutional Court.
3. **The Ministry of Justice and Public Administration** should expedite the drafting of the Law on Free Legal Aid, while at the same time also taking into account the comments and suggestions made during public debates, to enable efficient exercising of the right to free legal aid and access to justice
4. **The Bar Association of Serbia** should take measures in accordance with the regulations applicable to its work and comply with the international standards achieved in its field in order to become more actively involved in the judicial reform and establishment of the rule of law.

2.13. DEFENCE SECTOR

I BACKGROUND

1. State's achievements

- 1.1. The Decision on the Establishment of a Budget Fund to Finance the Housing Needs of Professional Members of the Army of Serbia and Employees of the Ministry of Defence has been adopted.²⁶⁸
- 1.2. The Bylaw on Reimbursement of Travel and Other Expenses and Other Allowances in the Army of Serbia has been passed.
- 1.3. The Ministry of Defence is implementing the principles of good governance to a fuller extent through the activities it takes within its sphere of competence, as it rectifies any omissions in its work within short periods of time and demonstrates a willingness to apologize to those citizens whose rights have been violated due to omissions in the work of that authority.

2. Results achieved by the Protector of Citizens

- 2.1. Recommendations of the Protector of Citizens and the investigations conducted by this authority have contributed towards rectification of omissions attributable to "administrative silence" and towards the exercise of citizens' right to receive a decision within the statutory time limits, as the Ministry of Defence complied with the Protector's recommendations, taking appropriate measures to rectify the omissions and adopting administrative instruments while the investigations into the legality and regularity of its work were still underway.
- 2.2. By complying with a recommendation of the Protector of Citizens, the Ministry rectified a violation of the right of professional members of the Army of Serbia to directly address the Protector of Citizens.
- 2.3. During the investigation into the legality and regularity of work, after the Protector of Citizens pointed out it was necessary to address the issue of "non-existing salary conversion charts" used in the calculation of pensions, the Ministry of Defence

²⁶⁸ Official Gazette of RS No. 106/13 and Official Military Gazette No. 26/13.

launched an initiative to amend the Law on Pension and Disability Insurance²⁶⁹, which will create a legal basis for obtaining the necessary inputs for pension calculation in cases when the Ministry of Defence has no available salary figures.

- 2.4. After the Protector of Citizens issued relevant recommendations, beneficiaries of the military health insurance fund in the towns of Boljevac, Sokobanja, Majdanpek, Donji Milanovac, Kladovo and Negotin are now able to receive prescription medicines at military medical establishments in the towns of their residence, which has improved the exercise of their right to health care.

3. Shortcomings at the national level

- 3.1. The Military Academy of the Ministry of Defence has not passed a Bylaw on Harmonisation of Vocational, Academic and Scientific Titles with the regulations in force after the enactment of the Law on Higher Education.
- 3.2. The Military Health Care Administration of the Ministry of Defence has not passed an implementing regulation to regulate in detail the procedure of specialist medical examination of professional servicemen.

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

- 4.1. The recommendations issued by the Protector of Citizens in 2011 to the Military Social Insurance Fund with the aim of ensuring the exercise of the right to indexation of pensions by the beneficiaries of military pensions have still not been implemented.²⁷⁰

5. Explanation

Unlike the previous reporting period, 2013 saw a significant reduction in the number of complaints relating to “administrative silence”. The fact that much fewer citizens have complained against belated responding by the Ministry of Defence appears to indicate a shift in the attitude of that authority towards the duty to effectively and efficiently discharge the delegated powers. The investigations conducted by the Protector of Citizens also deserve some credit for this. Acting on the recommendations of the Protector of citizens and during the investigations into the legality and regularity of its work, the Ministry of Defence rectified the omissions in its work which concerned “administrative silence” and adopted relevant administrative instruments in a very short time.

Nevertheless, this reporting year saw an increase in the number of citizens who complained to the Protector of Citizens about the fact that the Ministry of Defence and the Army of Serbia did not have salary figures, which meant that their pensions were calculated on the basis of the national average salary and were thus lower than they should have been.

269 Official Military Gazette No. 34/03, 64/04 – decision of the Constitutional Court, 84/04 - new law, 85/05, 101/05 - new law, 63/06 – decision of the Constitutional Court, 5/09, 107/09, 101/10, 93/12, 62/13 and 108/13.

270 For more information, see the 2012 Annual Report of the Protector of Citizens, p. 123-129.

A shortcoming in the regulations which govern the calculation of the personal coefficient for retired professional servicemen in cases when there are no data on salaries and allowances, i.e. on the calculation base used in the pension system, results in a situation where the calculation of the amount of pensions is based on figures on the average insurance contribution payments according to the scale of the Republic Pension and Disability Insurance Fund applicable on the retirement date, rather than on the average salary actually disbursed to the person concerned. After the Protector of Citizens highlighted the importance of this issue and emphasised it was necessary to take action to address it, the Ministry of Defence cooperated with other public authorities and launched an initiative with the Ministry of Labour, Employment and Social Policy to consider the opportunities for providing a legal basis for cases like these in the Law on Pension and Disability Insurance.

The issue of exercising the right to health care remained at the forefront during 2013. Beneficiaries of military health insurance in the towns of Boljevac, Sokobanja, Majdanpek, Donji Milanovac, Kladovo and Negotin pointed to omissions in the work of the Military Social Insurance Fund of the Ministry of Defence which prevented them from receiving prescription medicines at the military medical establishments in the towns of their residence. After the Protector of Citizens issued a recommendation, the Military Social Insurance Fund of the Ministry of Defence took appropriate measures and signed agreements with privately-owned pharmacies, thereby allowing the beneficiaries of military health insurance in Eastern Serbia to receive prescription medicines at the military medical establishments in the towns of their residence. This effectively improved the situation of the beneficiaries of military health insurance in those towns in terms of exercise of their right to health care, while at the same time putting an end to the practice of refunding travel costs to those persons whenever they had to travel to obtain medication, which created an unnecessary burden for other taxpayers.

An active serviceman in the Army of Serbia also complained to the Protector of Citizens about problems with the exercise of the right to health care. As a result of a shortcoming in the implementing regulations governing the right of professional servicemen to specialist medical examinations and the conditions under which such examinations may be performed, given the fact that such examinations are available at military medical establishments only during regular working hours, there is scope for violation of the right to privacy if a superior officer demands access to medical documents. Furthermore, a superior officer could also potentially abuse his/her discretion to decide whether a request for specialist medical examination is justified or not unless access to medical records is allowed.

The lack of an implementing regulation that would harmonise vocational, academic and scientific titles acquired under regulations applicable after the effective date of the Law on Higher Education, and the issues involved in awarding Master of Arts degrees by the Military Academy, which continued throughout 2013, effectively prevented citizens in the exercise of this right. Although the Military Academy of the Ministry of Defence made a draft version of the Bylaw on Harmonisation of Vocational, Academic and Scientific Titles and took initial steps, the procedure has not been completed and for this reason the said Bylaw is still not in force.

A lack of activity aimed at rectifying omissions is also apparent in the passive attitude of the Military Social Insurance Fund towards the issue of unadjusted military pensions.

Military pensioners once again voiced their dissatisfaction in 2013, in particular because of the negative attitude of the Military Social Insurance Fund towards the recommendation of the Protector of Citizens which called for an adjustment of pensions by 11.06% as from 1 January 2008.

An analysis of the total number of complaints against the work of the Ministry of Defence and the Army of Serbia received in 2013 reveals that active servicemen of the Army of Serbia have continued contacting the Protector of Citizens in increasing numbers. In addition to grievances relating to their individual status issues, their complaints increasingly point to systemic issues that affect a large number of professional servicemen of the Army of Serbia.

From the citizens' complaints the Protector of Citizens learned that the Ministry of Defence was preparing an instrument that would impose an obligation on professional servicemen to wear their uniform when coming to and leaving from work. They claim this could have harmful consequences both for every member of the Army of Serbia individually and for the authority and reputation of the Army of Serbia as a whole. The Protector of Citizens is of the opinion that professional servicemen of the Army of Serbia are citizens first and foremost, with all universally recognised human rights, although some of those rights and freedoms may be subject to restrictions in cases provided for by the law and where required by the very nature of military service; however, this in no way implies a forfeiture of the status of a citizen outside the working hours. A request was therefore sent to the Ministry of Defence to send a draft of the said instrument to the Protector of Citizens, in view of the fact that the Protector of Citizens is authorised to give opinions to the Government and the National Assembly in the drafting of legislation.

It has been observed that many submissions by the "citizens in uniform" are not in fact complaints in nature, but instead aim to draw attention to the status of the Army of Serbia and its members and the issues they face, including the lack of housing as the most important issue both in social and in economic terms. Adoption of the Decision on the Establishment of a Budget Fund to Finance the Housing Needs of Professional Members of the Army of Serbia and Employees of the Ministry of Defence²⁷¹ created the assumptions for addressing this crucial aspect of life for the professional servicemen of the Army of Serbia and the employees of the Ministry of Defence.

II TYPICAL CASES

Complainant receives the requested documents after three years of initial request

The Protector of Citizens received a complaint in which a citizen stated that the Military Construction Centre "Beograd" of the Ministry of Defence had not provided him with the requested documents after three whole years of his initial request.

After the recommendation of the Protector of Citizens, the Military Construction Centre "Beograd" provided the requested documents, which the citizen in question needed in order to complete the legalisation of his residential space.

271 Official Gazette of RS No. 106/13 and and Official Military Gazette No. 26/13.

*No member of the Army of Serbia can be punished
for contacting the Protector of Citizens.*

A professional serviceman in the Army of Serbia submitted a complaint to the Protector of Citizens against the Army of Serbia because of “administrative silence”, i.e. failure to decide on his application for retirement. After the initiation of an investigation into the legality and regularity of work of the Army of Serbia, the complainant informed the Protector of Citizens that his immediate superior gave him a list of questions he had to answer in writing because he had contacted the Protector of Citizens.

Acting on the recommendations, the Army of Serbia forwarded the application to the competent superior officer for deciding, thus rectifying the omission pointed out by the Protector of Citizens, but it also sent a letter of apology to its member for any inconveniences he may have suffered because of the statement he had to give as a result of his complaint to the Protector of Citizens.

The importance of this recommendation issued to the Army of Serbia is reflected in its systemic nature, because military command should not be driven by a desire to restrict the rights of their servicemen; instead, it should be committed to serving their needs and exercising their rights and for this reason no professional serviceman in the Army of Serbia should suffer harmful consequences for contacting the Protector of Citizens.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION
IN RELATION TO THE AUTHORITIES

1. **The Ministry of Defence** should pass an implementing regulation to regulate the exercise of the right to specialist medical examinations by professional servicemen in accordance with the law.
2. **The Ministry of Defence** should pass the Bylaw on Harmonisation of Vocational, Academic and Scientific Titles with the regulations in force after the enactment of the Law on Higher Education.

2.14. SECTORS OF PUBLIC ADMINISTRATION, LOCAL SELF-GOVERNMENT, DUTIES DELEGATED TO LOCAL SELF-GOVERNMENT AND KOSOVO AND METOHIA

I BACKGROUND

1. State's achievements

- 1.1. The Protector of Citizens found no significant achievements of the government in this sector in 2013.

2. Results achieved by the Protector of Citizens

- 2.1. The authorities of the city of Leskovac have improved their level of respect for citizens' rights and are now rectifying omissions immediately upon learning that the Protector of Citizens launched an investigation into their work. This is in stark contrast with the previous reporting period, when Leskovac stood out for its non-compliance with recommendations and refusal to cooperate with the Protector of Citizens in the investigations launched pursuant to citizens' complaints.

3. Shortcomings at the national level

- 3.1. Local self-government authorities have still not made any major steps forward in terms of more diligent handling of citizens' submissions, accessibility, good service and fair treatment of citizens.
- 3.2. Insufficient efforts, and in some cases even complete absence of any action, in the addressing of issues falling within their original or delegated spheres of competence.
- 3.3. Local self-government authorities still do not take all necessary steps to rectify the issues in their work that result in failure to implement or inefficient implementation of their own decisions.
- 3.4. Local self-government authorities still fail to provide clear and sufficient information to citizens in connection with their rights and legally guaranteed interests,

as well as the opportunities at their disposal for the protection of their rights and interests when they have issues with local self-government authorities.

- 3.5. Local self-government authorities still frequently exploit the fact that citizens often lack sufficient information: they prolong the procedures without justification and fail to exercise their inspection powers.
- 3.6. Local self-government authorities have not organised their work in a manner that would prevent the identified issues from repeating.

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

- 4.1. The Administration of the City Municipality of Vracar and the Administration of the City Municipality of Zvezdara failed to implement the recommendations issued due to non-enforcement of orders for the eviction of the so-called “protected tenants” – holders of tenancy rights to privately-owned apartments.
- 4.2. The Land Restitution Committee of the City Municipality of Barajevo failed to implement the recommendation issued because of an omission in the land restitution process.
- 4.3. The Administration of the City Municipality of Rakovica failed to implement the recommendations issued to it in connection with non-enforcement of its decisions and enforcement orders.

5. Explanation

The Protector of Citizens found no significant achievements of the government in this sector in 2013. During the reporting period, the citizens usually complained against the work of local self-governments because of delays in the handling of submissions, failure to respond to reports of environmental noise, failure to enforce orders issued by inspectorates (municipal inspectorate, environment protection inspectorate, traffic inspectorate) and failure to repair local roads. Citizens frequently complained against utility service providers for those utilities that fall within the original sphere of competence of local self-governments, including issues with: heating, water supply, communal waste removal, parking, public transport and maintenance of graveyards and grave plots. As the Protector of Citizens does not have the power to oversee the work of local self-governments in those activities that fall within their original sphere of competence, in such cases the citizens were instructed in detail which public authorities they can contact to protect their rights or, alternatively, such complaints were forwarded to local ombudsmen in their local communities or the Provincial Ombudsman. In certain cases, taking into account the seriousness of the allegations and the fact that some self-governments still do not have local ombudsmen, the Protector of Citizens used his mediation powers and sent submissions to competent local self-governments, pointing to the importance and urgency of addressing the issues within their spheres of competence.

A striking example of non-compliance with the statutory duty to cooperate with the Protector of Citizens used to be the city of Leskovac, as elaborated in detail in the 2012 Annual Report of the Protector of Citizens. However, this year the situation has improved for

the better. Examples of good cooperation with the said authority include complaints against the work of the City Council of Leskovac, the Mayor and the City Administration of Leskovac because of their failure to act on citizens' submissions. After the launch of investigations or sending of mediatory communications, the said authorities of the city of Leskovac informed the Protector of Citizens within the specified period they had rectified the omissions raised in the complaints.

Local self-government authorities usually rectified omissions after an investigation into their work was launched pursuant to complaints relating to belated acting on requests; in doing so, they would inform the Protector of Citizens they had in the meantime acted on the citizens' requests. The citizens were mostly satisfied with this response and the Protector of Citizens accordingly closed his investigations.

Cooperation between local self-government authorities and the Protector of Citizens is still not fully satisfactory. However, improvements have been observed compared with the previous years, as the majority of local self-government authorities now respond to the requests made by the Protector of Citizens and quite a few of them rectify the omissions immediately upon being informed that an investigation has been launched. It is of paramount importance that local self-government authorities fully cooperate with the Protector of Citizens, because obstruction of investigations, refusal to provide answers and documents and other forms of non-cooperation that prevent the Protector of Citizens from taking a stand on the merits of complaints are inadmissible in the legal system and violate imperative legal norms.

Although cooperation between local self-government authorities and the Protector of Citizens in the investigations has improved, in most cases the local self-government authorities have not complied with the recommendations issued.

The Administration of the City Municipality of Vracar and the Administration of the City Municipality of Zvezdara failed to implement the recommendations issued due to non-enforcement of orders for the eviction of the so-called "protected tenants" – holders of tenancy rights to privately-owned apartments and due to a failure to adopt programmes for new housing construction funded by money collected from the sale of apartments to former protected tenants by 31 March 1993 at the latest, as was required under the Law on Housing.²⁷²

The Land Restitution Committee of the City Municipality of Barajevo failed to implement the recommendation issued because of an omission in the land restitution process. The Municipality of Barajevo was recommended to forthwith find a way to rectify the omission and re-establish the complainant's title to the cadastral parcel in question or to allow the complainant peaceful enjoyment of his property by some other means acceptable to him.

The Administration of the City Municipality of Rakovica failed to implement the recommendations issued to it in connection with non-enforcement of its decisions and enforcement orders and its rejection of the proposal made by the complainant/enforcement applicant that it prepays the costs of enforcement in order to expedite the procedure.

Local self-government authorities have still not made any major steps forward in terms of more diligent handling of citizens' submissions, accessibility, good service and

272 Official Gazette of RS No. 50/92, 76/92, 84/92 - corrigendum, 33/93, 53/93, 67/93, 46/94, 47/94 - corrigendum, 48/94, 44/95 - new law, 49/95, 16/97, 46/98, 26/01, 101/05 - new law and 99/11.

fair treatment of citizens. They still fail to provide clear and sufficient information to citizens in connection with their rights and legally guaranteed interests, as well as the opportunities at their disposal for the protection of their rights and interests. Furthermore, although local self-government authorities face problems in the implementation or efficient implementation of their own decisions, no specific activities have been taken to overcome those problems. Local self-government authorities often initiate the enforcement of decisions which they are required to implement *ex officio* within a specified timeframe only after being specifically asked by the citizens to do so, and in some cases even fail to implement them altogether. Local self-government authorities still frequently exploit the fact that citizens often lack sufficient information, in that they prolong the procedures without justification and fail to exercise their inspection powers. In addition, they have not organised their work in a manner that would prevent the identified or similar issues from repeating.

II TYPICAL CASES

Failure to enforce enforceable decisions

A complainant filed a complaint against the actions of the Administration of the City Municipality of Palilula and the City Administration of the City of Belgrade due to their failure to enforce 27 decisions and enforcement orders issued by the municipal inspectorate of the Municipality of Palilula. The decisions in question ordered the owners of apartments to remove the prefabricated removable wire fences they had installed in a residential area without the approval of a competent authority, at the ground level of buildings and in public areas. The Protector of Citizens found that the Administration of the City Municipality of Palilula had violated the law and the principles of good governance by not taking all necessary measures and actions to ensure administrative enforcement of the said decisions and orders. The Inspection Secretariat of the City Administration of the City of Belgrade had also violated the law and the principles of good governance because it failed to take the statutory measures for the purpose of administrative enforcement of the said decisions once the Municipality failed to do so. The Administration of the City Municipality of Palilula was issued a recommendation to forthwith take all statutory measures and actions to administratively enforce the decisions and enforcement orders issued in this specific case and to ensure efficient implementation of decisions of its own bodies in its future work. The Inspection Secretariat of the City Administration of the City of Belgrade was issued a recommendation to take all necessary measures and actions in its future work to enforce the enforceable orders of municipal inspectorates of the city's municipalities in situations when the municipalities fail to enforce their own decisions. The complainant informed the Protector of Citizens that the City Municipality of Palilula enforced the decisions and complied with the recommendation issued by this authority.

Violation of the right to protection and peaceful enjoyment of property

The Protector of Citizens found that the Land Restitution Committee of the City Municipality of Barajevo made an omission in that it disposed of land owned by the

complainant and registered the title to that land in the name of other persons in the process of land restitution, in violation of the applicable provisions of the Law.²⁷³ These actions violated the right to protection and peaceful enjoyment of property of the complainant and of third parties, who are not even parties in the land restitution procedure. Furthermore, belated and ineffective actions taken pursuant to the land restitution application violated the principles of lawfulness and good governance. The recommendation issued to this authority urged it to rectify the omission without delay and re-establish the complainant's title to the cadastral parcel in question or to allow the complainant peaceful enjoyment of his property by some other means acceptable to him register the title to the land parcel in question. The City Municipality of Barajevo did not implement this recommendation within the specified period of time.

*Failure of city municipalities to adopt programmes
for new housing construction*

Pursuant to complaints, the Protector of Citizens issued recommendations to the Administration of the City Municipality of Vracar and the Administration of the City Municipality of Zvezdara because of their failure to enforce decisions which authorised the owners of apartments in the territories of those municipalities to evict protected tenants from privately-owned apartments and because of their failure to adopt programmes for new housing construction funded by money collected from the sale of apartments to former protected tenants by 31 March 1993 at the latest, as was required under the Law on Housing. These failures included non-compliance with responsibilities imposed by valid and enforceable decisions and failure to adopt programmes for new housing construction funded by money collected from the sale of apartments to former protected tenants. Recommendations issued to the said municipalities advised them to comply with the valid and enforceable decisions by providing appropriate housing for the resettlement of holders of protected tenancy rights and their families, by helping them move and by adopting programmes for new housing construction funded by money collected from the sale of apartments to former protected tenants.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION
IN RELATION TO THE AUTHORITIES

1. **Local self-governments** should act lawfully, efficiently and economically pursuant to citizens' requests.
2. **Local self-governments** should provide information to citizens in connection with their rights and legally guaranteed interests, as well as the opportunities at their disposal for the protection of their rights and interests when they have issues with local self-government authorities and should furthermore organise their work in a manner that would prevent the identified or similar issues from repeating.
3. **Local self-governments** should take all necessary measures and actions to eliminate obstacles and create assumptions for timely, efficient and economical enforcement of their own decisions.

273 Official Gazette of RS No. 18/91, 20/92 and 42/98.

2.15. SECTORS OF URBAN PLANNING, CONSTRUCTION AND CADASTRE, NATURAL DISASTERS AND RESTITUTION

URBAN PLANNING AND CONSTRUCTION

I BACKGROUND

1. State's achievements

- 1.1. The Law on Legalisation of Properties has been enacted.²⁷⁴
- 1.2. The Law on Special Conditions for Registration of Title to Properties built without a Building Permit has been enacted.²⁷⁵
- 1.3. The Bylaw on Conditions, Manner and Procedure for acquiring Title to Land and Properties subject to the Law on Special Conditions for Registration of Title to Properties built without a Building Permit.²⁷⁶

2. Results achieved by the Protector of Citizens

- 2.1. As the Constitutional Court, acting (among other submissions) on the initiative of the Protector of Citizens, declared the provisions of the Law on Planning and Construction relating to legalisation unconstitutional, the Protector of Citizens called on the competent Ministry and the Government to submit to the National Assembly without delay a bill of law on legalisation of illegally built properties.
- 2.2. The investigations initiated by this authority contributed to the promotion and protection of citizens' right to peaceful enjoyment of property, as local self-government authorities in charge of construction inspection rectified omissions in their work upon learning that the Protector of Citizens launched an investigation into their work.

274 Official Gazette of RS No. 95/13.

275 Official Gazette of RS No. 25/13.

276 Official Gazette of RS No. 31/13.

3. Shortcomings at the national level

- 3.1. The Republic of Serbia has still not created a legal framework that would provide effective and efficient implementation of final and enforceable own decisions of local self-government authorities in charge of construction inspection. This includes in particular mechanisms that acting local self-government authorities should have at their disposal to implement measures within their sphere of competence in accordance with the law.
- 3.2. The issue of scarce human and technical resources of the Ministry of Construction and Urban Planning needs to be addressed to enable the Ministry to exercise the full scale of its powers.
- 3.3. There has been no comprehensive reform of inspectorates across all levels to improve their work and make them more efficient, which requires first and foremost a different and more efficient oversight system.

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

- 4.1. No actions have been taken to implement the following proposals for improving the citizens' position in relation to public authorities set out in the 2012 Annual Report of the Protector of Citizens:
 - Local self-government authorities in charge of construction inspection have not taken all necessary measures to put an end to the practice of non-implementation of valid and enforceable own administrative enactments by which the authorities in question order certain measures to be taken;
 - Relevant laws should be amended to ensure more efficient oversight of property construction and commissioning inspection duties delegated to local self-government authorities by the Ministry of Construction and Urban Planning;
 - Amendments should be made to the laws and relevant implementing regulations should be passed to ensure timely and efficient handling of citizens' reports by competent local self-government authorities.
- 4.2. Local self-government authorities (Municipal Administration of Vladicin Han, Municipal Administration of the Municipality of Ivanjica, Administration of the City Municipality of Rakovica) have not complied with the recommendations of the Protector of Citizens to immediately begin implementing decisions on demolition and the related enforcement orders in accordance with the positive legislation.

5. Explanation

Deciding on a number of submitted initiatives, including the motion for a constitutional review of Article 83 paragraph 2 of the Law on Amendments to the Law on Planning and Construction filed by the Protector of Citizens, in December 2012 the Constitutional Court adjudicated that the provisions of the said Law which govern the legal matter of legalisation were not in compliance with the Constitution. The said decision

of the Constitutional Court was published 6 months later, on 7 June 2013, to give the Government and the National Assembly an opportunity to regulate this subject matter in compliance with the Constitution.

As no bill of law that would regulate this subject matter was submitted to the National Assembly by the day of publication of the said decision, the Protector of Citizens called on the competent Ministry and the Government to submit to the National Assembly without delay a bill on legalisation of illegally built properties, because the lack of a relevant regulation deprives of legal certainty both the citizens who applied for legalisation and those who expect their illegally built properties will be demolished. Four months later, the National Assembly enacted the Law on Legalisation of Properties.

During the conducted investigations, the Protector of Citizens found that competent local self-government authorities, acting on citizens' reports against illegal builders, in many cases conducted the procedures for disproportionately long periods, contrary to the principle of efficiency of procedures. The authorities delayed the passing of decisions and, once passed, decisions remained unimplemented, sometimes even years later. In this context, the work of municipal and city administrations, as bodies responsible under the law for administrative enforcement of decisions and enforcement orders on demolition, made omissions in that they failed to take all measures within their spheres of competence in accordance with the law in order to ensure the decisions are implemented. Such actions of municipal and city authorities are contrary to the main principles of administrative procedure and good governance in general – the principles of efficiency, economy and effectiveness.

The failure of municipal and city authorities to act in accordance with their own enforceable decisions, for the enforcement of which there had been no legal or factual hindrances before the effective date of the Law on Legalisation of Properties, created legal uncertainty and defeated the very purpose of the procedures that were conducted.

As learned by the Protector of Citizens from the received responses of local self-government authorities, they attribute this negative trend with regard to acting on their own final and enforceable decisions on the removal of properties to the following circumstances:

- Lack of funding required for enforcement, either because the budget of the local self-government had not earmarked sufficient funds for those purposes or, as was the case with city municipalities of the city of Belgrade, because budgets for those purposes are capped in advance and usually insufficient;
- Belated and unsuccessful public procurement procedures for the hiring of employees for these duties, in cases where relevant organisational units do not exist;
- Lack of an appropriate organisational unit responsible for enforcement of decisions in the organisational structure of local self-governments;
- Lack of a clearly defined plan and time schedule for enforcement of decisions on demolition or failure to act in accordance with such a plan;
- Failure of local self-government authorities to decide on citizens' requests for after-the-fact building permits and certificates of occupancy within the time limit set by the law, which then, in accordance with the applicable regulations in this field, becomes a preliminary issue in the procedure of enforcement of decisions ordering the removal of properties built without a building permit.

For these reasons, the Protector of Citizens pointed to the identified omissions and the need to rectify them in the course of the investigation and through recommendations issued to the local self-governments concerned (Municipal Administration of Vladicin Han, Municipal Administration of the Municipality of Ivanjica and Administration of the City Municipality of Rakovica). However, given the sheer scale of this issue in the work of local self-government authorities, the Protector of Citizens concluded the best way to protect citizens' rights and ensure that local self-governments perform these duties better in the future would be to issue opinions that would in particular focus on the need for competent local self-government authorities to: earmark funds for the enforcement of decisions on demolition of illegally built properties when planning their budgets; respect the time limits set by the law when deciding on citizens' requests for after-the-fact building permits and certificates of occupancy; and enforce valid and enforceable decisions and demolish illegally built properties according to a predetermined schedule of enforcement of demolition orders.

Acting on citizens' complaint against the work of the Ministry of Construction and Urban Planning, the Protector of Citizens found delays of many months – sometimes even over a year – in the exercise of duties within the Ministry's sphere of competence, sometimes with gross violations of citizens' rights and, in certain cases, with irreparable damage. In a significant number of cases, requests for responses had to be repeated after the launch of an investigation into the legality and regularity of the Ministry's work. In such cases, the Protector either received no response or the responses were incomplete, without statements of all relevant facts and circumstances and without relevant explanations. The Protector of Citizens contacted the Minister in connection with this issue and presented a specification of 27 cases in which the Ministry of Construction and Urban Planning failed to respond within the specified time. The Minister was asked to exert his authority to ensure compliance with the requests of the Protector of Citizens within shortest possible periods. In view of these facts, there is every reason to believe there are objective obstacles that stand in the way of quality and timeliness in the work of the said authority, and this in turn means it is in dire need of upgrades in terms of human and technical capacities.

II TYPICAL CASES

Local self-government authority fails to enforce its own final and enforceable decision

Acting on a complaint submitted by a complainant who was dissatisfied with the fact that the Municipal Administration of the Municipality of Vladicin Han had failed to enforce its own final and enforceable decision to demolish a property, the Protector of Citizens launched an investigation into the regularity and legality of work of the said authority.

The Municipal Administration of the Municipality of Vladicin Han was issued a recommendation to enforce the decision to demolish the property, in accordance with the relevant enforcement order, and to send a letter of apology to the complainant for the years-long failure to enforce the decision.

The Municipal Administration of the Municipality of Vladicin Han informed the Protector of Citizens within the specified period it had not complied with the recommendation, but would do so as soon as circumstances allow it (i.e. once it has completed a public procurement procedure for a contractor).

*Authority notifies complainant instead of passing
an administrative instrument*

Acting on a citizen's complaint about the failure of an authority to decide on an appeal within the statutory time limit and its failure to pass a decision pursuant to the complainant's request for demolition of a residential property, the Protector of Citizens launched an investigation into the regularity and legality of work of the Secretariat for Legal Affairs and Construction and Zoning Inspection of the City Administration of the City of Belgrade and the Administration of the City Municipality of Stari Grad.

The Secretariat informed the Protector of Citizens it had rectified the omission and decided on the appeal after the investigation was launched. Furthermore, it stated that the Administration of the City Municipality of Stari Grad, acting in accordance with Article 167 paragraph 1 of the Law on Planning and Construction, passed a decision on the complainant's request for demolition of the property instead of the notification provided earlier and thus rectified the identified shortcoming.

As the complainants assured the Protector of Citizens they received the requested decision to their satisfaction, the investigation pursuant to this complaint was closed.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION
IN RELATION TO THE AUTHORITIES

1. **The Ministry of Construction and Urban Planning** should draft regulations within its sphere of competence to provide local self-government authorities in charge of construction inspection with more efficient enforcement mechanisms within the scope of their powers.
2. Human and administrative capacity building is required at the **Ministry of Construction and Urban Planning** to enable the Ministry to fully and efficiently perform duties within its sphere of competence.
3. For the purpose of ensuring a more efficient exercise of inspection powers in the field of urban planning and construction, it is necessary to:
 - Improve the control/oversight of the legality and regularity of work of inspectorates at the local level, especially with regard to their handling of citizens' complaints and the manner of assessing and determining the amounts of statutory fines;
 - Increase the number of inspectors, increase the transparency of their work and improve the accessibility of inspectorates;
 - Ensure the highest possible level of protection for the persons who conduct inspections, through direct cooperation between all relevant administrative and judicial authorities, in order to fully achieve and protect the public interest and avoid various forms of abuse of powers;
 - Improve the coordination between the Ministry of Construction and Urban Planning, the inspectorates and local self-governments.

REAL ESTATE CADASTRE

Republic Geodetic Authority

I BACKGROUND

1. State's achievements

- 1.1. The decision of the Constitutional Court which adjudicated that Article 8a of the Decree on the Amount of Fees charged for the Use of Land Surveys and Cadastre and the Services provided by the Republic Geodetic Authority was not in compliance with the Constitution afforded all citizens equal treatment before this authority, regardless of their financial situation.²⁷⁷

2. Results achieved by the Protector of Citizens

- 2.1. The reputation of the institution of the Protector of Citizens helped a number of citizens in the exercise of their rights: in all cases where omissions subject to corrective action the Protector of Citizens were identified in the work of the relevant public authorities, the Republic Geodetic Authority and/or the competent Real Estate Cadastre Office rectified the omissions during the inspection into the legality and regularity of their work.

3. Shortcomings at the national level

- 3.1. The issue of belated or wrongful acting of Real Estate Cadastre Offices pursuant to citizens' request remains widespread.
- 3.2. Real Estate Cadastre Offices within the Republic Geodetic Authority fail to timely forward appeals with case files to the competent authority of second instance for further handling and deciding, which is contrary to imperative legislative provisions and robs the citizens of the possibility to timely obtain a decision on their right, responsibility or lawful interest. Cases have been identified in which appeals with case files have not been forwarded to the Ministry of Construction and Urban Planning at all.
- 3.3. There is still no efficient and effective system in place for issuing copies of the required documents demonstrating the basis for changes of title or other changes in properties from the period in which land registries were used.
- 3.4. After the initial organisation and establishment of a real estate cadastre, frequent discrepancies tend to occur between the data recoded in real estate cadastres and the data recorded in land registries or between the data recorded in real estate cadastres and the factual situation on the ground.

²⁷⁷ Decision of the Constitutional Court, IUo number 872/10 of 4 July 2013 (Official Gazette of RS No. 67/13).

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

4.1. There are no pending recommendations or opinions in this sector.

5. Explanation

In 2010, the Protector of Citizens issued a recommendation to the competent Real Estate Cadastre Office and pointed out it had exceeded the relevant statutory time limits many times over when acting on requests for which the citizens concerned paid the standard fee, while the requests filed by those citizens who were willing and able to pay a surcharge according to the Increased Tariff Rates were being handled as a matter of priority, which constituted an inadmissible way of putting citizens at a disadvantage. Two years later, the Constitutional Court adjudicated that Article 8a of the Decree on the Amount of Fees charged for the Use of Land Surveys and Cadastre and the Services provided by the Republic Geodetic Authority was not in compliance with the Constitution, explaining that the challenged provision allowed citizens to have their cases handled as a matter of priority solely on the basis of payment of a fee that was 100% higher than the regular amount provided for in the Tariff Rates. This created an advantage for those clients whose cases were handled as a matter of priority under this arrangement, which violated the constitutional principle of prohibition of discrimination set out in Article 21 of the Constitution. Although a recommendation was sent to the Republic Geodetic Authority in 2012 in connection with the need to take steps to ensure timely handling of appeals and although the director of the Authority was asked to remind the heads of Real Estate Cadastre Offices of their obligation to forward complaints to the competent authority of second instance within 15 days, the practice of belated forwarding of appeals (or failure to forward them altogether) to the Ministry of Construction and Urban Planning for handling has continued in 2013.

The citizens are not always able to obtain from the competent Real Estate Cadastre Office a copies of the required documents demonstrating the basis for changes of title or other changes in properties from the period in which land registries were used. The explanation provided by the Real Estate Cadastre Offices was that collections of documents from that period were stored in the archives of the Republic Geodetic Authority.

On this issue, the practice of Real Estate Cadastre Offices differs widely: some of them issue these data and documents without any problems, while others refer citizens to the archives of competent courts, explaining that courts provided them with land registry dockets, but failed to provide the collections of documents which constituted an integral part of the land registries. The explanation they offer is that these collections of documents are voluminous and could not be accepted due to a shortage of space and are therefore still kept in court archives.

This issue creates difficulties in particular for those citizens who collect documents in order to file requests for restitution of property and indemnification.

In a number of complaints the citizens alleged that, after the establishment of the real estate cadastre, discrepancies have occurred to their detriment between the data recorded in the cadastre and the data recorded in land registries or land surveys from earlier years. The most common complaint is that the surface areas of their land parcels recorded in the

cadastre are smaller than those entered in previous records. There have also been allegations of changes in the shape/boundaries of land parcels, which results in situations where a complainant's building is partly erected on another person's land. Any rectification of the data requires the consent of the registered title holder, which complicates the situation further. Without the consent of the registered title holder, the only way to correct an error is to seek court adjudication.

Similarly as in earlier years, the majority of the complaints point to belated handling of citizens' request by Real Estate Cadastre Offices. Investigations into the legality and regularity of work of the competent authority were launched whenever the applicable conditions were met. In some cases, the Real Estate Cadastre Department or the Professional and Administrative Supervision Department of the Republic Geodetic Authority have been involved in the investigation in order to overcome the identified shortcoming through preventive action and cooperation.

II TYPICAL CASES

Competent Real Estate Cadastre Office rectifies a shortcoming

A resolution of the Real Estate Cadastre Office ordered the complainant to supplement the documents provided by enclosing a decision on land conversion for the cadastral parcels concerned and evidence of payment of the land conversion fee, although this was unnecessary. Namely, under the applicable Master Plan, the cadastral parcels in question are already treated as building land situated in areas dedicated to individual housing.

An investigation into the work of the competent Real Estate Cadastre Office was launched pursuant to this complaint. The Real Estate Cadastre Office replied to the Protector of Citizens within the specified time that the complaint was founded and that measures had been taken to rectify the shortcoming. A relevant decision was made pursuant to the request, without the documents required by the contested resolution.

Citizens unable to exercise their rights for years due to irregularities committed by Real Estate Cadastre Office

A complaint was filed against the authority of second-instance because of belated handling of an appeal against a decision of a Real Estate Cadastre Office of February 2008.

The Protector of Citizens launched an investigation of the Ministry of Construction and Urban Planning, which replied its checks revealed there was no appeal case pending in that authority against the first-instance decision in question.

In the light of this information, the Protector of Citizens launched an investigation of the Real Estate Cadastre Office, demanding of the said office to explain whether an appeal had been lodged against the decision in question and, if so, whether it had been forwarded for further handling together with the case file.

The Protector of Citizens was informed that a subsequent check found that an appeal was lodged by the Republic Public Attorney's Office in a different administrative matter and against a different decision, was erroneously assigned at the electronic registry office

to the decision made in favour of the complainant. After finding these facts, the Office rendered the disputed decision valid and enforceable, thus rectifying after more than five years a shortcoming which prevented the complainant from registering title to a part of an apartment she had inherited from her parents.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION IN RELATION TO THE AUTHORITIES

1. **The Republic Geodetic Authority** should take necessary measures within its sphere of competence to establish a mechanism for efficient and timely handling of appeals, in accordance with the provisions of the Law on General Administrative Procedure. In all cases where an appeal is not timely forwarded to the Ministry of Construction and Urban Planning, it is necessary to identify the responsible officer and impose appropriate disciplinary sanctions.
2. **All competent authorities should jointly work towards** integrating land registry dockets and collections of documents from the period when land registries were used. This would enable the citizens to obtain documents demonstrating the basis for changes of title or other changes in properties without the problems hitherto associated with this procedure.
3. Appropriate measures should be taken to increase the capacities of **Real Estate Cadastre Offices** for efficient operation. To that end, the possibility of hiring additional staff should be considered, to enable the Offices to fulfil their mandate properly and within the statutory time limits.

Ministry of Construction and Urban Planning

I BACKGROUND

1. State's achievements

- 1.1. The Law on Special Conditions for Registration of Title to Properties built without a Building Permit²⁷⁸ has been enacted. This Law allows for registration of title to properties or parts thereof built without a building permit by 11 September 2009.

2. Results achieved by the Protector of Citizens

- 2.1. A recommendation of the Protector of Citizens rectified an omission in the work of the Ministry of Construction and Urban Planning, which sent a letter of apology and a substantiated reply in writing to the petitions by which the complainant initiated amendments to the Law on State Land Survey and Cadastre.
- 2.2. An opinion of the Protector of Citizens of December 2013 highlighted a need to take appropriate measures to increase the capacities for efficient handling of appeals lodged against the decisions of Real Estate Cadastre Offices, which would require the engagement/hiring an appropriate number of employees.

278 Official Gazette of RS No. 26/13

3. Shortcomings at the national level

- 3.1. Similarly as in earlier years, in 2013 the Ministry of Construction and Urban Planning has not acted timely when handling appeals against the decisions of Real Estate Cadastre Offices (with delays longer than the statutory two-month limit, in some cases even several years after the appeal was lodged).
- 3.2. The issue of scarce human and technical resources of the Ministry of Construction and Urban Planning needs to be addressed to enable the Ministry to exercise the full scale of its powers, including its statutory duty to cooperate with the Protector of Citizens.

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

- 4.1. There have been no unimplemented recommendations or opinions in this sector.

5. Explanation

Similarly as in earlier years, the largest issue in the work of the Ministry of Construction and Urban Planning in the field of land survey and real estate cadastre has been belated handling of appeals against the decisions of Real Estate Cadastre Offices, which violates on a daily basis the citizens' rights guaranteed by the Constitution and laws.

The problem of cooperation between the Ministry and the Secretariat of the Protector of Citizens still persists. Investigations into the work of this authority take longer than necessary, sometimes even more than a year, because of the failure of the responsible officers at the Ministry to comply with their statutory duty to respond to the demands of the Protector of Citizens and provide the requested information within the specified period.

It should be noted that there have been situations where complaints informed the Protector of Citizens they had received a second-instance decision, but the Protector of Citizens receives no confirmation of this fact from the Ministry.

Various measures have been put in place to improve the operations and establish enhanced and more efficient cooperative relations.

In December 2013, a meeting was held at the Ministry of Construction and Urban Planning in which the Protector of Citizens drew attention to the excessively long second-instance procedures and pointed out that the Ministry failed to timely provide responses in the investigations launched pursuant to citizens' complaints, thus breaching its statutory duty to cooperate with the Protector of Citizens.

The Ministry expressed its willingness to improve cooperation with the Protector of Citizens and to fulfil its obligations to the citizens within the statutory time limits, but explained that its 11 could not realistically be expected to handle timely more than 27 thousand cases received to date. With this in mind, the Protector of Citizens gave his opinions in which he pointed to the need to take appropriate measures to build the capacities for efficient work, in particular by increasing the number of employees at the Administrative Unit for Land Survey and Real Estate Cadastre.

IV TYPICAL CASES

Failure to decide on an appeal within the statutory time limit

A complainant claimed he had lodged an appeal against a decision of a Real Estate Cadastre Office passed in 2011. Although the time limit for deciding on that appeal expired long ago, the Ministry of Construction and Urban Planning passed no second-instance decision, even after multiple pleas.

In early 2013, an investigation into the work of this authority was launched pursuant to the complaint. The Ministry responded only after a plea, stating the appeal was founded and would be decided upon within 30 days.

Upon expiration of the period for passing a second-instance decision, which was in this case set by the authority itself, another plea was sent, asking the Ministry to explain whether a decision had been made in the meantime pursuant to the said complaint.

The Ministry passed a second-instance decision which overturned the appealed decision and returned the case for repeated procedure and deciding in June 2013, after which the investigation pursuant to the complaint was closed.

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

1. To ensure timely and proper handling of cases, it is necessary to hire/engage a sufficient number of employees, in an effort to increase the efficiency and quality of work of the Administrative Unit for Land Survey and Real Estate Cadastre of the **Ministry of Construction and Urban Planning**.
2. To improve cooperation between the Ministry and the Protector's Secretariat, a civil servant should be appointed to act as a liaison officer vis-à-vis the Secretariat of the Protector of Citizens in connection with complaints against the work of the Ministry.

RESTITUTION

I BACKGROUND

1. State's achievements

- 1.1. The Law on Amendments to the Law on Property Restitution and Compensation has been enacted²⁷⁹.

2. Results achieved by the Protector of Citizens

- 2.1. In an investigation launched by the Protector of Citizens, instructions were issued by the director of the Restitution Agency to ensure that, in the future, the Agency itself collects the documents needed to determine the circumstances under which changes were made in the title to land after seizure, but before re-parcelling, even though it is not required to do so under the law.

²⁷⁹ Official Gazette of RS No. 108/13.

3. Shortcomings at the national level

3.1. Due to contradictory provisions of the Law on Property Restitution and Compensation²⁸⁰, the Restitution Agency has not been able to award compensation.

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

4.1. There have been no unimplemented recommendations or opinions in this sector.

5. Explanation

In their complaints, citizens usually cited difficulties in obtaining the documents required in the process of property restitution and compensation. They claimed they addressed a number of different authorities, all to no avail: courts, municipal administrations, historical archives, real estate cadastre offices... However, all of them replied they could not issue the requested documents because they did not have them in their archives. On the other hand, the Restitution Agency refused to begin processing any incomplete claims.

This situation was a particular concern in those procedures where the land claimed for restitution was reparable after seizure. With regard to land parcels included in pools of land for reparable, which was subsequently divided into new and different parcels, the Republic Geodetic Authority has stated it is impossible to identify (based on earlier land surveys) the original cadastral parcels that existed before the reparable. This is explained by the fact that Real Estate Cadastre Offices are not required to take over the entire land registry (including the status before reparable), but only the most recent entries (the status after reparable), which is why the claimants cannot be issued an appropriate certificate of the history of changes in title to such land parcels from the time of their formation to their inclusion in a pool of land for reparable.

However, the director of the Restitution Agency informed the Protector of Citizens that, in the future, in view of the difficulties faced by the citizens, the Agency intends to collect by itself the documents required to determine the circumstances under which changes were made in the title to land after seizure, but before reparable. These instructions by the director of the agency were sent to all civil servants in the Agency via official e-mail.

In situations where a claim for restitution or compensation is founded, but restitution in kind is not possible, the procedure continues in order to award compensation to the claimant. The Agency faced difficulties in its attempts to award compensation to claimants due to a contradiction between the provisions of the Law on Property Restitution and Compensation. Namely, the validity and enforceability of a compensation award imposed an obligation on the state to make a prepayment to the claimant in the amount of 10% of the compensation base. On the other hand, the Law stipulated that the amount of the compensation (without which the amount of the prepayment could not be calculated) was to be calculated after the relevant coefficient has been determined on proposal of the ministry in charge of finance, within three years of the date of the public invitation (until 6 February 2015).

280 Official Gazette of RS No. 72/11.

To overcome this situation and harmonise the conflicting provisions of the Law, the Law on amendments to the Law on Property Restitution and Compensation stipulates that the compensation prepayment is to be calculated and disbursed starting from 31 March 2015.

II TYPICAL CASES

How to deal with a situation when one public authority demands a document which another public authority is instructed not to issue?

A complainant asked: "How do I deal with a situation when one public agency demands a document which another public agency is instructed not to issue?" He stated he had contacted the competent Real Estate Cadastre Office in order to obtain a certificate of changes in and title to cadastral parcels from the time of their formation to their inclusion in the land pool for reparcelling. He received a confirmation that the Office was unable to issue such certificate.

After that, he addressed the competent court unit, municipal administration and historical archives, but all of them replied they were unable to issue the required documents. At the same time, the Restitution Agency informed him it would not handle his case until he provides the said certificate.

Pursuant to the complaint, the Protector of Citizens launched an investigation of the Republic Geodetic Authority and the Restitution Agency.

After the Republic Geodetic Authority stated the reasons why the complainant could not be issued with a certificate of the history of changes in the land parcels in question from the time of their formation to their inclusion in the land pool for reparcelling, the director of the Restitution Agency said that, in the future, the Agency itself would collect the documents needed to determine the circumstances under which changes were made in the title to land after seizure, but before reparcelling, after which the investigation pursuant to the complaint was closed.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION IN RELATION TO THE AUTHORITIES

1. New amendments to the Law should address the issues observed in the procedures of property restitution and compensation.

NATURAL DISASTERS

I BACKGROUND

1. State's achievements

- 1.1. There were no significant State's achievements in this field in the reporting period.

2. Results achieved by the Protector of Citizens

- 2.1. With the aim to ensure cooperation on the improvement and protection of citizens' rights and freedoms, the Protector of Citizens sent to the head of the Sector

for Emergency Management of the Ministry of Interior the draft opinions which would draw the Government's attention to the need of passing the relevant regulations from its sphere of competence in order to regulate the procedure of repair of damage, i.e. allocation of funds for the construction of new or refurbishment of homes damaged in natural and other disasters, and establish the criteria which would ensure equal treatment and legal certainty of the citizens in these procedures.

- 2.2. The Protector of Citizens emphasized to the City Committee for Emergencies of the city of Kraljevo and other competent authorities of local self-government that in situations when it is not possible to establish all crucial facts and circumstances in a reliable and unambiguous manner, they should always take care to act impartially, in the best interest of citizens and that their decisions do not put at risk the citizens' rights.

3. Shortcomings at the national level

- 3.1. The regulations providing for the procedure of repair of damage and allocation of funds for the construction and refurbishment of homes damaged in natural and other disasters have not been passed.
- 3.2. Enactments with explanation of the decision passed and the instruction of legal remedy are not passed on citizens' requests.

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

- 4.1. The City Committee for Emergencies of the city of Kraljevo did not accept the recommendation of the Protector of Citizens to take all available measures with the aim to completely and accurately establish the facts and circumstances relevant for passing of correct and impartial decision on the complainant's request.

5. Explanation

A number of citizens of Kraljevo, Kolubarski district and other local self-governments whose homes and premises were destroyed or damaged because of earthquake and other natural disasters contacted the Protector of Citizens.

In their complaints they expressed their dissatisfaction with the work of the competent local self-government in the procedure on their applications for refurbishment or allocation of funds for repair of damage on their homes caused by a natural disaster.

The most frequent reason for dissatisfaction is the fact that the applicants have not been informed about the reasons for which they cannot exercise the right to refurbishment of damage or allocation of funds of solidarity assistance, as well as that they cannot file an objection, complaint or other legal remedy because enactments of the competent authorities which they contest does not contain the instruction on legal remedy.

Without assessment of the justifiability of specific applications or objections, in investigation of the complaints lodged, the Protector of Citizens emphasized to committees for emergencies and other local self-government authorities the duty to send to applicants the

explanations of decisions and the instructions of legal remedies because that would provide applicants an opportunity to initiate the mechanism of supervision and review of the decision which they contest when they learn the reasons which had an impact on decisions on their applications, which is one of their fundamental rights guaranteed the Constitution.

By examination of the regulations on responding to emergencies it was found that the procedure on the citizens' applications for compensation of damage caused by natural and other disasters is not regulated in a single, clear and predetermined manner, that time limits, procedure and criteria on the basis of which is determined the order of priority of citizens for allocation of funds for refurbishment of damage (ranking) have not been stipulated, as well as that the legal remedy and the authority competent for the review/assessment of the regularity and legality of passed decisions have not been specified.

Thus, there is a need to regulate acting of local self-government authorities on requests of citizens for refurbishment or construction of damaged buildings, as well as compensation of other damage caused by natural disasters. In that sense, it is necessary to establish the detailed criteria which would determine the order of priority for refurbishment/construction of damaged buildings in the territory of the local self-government where a natural disaster occurred. Priority lists and documentation on the basis of which the lists were formed should be available to interested citizens with the aim to minimize the possibility for unequal treatment of the citizens in allocation of solidarity assistance and for partial, unpredictable and non-transparent actions of the competent officials and authorities, which causes the sense of doubt and legal uncertainty.

Two-tier decision-making should also be introduced, taking into account that that this is one of fundamental rights and freedoms proclaimed by the Constitution of the Republic of Serbia²⁸¹, i.e. to establish which legal remedy can be used against a decision passed on a request for refurbishment of damaged/construction of destroyed buildings or receipt of adequate compensation to repair damage caused by a natural disaster.

II TYPICAL CASES

Deciding on application for compensation of damage

A complainant contacted the Committee for Natural Disasters in order to repair damage caused by a natural disaster and requested material assistance, emphasizing that because of huge snow drifts the roof structure on his family home collapsed, furniture and fittings were destroyed, and the house cannot be used for living.

Since a decision was not passed on his application, the complainant contacted the president of the municipality and the municipality council requesting financial assistance to purchase material for repair of the roof structure and tiles to protect the remaining part of the building. The municipality council informed the complainant that his application for compensation was considered at a session of the council and that it was rejected.

With the aim to assess the statements in the complaints, the Protector of Citizens asked whether a decision with the explanation and the instruction on legal remedies was passed on the complainant's application.

281 Official Gazette of RS No. 98/06

The Protector of Citizens was informed that the Committee was fully aware of the complainant's situation. It was also pointed out that on the basis of the checks conducted, by examination of the decision of the competent tax administration on assessment of property tax it was found that the complainant does not live in the damaged building, but on the other address in a building which is also in his ownership. The complainant received a notification from the competent authority, i.e. the Municipality Council, that his application was rejected, but a special decision with the explanation and the instruction of legal remedy was not passed.

The Protector of Citizens informed the complainant that in the following period he would propose to the Government to regulate the procedure of compensation of damage by passing of relevant regulations from its sphere of competence.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION IN RELATION TO THE AUTHORITIES

1. **The Government** should pass regulations which would provide for the procedure of repair of damage and allocation of funds to the citizens for construction/repair of homes destroyed/damaged by natural and other disasters, particularly to establish the criteria which would ensure equal treatment and legal certainty for citizens in those procedures.

2.16. SECTORS OF ENERGY AND MINING, ENVIRONMENT, AGRICULTURE, TRADE, FORESTRY AND WATER MANAGEMENT, INFRASTRUCTURE, TRANSPORT, HYDROMETEOROLOGY AND COMMODITY RESERVES

I BACKGROUND

1. State's achievements

- 1.1. The Consumer Protection Strategy for the period 2013 -2018 has been passed.
- 1.2. The new Decree on Subsidized Energy Customers or Vulnerable Heat Energy Consumers has been passed.
- 1.3. The Decree on the Conditions for Electricity Delivery and Supply has been passed.²⁸²
- 1.4. Passing of the Decision of the Management Board of the public enterprise "Electric Power Industry of Serbia" ("Elektroprivreda Srbije") provided facilities for the payment of the "old debt" for consumed electricity for a large number of citizens.²⁸³
- 1.5. With the aim to liberalize of the market, the public enterprise "Electric Power Industry of Serbia" founded the company "EPS snabdevanje" (EPS power supply) which has become the public supplier for all standard tariff customers.
- 1.6. The Second National Report on Implementation of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was submitted to the United Nations Economic Commission for Europe.

2. Results achieved by the Protector of Citizens

- 2.1. The recommendation issued by the Protector of Citizens to the Ministry Energy, Development and Environmental Protection contributed to the passing of the new Decree on Subsidized Energy Customers or Vulnerable Heat Energy Consumers.
- 2.2. The opinion of the Protector of Citizens issued to the public enterprise "Electric Power Industry of Serbia", which emphasized the necessity of the passing of enactments which

282 Official Gazette of RS No. 63/13.

283 Decision of the Management Board of the public enterprise "Electric Power Industry of Serbia" number 2233/3-13.

- specify the single criteria and conditions for rescheduling and partial relief for the debt of standard tariff customers, contributed to the systemic and single manner of addressing of the issue of rescheduling and repayment of debt for consumed electricity.
- 2.3. Launched investigations of regularity and legality of the work of public authorities and public enterprises in the field of energy contributed to the improvement of the position of fuel buyers.
 - 2.4. The Draft Report of the Protector of Citizens on complaints to the work of the public enterprise "Electric Power Industry of Serbia and its subsidiaries for electricity supply and distribution sent to the competent Ministry contributed to more comprehensive review of the problems faced by the citizen as end buyers of electricity and made these problems more visible.
 - 2.5. The Protector of Citizens submitted his contribution for the preparation of the Second National Report on Implementation of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).
 - 2.6. Recommendations and other activities of the Protector of Citizens in case of the lead smelting plant in the town of Zajaca made problems in the exercise of the citizens' rights to healthy environment and health more visible.
 - 2.7. Recommendations of the Protector of Citizens to the Ministry of Agriculture, Forestry and Water Management to restore the head of the sector of the national veterinary inspectorate for the Jablanicki district, a former veterinary inspector who reported organized unlawfulness and irregularities in the work of the veterinary inspectorate, contributed to better protection of population health in this district and drew the public attention to the necessity and importance of the protection of whistleblowers.
 - 2.8. By publicly inviting the competent ministers to take responsibility in carrying out of their tasks, the Protector of Citizens ensured provision of more information to the citizens about the risk for their health in the "aflatoxin" scandal.

3. Shortcomings at the national level

- 3.1. The manner and the conditions for acquiring of the status of subsidized energy customers or vulnerable heat energy consumer has not been regulated even after passing of the new Decree on Subsidized Energy Customers or Vulnerable Heat Energy Consumer.
- 3.2. An appropriate and efficient two-tier procedure in the protection of the rights of buyers of fuel as goods of common economic interest has not been introduced.
- 3.3. Electricity supply companies do not act in accordance with the Law on Energy and the Decree on the Conditions for Electricity Delivery and Supply, which causes significant financial harm to the citizens.
- 3.4. Unresolved property law relations between investors and property buyers and the status of a number of illegally built facilities generate corruption potential which significantly hampers citizens' access to the electricity system.
- 3.5. The sources of pollution of the environment in Zajaca have not been eliminated and the monitoring of the pollution of soil and water has not been carried out regularly. The data on the inspection carried out were not available enough to the public.

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

- 4.1. No actions have been taken to implement the following proposals for improving the citizens' position in relation to public authorities set out in the 2012 Annual Report of the Protector of Citizens:
- Recommendation for companies which exercise delegated public powers and perform activities of common social interest to improve their work and to refrain from using their dominant position, i.e. to contribute to efficient and transparent work of those who exercise delegated public powers and the improvement of the protection and exercise of human freedoms and and citizens' rights by corporate social responsibility and compliance with the applicable regulations.
- 4.2. The recommendation of the Protector of Citizens issued to the Ministry of Energy, Development and Environmental Protection to prepare and submit to the government without delay the draft enactment on the criteria, manner of protection, conditions, time limits and procedure for establishment of the status of subsidized energy consumer has not been fully accepted. The category of consumers whose lives and/or lives of their family members could be at risk as a result of disconnection or restricted supply of electricity or natural gas because of their health status, disability of physical inability was eliminated from the draft enactment.
- 4.3. The Ministry Energy, Development and Environmental Protection did not implement the recommendations of Protector of Citizens and did not ensure comprehensive and regular monitoring of the pollution of the environment in Zajaca.

5. Explanation

In compliance with the opinion and the recommendation of the Protector of Citizens, the Government passed the Decree on Subsidized Energy Customers or Vulnerable Heat Energy Consumers, which superseded the previous Decree o Subsidized Energy Customers when it entered into force. There is a doubt that the Decree may not be fully compliant with the Law on Energy.

Passing of the Law resulted in justified legal expectations of the certain category pf citizens that they would acquire the status of the customer who will be able to settle their obligations on time and to pay electricity at a discounted rate. Passing of the Decree with the above content made this impossible and expectations of the citizens have been failed, while the legal provision remained partially implemented.

In the previous period, the Protector of Citizens emphasized several times in his enactments the necessity of passing of an enactment on the manner and conditions for repayment of debt for electricity in instalments, with the aim to address this issue in a systemic and single manner, taking into account that the amounts of the citizens' debts to the Electric Power Industry of Serbia are very high. The problem was partially addressed by implementation of the Decision of the Managerial Board of the Electric Power Industry of Serbia on rescheduling of debts, but the issue of collection of statute-barred claims and use of an unconstitutional method of default interest calculation which resulted in enormous amounts citizens' debts remained opened.

As the formation of the electricity supply company "EPS Snabdevanje" resulted in a number of problems and the increase of citizens' complaints, the Protector of Citizens had to

prepare the report on the situation in the field of the rights of energy costumers. The report was prepared on the basis of the data and facts collected during investigations of the citizens' complaints with the aim to address the system issues in the energy sector in order to permanently improve the exercise of the rights of electricity customers in the Republic of Serbia.

Taking into account the complexity of the problem, the importance of their appropriate addressing, both for the operations of the above public enterprises and for the citizens of Serbia, as well as the expressed will and a number of activities taken by the Ministry of Energy, Development and Environmental Protection and the public enterprise "Electric Power Industry of Serbia", the Protector of Citizens considered it was appropriate to make the data he obtained in this manner publicly available, providing support to all activities the aim of which is to rectify the identified irregularities.

The Draft Report sent to the Ministry Energy, Development and Environmental Protection includes the analysis of the key problems and their manifestation which are most frequently the subjects of citizens' complaints and which pertain to the following: exercise of the rights of subsidized energy customers, elements of bills and calculation of interest rate, lack of legal remedies and legal protection, detection of unauthorised consumption of electricity, the quality of the supplied electricity, malfunctioning of measurement devices, inability to connect to the electricity grid and the status of an illegal consumer, non-compliance of court decisions, corruption, administrative silence and unfair treatment by employees in electricity distribution companies.

Struggling to provide for a decent living, the citizens rarely contact the Protector of Citizens to report the violation of the right to healthy environment. This kind of complaints account for less than 1% of the total complaints received in 2013. The complaints in which the citizens reported violation of the right to healthy environment mostly pertain to the protection against noise in urban areas, pollution or air, soil and water caused by hazardous emissions from plants, pollution of the environment because of unprofessional and irregular disposal of waste and hazardous substances, proximity of power plants and TV masts to residential properties, etc. The complaints are often lodged by groups of citizens or associations active in the field of environmental protection. In investigation of complaints lodged against the work of the smelter plant in the town of Zajaca, Зажача, the Protector of Citizens recommended to the Ministry of Energy, Development and Environmental Protection to sample and analyse pollution of the air every day as long as there is a need for that, to sample regularly surface water and groundwater, drinking and soil and to analyse pollution, to publish the results of such analysis in maximum periods of seven days on the official internet page of the Environmental Protection Agency, as well as to inform the citizens of Zajaca at least monthly about the results of analyses. It was also recommended to the Ministry to establish the following mechanisms together with other competent institutions: the mechanism of ongoing monitoring of water, air and soil pollution and emissions of pollutants, the mechanism of regular and full notification of the interested citizens about the results of monitoring and the mechanism of planning and construction of facilities and installations which provide permanent and safe solutions for elimination of pollutants and hazardous substances.

During a control visit to Zajaca, the Protector of Citizens found that the Ministry of Energy, Development and Environmental Protection did not implement the recommendations of the Protector of Citizens, although it stated the opposite in the notifications sent to this oversight institution. Air pollution is regularly measured in Zajaca and the Ministry provided funds for the initiation of rehabilitation works on the so-called "historic landfill". On the other hand, soil pollution was not controlled at all, while information on water pollution control is unavailable.

In response to the citizens' concern because of conflict information on the possible health hazards and harmfulness of milk, the Protector of Citizens publicly invited the competent ministers and other officials to take responsibility in carrying out of their duties, in the first place to take more intensive measures to prevent health hazards and to inform the public correctly, unambiguously and promptly instead of confusing the citizens by conflict statements and gestures. The Protector of Citizens emphasized that the issue of citizens' health should be a priority in the work of public authorities. He also mentioned the case of the national veterinary inspector, who officially complained and filed reports for years against unlawfulness in the food supply chain from manufacturers to consumers and was threatened because of that and unlawfully lost his title, which was confirmed by the competent authorities, including the including the Government Appeals Board and the Anti-Corruption Agency.

II TYPICAL CASES

Customer denied the right to subsidized energy

Invoking Article 149 of the Law on Energy which regulates the issue of the status of persons whose life or health might be could be at risk as a result of disconnection or restricted supply of electricity or natural gas because of their health status, disability of physical inability, a complainant tried to obtain a discount on the bill for supplied electricity on the basis of the rights from the category of subsidized energy customers, since one of his household members has cerebral paralysis with a disability rate of 100%. However, the competent services in the power supply company "Elektrodistibucija Vranje" notified the complainant that, in addition to the fact that the submitted documentation is incomplete, he also cannot exercise this right on the basis of the Decree on Subsidized Energy Customers because he does not comply with the conditions specified in this enactment.

The Protector of Citizens in his opinion emphasized the particularly vulnerable position of this category of citizens and the need that public authorities regulate its legal status by secondary legislation in accordance with the provisions of the Law on Energy.

Failure to act on owner's request to disconnect electricity

The Protector of Citizens was contacted by a complainant, the heir to a house that is currently illegally occupied by another person who prevents him from accessing the house and does not want to move from it. The complainant, as the owner of the gauge on this address submitted to the Electricity Supply Company "Elektrodistibucija Beograd" a request for disconnection of electricity supply. However, the company did not act timely on the request but as late as after six months, while the illegal occupant does not pay electricity bills although he uses electricity and because of that the company "Elektrodistibucija Beograd" claims from the complainant as the owner of the house and the registered user according to the gauge compensation for consumed electricity. Since the complainant rejects to pay this compensation because he believes the competent authorities of the company "Elektrodistibucija Beograd" acted unlawfully and untimely, electricity supply was not resumed. In investigation of complaints, the Protector of Citizens issued a recommendation to the company "Elektrodistibucija Beograd" on the basis of control of legality and regularity of operations to

calculate the amount of consumed electricity without delay for the period from the moment of the submission of the request for disconnection of electricity supply and to decrease the total amount of the customer's debt for this amount and to connect him again to the grid after settlement of this debt. The company "Elektrodistibucija Beograd" did not implement the recommendation of the Protector of Citizens and did not decrease the bill for consumed electricity believing there were no omissions in work of the employees in this company.

The case of Zajaca

The Protector of Citizens received complaints for the citizens of the town of Zajaca who reported that their children have been exposed to lead poisoning because of omissions in the implementation of the measures to protect pollution of air, water and soil by the work of the lead smelter plant. The omissions in the work of the Ministry of Energy, Development and Environmental Protection in and the Ministry of Health were identified in investigation and recommendations were issued to rectify the identified omissions (irregular measurement of the degree of pollution of the environment, failure to inform the citizens, failure to carry out a new, previously planned control of the blood lead levels in children) in order to systematically address the issue of pollution of the environment in Zajaca which has been present for several decades.

In a control visit the Protector of Citizens found that the Ministry of Energy, Development and Environmental Protection did not implement the recommendations because there was no control (timely and ongoing) of air, water and soil pollution. A meeting between the Protector of Citizens and the competent ministers resulted in more regular monitoring of the pollution of air and publishing of information about it on the official web site of the Environmental Protection Agency, while according to the latest information, the line ministry allocated funds for rehabilitation of one pollution source (the so-called historical landfill source of).

Veterinary inspector dismissed after he reported organized unlawfulness and irregularities

In investigation of complaints lodged by a veterinary inspector, to whom the Anti-Corruption Agency recognized the status of whistleblower, the Protector of Citizens found that the Veterinary Directorate unlawfully dismissed the complainant from the position of the head of the national veterinary inspectorate for the Jablanicki district after he reported organized unlawfulness and irregularities. The superior verbally ordered the complainant to drop the investigation of unlawfulness he identified and his colleagues came to his home address and harassed his family. Although he informed the Ministry in person about this, no measures were taken. The Ministry of Agriculture, Forestry and Water Management failed to rectify the unlawfulness in demotion of the complainant even after the Government Appeals Board twice cancelled the decision on deployment.

In this regard, the Protector of Citizens issued a recommendation to the Ministry of Agriculture, Forestry and Water Management that the Veterinary Directorate should restore the complainant to the position of the head of the sector of the national veterinary inspectorate for the Jablanicki district or to a higher managerial position. The Protector of Citizens also issued a recommendation to the Ministry of Agriculture, Forestry and Water Management to find which managers and employees in the Ministry participated in irregularities identified by the enactment of the Protector of Citizens and to take legal measures against them.

The Ministry of Agriculture, Forestry and Water Management did not implement the recommendations of the Protector of Citizens because, as the Ministry explained, the newly appointed head of the sector cannot be dismissed without his own consent.

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION IN RELATION TO THE AUTHORITIES

1. **The Ministry Energy, Development and Environmental Protection** should harmonize the Decree on Subsidized Energy Customers or Vulnerable Heat Energy Consumers with the Law on Energy with the aim to ensure a rounded legal system which would regulate the position of persons whose lives could be at risk as a result of disconnection or restricted supply of electricity or natural gas because of their health status, disability or physical inability as the status of subsidized energy customers.
2. **The Ministry of Energy, Development and Environmental Protection** should provide efficient and timely initiation of the procedures to establish personal responsibility of employees in all subsidiaries for electricity supply and distribution which operate within the public enterprise "Electric Power Industry of Serbia".
3. **The Energy Agency** should, in provision of access to the system, pay particular attention to the control of time required for system operators to connect consumers to the system or to repair malfunctions in case of outage.
4. **The Ministry External and Internal Trade and Telecommunications** should, taking as soon as possible all necessary measures and activities, implement the adopted Consumer Protection Strategy for the period from 2013 to 2018, with a special attention paid to the development of the national program for the protection of vulnerable consumers of goods and services for reasons of common economic interest.
5. **The Government** should prepare and propose to the National Assembly adoption of the Law on Protection of Consumers which would ensure the legal basis for participation of the representatives of consumer associations in expert groups in the field of energy and in the work of regulatory, oversight and managerial structures of the public sector.
6. **The Ministry of Energy, Development and Environmental Protection, the Ministry of Health and the Ministry Natural Resources, Mining and Spatial Planning** should, in cooperation with other public authorities, local self-government authorities and, organizations and institutions, provide full implementation of recommendations of the Protector of Citizens issued to ensure continual, efficient and timely control of pollution of the environment in Zajaca and of health of the citizens of this town, particularly children.

2.17. SECTORS OF SECURITY SERVICES AND INDEPENDENT OVERSIGHT AUTHORITIES

SECURITY SERVICES

I BACKGROUND

1. State's achievements

- 1.1. The Law on Amendments to the Law on Military Security Agency and Military Intelligence Agency has been enacted.²⁸⁴
- 1.2. The Constitutional Court of Serbia declared unconstitutional the provisions of the Law on Electronic Communications²⁸⁵ which allowed the use of special measures which derogated from the inviolability of letters and other communication without a court order.
- 1.3. The Constitutional Court declared unconstitutional a provision of the Security Information Agency²⁸⁶ which derogated from the inviolability of letters and other communication.
- 1.4. The Law on Private Security and the Law on Detective Activity have been enacted.

2. Results achieved by the Protector of Citizens

- 2.1. The National Assembly amended the Law on Military Security Agency and Military Intelligence Agency after the Constitutional Court, pursuant to a motion filed by the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection, delivered the Decision on Unconstitutionality of Provisions of the Law on the Military Security Agency and the Military Intelligence Agency.

284 Official Gazette of RS No. 88/09, 55/12-Decision of the Constitutional Court I 17/13

285 Official Gazette of RS No. 44/10

286 Official Gazette of RS No. 2/02 and 11/09

- 2.2. The National Assembly adopted the amendment submitted by the Protector of Citizens to Article 14 of the Bill on Amendments to the Law on the Military Security Agency and the Military Intelligence Agency.
- 2.3. The recommendation issued by the Protector of Citizens to the Military Intelligence Agency contributed towards improved protection, higher personal and professional integrity and better exercise of employment rights for the members of MIA.

3. Shortcomings at the national level

- 3.1. Most of the 14 systemic recommendations issued jointly by the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection, which were designed to significantly bolster the existing guarantees for the respect of citizens' rights in the security sector, have not been adopted.
- 3.2. The provision of the Law on Criminal Procedure which stipulates that the police, acting on the order of a public prosecutor, may obtain records of phone communications and base stations used or identify the caller's location remains in force.
- 3.3. Members of security services who, in good faith, draw attention to unlawful and irregular actions by the services are often exposed to retaliation, against which there is no sufficiently effective legal or factual protection.

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

- 4.1. No actions have been taken to implement the following proposals for improving the citizens' position in relation to public authorities set out in the 2012 Annual Report of the Protector of Citizens:
 - To pool together the existing parallel technical capacities of various agencies and the police into a single national agency which would act as a provider of technical services necessary for the interception of communications and other signals to all authorised users.
 - To integrate the procedures applicable to electronic communication service providers and their responsibilities
 - To enable strong legal and factual protection of whistleblowers (especially in the security sector, but also generally)
 - To provide for an indelible trail of access to telecommunications, with all data necessary for subsequent investigation of legality and regularity of access
 - To criminalise any obstruction of investigations conducted by independent oversight authorities (the Protector of Citizens, the Commissioner for Information of Public Importance and Personal Data Protection, the Anti-Corruption Agency, the State Audit Institution, the Equality Commissioner). Any harassment, threat or other attempt to influence a complainant or a witness who cooperates with oversight authorities should be qualified as a criminal offence.

- To impose an obligation on internal oversight mechanisms to report their findings relevant for the respect for human rights to the Protector of Citizens and competent parliamentary committees, especially if they are ignored by the leaders of their own bodies or if they reveal serious alleged or confirmed violations of human rights.
- To analyse the implementation of the Law on Data Confidentiality (including the adoption of necessary secondary legislation, declassification of old documents, conduct of investigations, issuing of security clearance certificates...) and to consider the need for thorough amendments of that Law or enactment of a new one to ensure the achievement of its proclaimed objectives.
- To build the capacity of independent oversight institutions for handling and keeping confidential information.
- To enact a new Law on Security Information Agency to ensure, among other things, predictability in the use of special measures.
- To re-examine the police powers of the intelligence/security services, i.e. their participation in criminal proceedings.

5. Explanation

Amendments to the Law on the Military Security Agency and the Military Intelligence Agency have harmonised the text of the Law with the Decision of the Constitutional Court²⁸⁷, which adjudicated that certain provisions²⁸⁸ of the Law on the Military Security Agency and the Military Intelligence Agency were not in compliance with the Constitution and would be repealed as of 1 June 2012. The said provisions were in collision with the constitutional guarantee that any derogation from the privacy of correspondence and other means of communication must be approved by a court. This novelty implements one of the 14 systemic recommendations issued by the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection in 2012.

The National Assembly adopted the amendment submitted by the Protector of Citizens to the Bill on Amendments to the Law on the Military Security Agency and the Military Intelligence Agency which provides that the MSA and the MIA, if they obtain information of which other security services or the police are in charge, are to forward those pieces of information to other security services if they are of relevance for national safety or to the police if they relate to criminal offences for which special presentation of evidence is required under the Criminal Code. This arrangement observes the principle of proportionality in the work of those services, while at the same time also providing a normative framework which will ensure that those powers that are delegated to them for specific purposes are used exclusively for those purposes, which at the same time also protects citizens' rights.

In addition to the provisions of the Law on MSA and MIA, in 2013 the Constitutional Court also repealed as unconstitutional specific provisions of two other Laws. The first one is the provision of the Law on Security Information Agency which provides for a derogation from privacy of letters and other communication, because it was not worded clearly and precisely

287 Number IUz-1218/10.

288 Article 13 paragraph 1, in vezi sa Articleom 12 paragraph 1 item 6) and Articlea 16 paragraph 2 of the Law on.

enough, which prevents the citizens and other legal subjects from understanding which legal rule applies in their specific circumstances, thus denying them the possibility to protect from arbitrary violation of their right to inviolability of private life and communication.

Acting on a Motion filed by the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection in 2010, the Constitutional Court repealed as unconstitutional two provisions of the Law on Electronic Communications, which allowed the use of special measures derogating from the inviolability of letters and other communication not only under a court order, but even without it, whenever such possibility was provided for by the law and/or whenever a competent authority so required.

In 2013, the Protector of Citizens and the Commissioner filed the Constitutional Court a Motion for a Constitutional Review of the provision of the Criminal Procedure Code²⁸⁹ which stipulates that the police, acting on the order of a public prosecutor, may obtain records of phone communications and base stations used or identify the caller's location. A decision of the Constitutional Court in this case is still pending, but hopefully the Court will reiterate the stand it has already taken earlier on the same point of law.

II TYPICAL CASES

Omission in the work of the Military Intelligence Agency the Ministry of Defence

A member of the Military Intelligence Agency contacted the Protector of Citizens and sought the protection of his rights, which he alleged had been violated due to a particularly unfair treatment by the Military Intelligence Agency which began after he pointed to possible illegal activities and irregularities in the work of a number of senior officers.

After finding that the Military Intelligence Agency, or some of its superior officers, treated unfairly one of their members to the detriment of his rights, his personal and professional integrity and his employment rights – a fact that had already been established by the Inspector General of the Services within the Ministry of Defence - the Protector of Citizens issued a recommendation to the Military Intelligence Agency, advising to comply without delay with all recommendations and conclusions set out in the report of the Inspector General which found irregularities in the treatment by the Military Intelligence Agency of its member and in the work of the Agency in general. Nevertheless, the recommendations and conclusions set out in the report of the Inspector General have not been fully complied with in full.

Suspicion of unauthorised wiretapping

The Protector of Citizens has been contacted by a number of complainants who have voiced their suspicion their phone communications were under surveillance by the security services and the police. However, experience has shown that complainants tend to contact the Protector of Citizens before even attempting to protect their rights through available remedies, without making a sufficiently clear and convincing case to support their claims. Complaints such as these are therefore usually dismissed as premature or formally deficient.

289 Article 286 paragraph 3 (Official Gazette of RS No. 72/11 and 101/11).

III PROPOSALS FOR IMPROVING THE CITIZENS' POSITION IN RELATION TO THE AUTHORITIES

1. Put in place efficient organisational measures and IT solutions to expedite preliminary court review and deciding on requests for access to communications and communication data.
2. The Government should propose, and the National Assembly should enact, only those laws that respect the constitutional guarantees relating to privacy of communication and other human rights. The opinions of public authorities mandated by the National Assembly to protect citizens' rights should not be ignored.
3. Pool together the existing parallel technical capacities of various agencies and the police into a single national agency which would act as a provider of technical services necessary for the interception of communications and other signals to all authorised users.
4. Integrate the procedures applicable to electronic communication service providers and their responsibilities.
5. Provide for strong legal and factual protection of whistleblowers (especially in the security sector, but also generally).
6. Provide for an indelible trail of access to telecommunications, with all data necessary for subsequent investigation of legality and regularity of access.
7. Ensure effective supervision of the private security sector.
8. Criminalise any obstruction of investigations conducted by independent oversight authorities (the Protector of Citizens, the Commissioner for Information of Public Importance and Personal Data Protection, the Anti-Corruption Agency, the State Audit Institution, the Equality Commissioner). Any harassment, threat or other attempt to influence a complainant or a witness who cooperates with oversight authorities should be qualified as a criminal offence.
9. Impose an obligation on internal oversight mechanisms to report their findings relevant for the respect for human rights to the Protector of Citizens and competent parliamentary committees, especially if they are ignored by the leaders of their own bodies or if they reveal serious alleged or confirmed violations of human rights.
10. Analyse the implementation of the Law on Data Confidentiality (including the adoption of necessary secondary legislation, declassification of old documents, conduct of investigations, issuing of security clearance certificates...) and to consider the need for thorough amendments of that Law or enactment of a new one to ensure the achievement of its proclaimed objectives.
11. Build the capacity of independent oversight institutions for handling and keeping confidential information.
12. Enact a new Law on Security Information Agency to ensure, among other things, predictability in the use of special measures.
13. Re-examine the police powers of the intelligence/security services, i.e. their participation in criminal proceedings.

INDEPENDENT OVERSIGHT AUTHORITIES

I BACKGROUND

1. State's achievements

- 1.1. The National Anti-Corruption Strategy in the Republic of Serbia for the period from 2013 to 2018 has been adopted.²⁹⁰
- 1.2. The Action Plan on Implementation of the National Anti-Corruption Strategy in the Republic of Serbia for the period from 2013 to 2018 has been adopted.²⁹¹
- 1.3. The working group of the Ministry of Justice and Public Administration completed the preparation of the working version of the Draft Law on Protection of Whistleblowers and this document has been in a public debate since December 2013.
- 1.4. The Government allocated appropriate premises for work of the Office of Commissioner for Information of Public Importance and Personal Data Protection.

2. Results achieved by the Protector of Citizens

- 2.1. The Protector of Citizens was a chairperson of the working group formed by the Commissioner for Information of Public Importance and Personal Data Protection, which prepared the Model Law on Protection of Whistleblowers.

3. Shortcomings at the national level

- 3.1. The Law on Protection of Whistleblowers has not been adopted and the Model Law prepared by the working group of the Ministry of Justice and Public Administration is significantly different from the Model Law supported by Serbian and international professional communities.
- 3.2. The position and role of all independent authorities in the system of protection of whistleblowers are not specified precisely enough.
- 3.3. The number employees in offices of independent authorities is not sufficient for the large number of citizens' reports, because of which independent authorities are not always able to act within the appropriate time limit.

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

- 4.1. No actions have been taken to implement the following proposals for improving the citizens' position in relation to public authorities set out in the 2012 Annual Report of the Protector of Citizens:
 - Recommendation to ensure strong, legal and factual protection of whistleblowers.

290 Official Gazette of RS No. 57/13.

291 Official Gazette of RS No. 79/13.

5. Explanation

The adoption of the National Anti-Corruption Strategy in the Republic of Serbia for the period from 2013 to 2018 and the Action Plan for its implementation is a necessary step in efforts to eliminate corruption to the largest possible extent, which prevents economic, social and democratic development of the state.

Taking into account that the consequence of corruption is not only impoverishment of the society and the state, but also drastic decrease of the citizens' trust in democratic institutions, the Protector of Citizens emphasized in his opinion on the text of the Action Plan that it is necessary to shorten the time limit for implementation of the activities on preparation of the text of the law on protection of whistleblowers with the aim to provide adequate protection to all who step forward in the interest of the public.

The opinion of the Protector of Citizens was accepted and it was expected that the text of the law based on the Model Law on Protection of Whistleblowers, prepared by the working group of the Commissioner for Information of Public Importance and Personal Data Protection, would be prepared soon under management of the Protector of Citizens. The Model Law, garnered unanimous support from Serbian and international professional communities, was forwarded to the Ministry of Justice and Public Administration for further procedure.

The Ministry first formed its working group for preparation of the law and then it presented the Draft Law on Protection of Whistleblowers, for which it was publicly said that it was based on the mentioned Model Law. However, the Draft Law contains a completely new provision which renders the purpose of passing of the law completely senseless. In addition, it envisages the role of a possible attorney of whistleblowers before a court for the Protector of Citizens, which is not appropriate for the authority whose main tasks are to protect the citizens' rights and supervise the work of public authorities.

In 2013, the Protector of Citizens received a low number of complaints against work of other independent authorities, but their number increased compared with the previous year.

The citizens complained against the work of the Commissioner for Information of Public Importance and Personal Data Protection, the Commissioner for Protection of Equality and the Anti-Corruption Agency and the complaints mainly indicated the "administrative silence", i.e. authorities' failure to decide on citizens' requests within the appropriate time limit.

Taking into account the problems faced by independent authorities, i.e. the number of employees which is not sufficient for the large number of citizens' reports to these authorities, it is not surprising that complaints against these authorities are primarily lodged against the lack of diligence. The Protector of Citizens explained to the citizens these objective circumstances which have significant impact on compliance with stipulated time limits and due to which the Protector of Citizens have no ground to conclude that violations citizens' rights occur because of illegal or irregular acting of independent authorities.

II PROPOSALS FOR IMPROVING THE CITIZENS' POSITION IN RELATION TO THE AUTHORITIES

14. It is necessary to pass the Law on Protection of Whistleblowers as soon as possible.
15. It is necessary to strengthen the mechanism of the Anti-Corruption Agency to act on petitions and to increase the number of employees in the Office of the Commissioner for Information of Public Importance and Personal Data Protection.

PART III: THE MEDIA

3.1. HUMAN RIGHTS IN THE EYES OF THE MEDIA

Judging by an analysis of press articles which dealt with the issues of human rights in 2013, it would appear that the media take a selective, sporadic and quite often sensationalist approach to reporting on violations of citizens' rights. This approach is evident both in reporting on the rights of particularly vulnerable groups and in reporting on a wide range of other rights, including the right to health care, the right to equitable remuneration for work, the right to salary etc.

The media²⁹² and the citizens²⁹³ alike appear to be highly sensitive to violations of the rights of children and women and family violence. Events of this kind, especially if they involve physical and psychical abuse, tend to be covered on the front pages in the press, often with photographs of the abused victims and their families, without any effort to hide the faces of children and without removing any information on the basis of which the children could be identified.

Cases of domestic violence against women and children, as well as cases of peer violence among children, proved to be particularly tempting for the media. Apart from a purely factual description of the perpetrator's behaviour ("he was a quiet and withdrawn neighbour", "it was well known he beat his wife" or "he was treated at a psychiatric hospital") and details of the act of violence itself, the media are seldom willing to foray into a deeper analysis of the underlying causes and consequences of violence or the measures taken by public authorities and the society at large to curb the recent surge in violence.

Media reports and programmes often cite dire financial circumstances of the competent services, but tend to avoid asking those services about the measures they put in place to prevent violence in the first place. The media tell us that centres for social work lack human and financial resources; we hear that police stations lack specific information on the actions of the offenders and that courts do not have sufficient evidence to convict the offenders.

Media reports and programmes are often characterised by sensationalism and primitive curiosity. Case after case, without even the modicum of ethical scruples, the media put

292 Media documentation of the Protector of Citizens.

293 Public perception of the rights of vulnerable groups in the Republic of Serbia and awareness of the powers and perception of work of the Protector of Citizens, survey by the Protector of Citizens, 2013.

the bar ever higher to test their audiences' threshold for violence, purposefully looking for details that could create a sensation. One of the daily papers recently introduced a statistical breakdown of data on domestic violence, thus creating what can be seen as a reminder of sorts. While this is a praiseworthy effort that will contribute towards creating a clear image of the sheer scale of violence, it is not sufficient to change the overall mood of the public, which is gradually becoming desensitised in a way to these daily reports of brutal violence.

The media regularly report on violations of the rights to health care, education and work. The majority of the texts and reports focus on a single specific case and attempt to give that case some kind of closure. Increasingly, the media report on campaigns to collect money for children who need treatment abroad or for families living in dire circumstances, inclusion and unpaid social insurance contributions and salaries.

In the opinion of the Protector of Citizens, the increasingly frequent self-organisation of citizens is a sign they are beginning to lose hope the government would recognise and solve their daily problems. This, in and of itself, puts a question mark over the effectiveness and efficiency of the institutions formed to ensure respect for the rights the citizens enjoy under the Constitution and the law. The citizens are certainly aware that individual actions cannot yield satisfactory outcomes and their willingness to take part in the campaigns launched by the media should also be seen as a criticism of the cumbersome and unproductive system.

Although the term "corruption" crops up frequently in the media, there is a bias in the way corruption cases are presented. The media usually report on the committers of corruption offences (usually those from the previous government) and the measures taken by the new government to prevent corruption. There is a growing dearth of investigative journalism that would uncompromisingly expose all parties involved in corruption, especially in the leading electronic and printed media. Such texts and reports can be found in any meaningful extent only on certain specialised portals or in specialised TV productions.

These trends seem to pave the way for exploitation of the media for political one-upmanship or for showdowns between different economic power centres, especially given the widespread suspicion of corrupt practices employed by certain media outlets. The media lead the way in the blame game and avoid dealing with the causes of corruption. The focus of criticism is shifted from one participant in a scandal to another, while the key information reported by these media outlets comes from vaguely defined sources close to the prosecution. Neither the institutions nor the media are held to account for this trend, and the citizens – the readers and viewers – are increasingly under an impression that the whole society is rife with corruption.

3.2. RESPECT FOR CITIZENS' RIGHTS IN THE MEDIA

The media in Serbia today pay more respect to citizens' rights than had previously been the case. However, this statement needs to be qualified in that it applies only to the treatment of the individuals covered by the media reports. Essentially, the increasing "tabloidisation" of the media scene threatens to undermine the fundamental right to fast, impartial and accurate information based on facts.

Impartial and accurate reporting based on facts takes the back seat to a ruthless fight for readership and viewership figures. This often results in (sometimes drastic) violations of fundamental human and citizens' rights, both those of political activists as public office holders at various levels and those of the citizens themselves.

One of the most drastic examples of threats to citizens' rights was the ordeal at the hands of a tabloid of a family who collected money to send their severely ill child abroad for treatment. Unfortunately, the child died in the meantime, leaving the family exposed for weeks to accusations of misappropriation of the money collected for treatment. In doing so, the tabloid chose to ignore the information from official sources, which refuted the allegation.

Media associations stood up against such actions by the tabloid paper, but the campaign nevertheless persisted, even after it was officially announced the family had delivered the amount collected for treatment – which had in fact never been spent – to the Institute for Mother and Child.

Rather worryingly, in some cases reputed experts joined the campaigns led by the tabloids, thus publicly violating the rules of their professions. On one occasion, a psychologist gave his professional opinion that a certain singer should be treated for alcoholism and, in doing so, practically violated two codes of ethics – the journalists' one and the medical one. The journalists' code prohibits the spreading of rumours and libels and orders journalists to respect the privacy, dignity and integrity of the persons on whom they report. The psychologists' code of ethics bars them from "publicly commenting on information relating to individuals whose identity has been disclosed, even when those individuals consent to the disclosure of their identity."

The media have generally stopped running photographs depicting pornographic content or explicit scenes of violence, but there still are isolated incidents. Thus, last year one tabloid published photographs of intimate intercourse between participants in the "Farm" reality show. The journalists' associations protested in strongest possible terms and no similar content has been published since.

As regards relations between the media and political and other centres of power, a worrying trend of exploitation of the media in political and other campaigns has been observed. The most striking examples are actions against organised crime, where media first announce that someone is under investigation, accuse him/her of crime and publicly quote allegations put forth by the prosecution as final and demonstrated facts.

Such approach violates the presumption of innocence, to the detriment of the accused citizens, as well as their family members. Media associations have pointed to this issue on a number of occasions, explaining that the media had a duty to defend not only the freedom of public speech, but also human and civil freedoms in general.

The Protector of Citizens has no direct powers in this field. When citizens complain against unfair treatment by the media, he refers them to journalists' and media associations or to seek satisfaction in a court of law. It is therefore of utmost importance to enable swift and efficient trials in cases of violations of human and citizens' rights in the media and to strengthen independent regulatory bodies.

The role of independent regulatory bodies is particularly important because the issues at stake are sensitive and, if not dealt with appropriately, may result in threats to media freedoms. For this reason it is always better and preferred to resolve conflicts at source, among the media themselves, with the assistance of independent regulatory bodies.

As an outstanding achievement in the field of self-regulation, the Protector of Citizens welcomes the formation of the Press Council, a body composed of representatives of journalists' associations, the media and the non-governmental sector. It would be highly beneficial if the Press Council, which deals with violations of the code of ethics in printed media and receives complaints from citizens whose rights are violated, continued operating in the coming years and garnered wider social support.

Building on the assumption that media freedoms, as a fundamental human rights, imply also a responsibility for public presentation of information and opinions, in his public appearances the Protector of Citizens pointed out on multiple occasions the threats of growing "tabloidisation" and the need for professional associations, public authorities and the society as a whole to tackle this issue more thoroughly.

The rampant "tabloidisation" of Serbia's media sphere violates human rights, undermines the rule of law, devalues anti-corruption efforts and strips institutions of the citizens' trust; this situation is not the fault of the tabloids, but of certain individuals within the institutions.

Pompous announcements and arrests, silent releases, information leaked from confidential documents, millions and dire poverty, photographs and edited images, facts and fabrications, medical records and bank accounts, weddings and funerals – all mixed together in a mud pond of truths, half-truths and lies, where it is no longer possible to tell the victim apart from the criminal, justice from evil, or guessing and fabrication from reality.

In an atmosphere where "justice" is meted out in headlines rather than judgements, everyone is a potential, as yet unexposed criminal, a shameless tormenter; on the other hand, everyone can also don the cloak of a hero before the exalted masses. The presumption of innocence has all but vanished, regulations and procedures are swayed to fit the interests of powerful persons known and unknown; institutions and officials, instead of promoting the rule of law, are exploited as needed to either blow the trumpet or draw covers on a scandal.

The citizens increasingly view all this as a huge reality show, which many find so amusing they are willing to pay for it; however, deep inside they feel it is stealing the real life from them.

The “tabloidisation” and banalisation of Serbia is not the fault of tabloids, but of individuals within institutions who do not know, do not want or cannot implement their plans, policies, ideas and solutions institutionally, openly and responsibly; instead, they set about their goals from the shadows of Serbia’s non-transparent and legally and ethically unregulated media space.

This phenomenon is not new in this country, but in recent months it has reached epic proportions. All this is to the detriment of the citizens and the society, indeed even to the detriment of the centres of powers who consider themselves the rules of the tabloid media scene of the day, believing – just as their predecessors did – that they would remain firmly in the driver’s seat forever and that those very same, heavy weapons will not sooner or later turn against them as well.

(From the statement given by the Protector of Citizens to Tanjug in June 2013)

3.3. PROTECTOR OF CITIZENS IN THE MEDIA

The majority of announcements and information released by the Protector of Citizens to the media are planned to be information-neutral, i.e. most of the texts contain no specific comments, whether positive or negative. Although the texts written by the Protector of Citizens, especially in case of investigations, specify the authority responsible for an irregularity, most of the articles never went deeper into the nature of the violated right, the prevalence of the identified practice and, least of all, whether the authorities concerned complied with the recommendations of the Protector of Citizens in the specific cases.

The media devoted the largest share of their information space – in positive terms – to cases where the Protector of Citizens pointed to mass violations of rights (health care, education, environment protection).

Cases such as “primary school graduation examination”, “plastic health insurance cards with microchip”, “Zajaca”, “asylum seekers” or “electricity bills” have stirred media interest in the work of public authorities and in the issue of their accountability. The texts called for those authorities that were in charge of the said areas to be held to account and state the opinions of the Protector of Citizens.

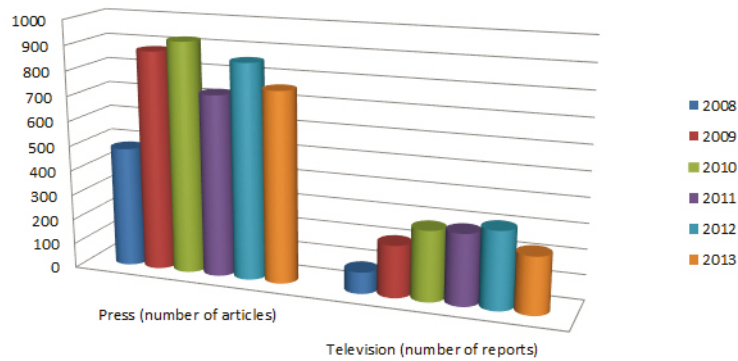
As regards individual cases of violations of citizens’ rights, including in particular the rights to good governance, efficiency, work and professionalism of public authorities, the media have been somewhat inert, as if they consider this to be the way things are, or as if these occurrences should not even belong to the area of human rights. Irregular actions of public authorities are usually put down to the poor work discipline that is so typical of our mentality and is therefore, as a rule, impossible to root out. The accountability of public authorities and institutions towards the citizen is ignored; all that matters are the leaders, who are either good or bad at what they do. Judging by the media reporting alone, one would be excused for thinking that Serbia was still struggling to ensure the respect for a handful of fundamental human rights, which were once considered the only such rights, while reporting on a whole range of other citizens’ rights remains disappointingly low.

Cooperation with the media in numbers

In the reporting year, the Protector of Citizens published slightly fewer press articles and had fewer television reports in the media with national coverage compared with the previous year. In a total of 17 daily and weekly papers covered by the analysis, 761 articles of various genres were published.

Chart 22 – Protector of Citizens in the media in the period 2008 – 2013

Protector of Citizens in the media in the period 2008 – 2013

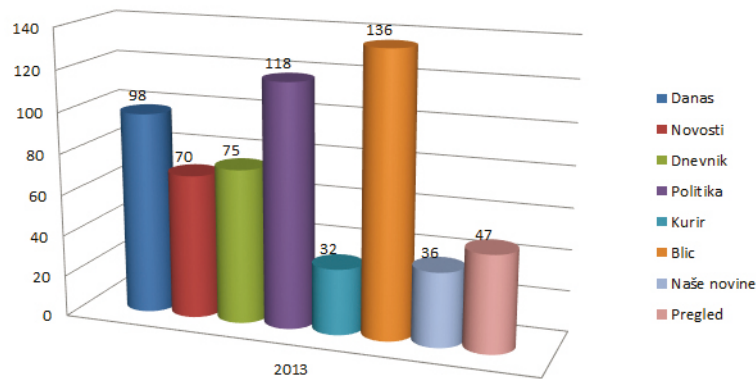


The majority of the texts were published by the following dailies: Politika, Blic, Danas, Dnevnik and Vecernje novosti. Of a total of 227 reports on nine television stations analysed by this institution in 2013, most were broadcast on RTS (Serbian Broadcasting Corporation) 1, B92 TV, Pink TV and Happy TV.

The media reported about this institution on the basis of statements given by the Protector of Citizens and his deputies or other officials, on the basis of reports from events, on the basis of announcements or in the form of news.

Chart 23 – Number of announcements in daily papers in 2013

Number of announcements in daily newspapers

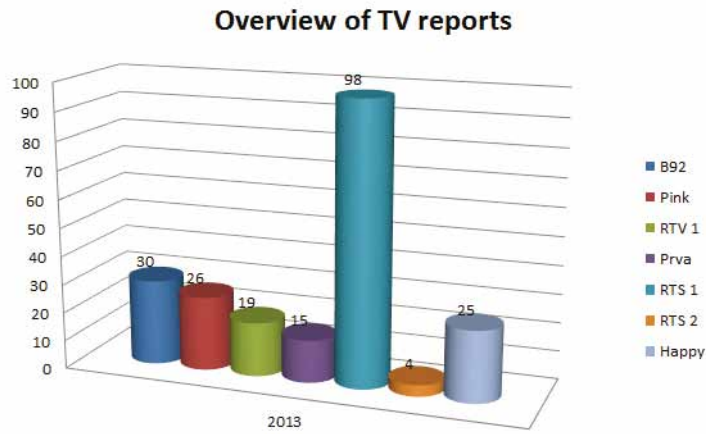


The Protector of Citizens and his deputies appeared on television on 18 occasions to comment on current events in the society and the activities of this institution.

During the year, the press published 15 comments relating to the work and activities of the Protector of Citizens, most of them in Danas and Politika dailies. These included also the authored texts written by the Ombudsman himself and his deputies.

Response from the media to the initiatives and reactions of the Protector of Citizens has been overwhelmingly positive. There were nine interviews – fewer than last year – but the number of statements given increased by a fifth.

Chart 24 – Number of television reports in 2013



PART IV: COOPERATION OF THE PROTECTOR OF CITIZENS

4.1. COOPERATION WITH PUBLIC AUTHORITIES EXCLUDED FROM OVERSIGHT BY THE PROTECTOR OF CITIZENS

During this reporting period, the Protector of Citizens made efforts again to improve relations with public authorities excluded from his oversight – the National Assembly, the President, the Government, the Constitutional Court, courts and public prosecutor's offices.

Improvement of cooperation with the National Assembly was observed during the reporting period. The aspects of cooperation which include review of his Annual Report, monitoring of compliance with his recommendations and relations with competent parliamentary working bodies are of particular importance for the Protector of Citizens.

Unlike the Annual Report of the Protector of Citizens for 2011, which was reviewed at the National Assembly only by one competent committee, the Annual Report for 2012 was reviewed at sessions of the Committee on the Judiciary, Public Administration and Local Self-Government, the Committee on Human and Minority Rights and Gender Equality, the Committee on Labour, Social Issues, Social Inclusion and Poverty Reduction and the Committee on the Rights of the Child. Communication with the committees was improved and sessions at which the Annual Report of the Protector of Citizens was reviewed were meaningful. On its extraordinary session held on 1 July 2013, the National Assembly passed Resolutions regarding the review of the Annual Report of the Protector of Citizens for 2012. By these resolutions it inter alia ordered the Government to report quarterly to the Assembly on the compliance with recommendations of the Protector of Citizens by public administration authorities and public power holders and emphasized the need to amend certain laws in accordance with initiatives and opinions issued by the Protector of Citizens and in general the need to act promptly on legislative initiatives made by the Protector of Citizens.²⁹⁴

The Action Plan on Implementation of the National Anti-Corruption Strategy in the Republic of Serbia for 2013-2018 and the Action Plan for Compliance with European Commission Recommendations contained in the Annual Report on Serbia's Progress in the Process of European Integration for 2013 further emphasized the duty of the Government to report to the National Assembly on compliance with recommendations of independent oversight

²⁹⁴ Official Gazette of RS No. 57/13.

authorities. The Protector of Citizens does not have information whether the Government has reported to the National Assembly about the activities on compliance with Resolutions, i.e. about compliance with the adopted action plans.

The Draft Law on Amendments to the Law on National Assembly sets out that the Government reports to the National Assembly about the implementation of resolutions the National Assembly passed in connection with the review of the reports of independent public authorities, organizations and bodies within six months of the passing of resolutions.

In 2013, the Protector of Citizens established particularly good cooperation with the Committee on Human and Minority Rights and Gender Equality, the Security Services Control Committee and the Committee on the Rights of the Child.

However, it remains unclear in practice of the National Assembly whether the parliamentary committee responsible for the review of the Ombudsman's report should be the Committee on Constitutional and Legislative Issues – the committee which under the Law on the Protector of Citizens proposes to the National Assembly a candidate for the Protector of Citizens.

The Law on Amendments to the Law on Budget System²⁹⁵ stipulates that the Protector of Citizens has to obtain an approval from the committee of the National Assembly responsible for administrative and budgetary issues for employment or hiring of any new person, notwithstanding the fact that the post is provided for in the Human Resources Plan and funding for it has been secured in the budget of the Republic of Serbia. Although the National Assembly has time and again voiced its support to strengthening of the capacity of the Protector of Citizens, in practice serious issues arise whenever an attempt is made to obtain such approval to the extent that it poses a threat to the independence and performance of the Protector of Citizens.

In the reporting period, several meetings were held at the strategic and operative levels between representatives of the National Assembly and the Protector of Citizens, mostly as part of project activities, which should improve everyday communication and cooperation. To ensure faster flow of information and to improve operative cooperation, the Protector of Citizens appointed a contact person for cooperation with the National Assembly in his Secretariat.

However, there was no cooperation with the Government. The Government did not take any visible step to show to administrative authorities, the work of which it supervises and directs, that it was the true guarantor of their duty to comply with their legal duties towards the Protector of Citizens, to cooperate with him and to implement his recommendations with the aim to improve the respect of citizens' rights.

The Government did not provide its opinion on certain initiatives made by the Protector of Citizens, which have been submitted to it in accordance with the explicit provision of the Law on the Protector of Citizens.

295 Official Gazette of RS No. ??.

4.2. INTERNATIONAL COOPERATION AND PROJECTS

In 2013, the Protector of Citizens continued intensive international cooperation at multilateral and bilateral levels. Cooperation with regional and European international organizations and institutions and their specialized bodies was further strengthened. Established mechanisms for cooperation with ombudsmen in other countries were enhanced through bilateral and multilateral meetings, primarily in regular conferences, round tables, seminars, trainings and educative and other meetings organized in the country and abroad.

The Protector of Citizens continued his regular activities as a member of a number of expert networks: the International Coordinating Committee for National Human Rights Institutions, the International Ombudsman Institute, the Association of Mediterranean Ombudsmen, the European Ombudsman Institute and the European Network of Ombudsmen for Children.

In the reporting period, the Protector of Citizens had a number of meetings with high officials of international organizations. Two visits stood out in particular in this year. The first visit was made by Ms Navi Pillay, United Nations High Commissioner for Human Rights, who met with the Protector of Citizens during her official visit to the Republic of Serbia. During her stay in Serbia, she visited the Psychiatric Hospital "Dr. Laza Lazarevic" with the Protector of Citizens and on that occasion they considered the issues of long-term hospitalization of persons with mental disorders in large asylum-type hospitals. The other particularly important visit was the visit made by Mr. Nils Muižnieks, Council of Europe Commissioner for Human Rights, who visited the Centre for Asylum Seekers in Bogovadja together with the Protector of Citizens and his deputy in charge of the issues of persons deprived of liberty with the aim to learn more about the status of asylum seekers and illegal migrations through the territory of the Republic of Serbia. Cooperation with the Commissioner was also intensified on the sidelines of a multilateral meeting on human rights in Vienna and at the special meeting in Strasbourg, at which the Commissioner gathered several leading experts in the field of national security and human rights.

In 2013, the Protector of Citizens was also a host to Dr. Chaloka Beyani, UN Special Rapporteur on the Human Rights of Internally Displaced Persons. In addition, to continue years-long successful cooperation, the Protector of Citizens was a host to Mr. Rafael Ribó, Catalan Ombudsman. The Protector of Citizens attended a meeting in Athens held to celebrate the 15th anniversary of the Greek Ombudsman. Bilateral cooperation with ombudsmen in the region was particularly strengthened in 2013. To that end, the Protector of Citizen inter aila

exchanged experiences with his colleagues at the conference "Institutions of Ombudsman in Southeast Europe: Process of EU Accession and Universal Periodic Review" in Zagreb.

With the aim to contribute to the process of Serbia's accession to the European Union, the Protector of Citizens talked to Ms Myriam Ferran, Head of the Unit on Relations with Serbia in the European Commission Directorate General for Enlargement. In addition, the Protector of Citizens had meetings with several EU expert missions. The Protector of Citizens has been continually participating in the reporting on EU accession.

Cooperation with the Organization for Security and Cooperation in Europe (OSCE) was continued on several levels. The Protector of Citizens participated in the work of the Human Dimension Committee of the OSCE Permanent Council and held a presentation on the issue of national institutions for human rights. The OSCE Mission to Serbia remained a significant partner in several spheres of competence of the Protector of Citizens. In the field of gender equality, a one-day workshop was organized in cooperation with this organization, which addressed the introduction of gender perspective and improvement of knowledge and skills in the field of gender equality and multiple inequalities for employees in the Service of the Protector of Citizens, the Provincial Ombudsman, the Commissioner for Protection of Equality and local ombudsmen of Novi Sad, Zrenjanin, Pancevo and Backa Topola. The lecture was held by professor Dr. Mieke Verloo of the Radboud University in Nijmegen, the Netherlands, one of the leading experts in Europe for these issues, while Ayla van Hill of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw presented the handbook on national institutions for women's rights and gender equality, which contains overview of the situation in 38 OSCE member states covered with the survey, including Serbia. Since the focus of the OSCE support was improvement of the institutional and legislative framework, monitoring of the implementation of the Law on Gender Equality at the local level was carried out. In addition, the working group was also formed, which will work on the preparation of the new Model Law on Gender Equality.

Members of the Gender Equality Council of the Protector of Citizens and representatives of the Secretariat of the Protector of Citizens jointly organized a study visit the Gender Equality Ombudsperson of the Republic of Croatia, during which they also talked to representatives of the Croatian Office for Gender Equality and civil society organizations dealing with protection of rights and improvement of the position of women and LGBT population.

The activities of the protector of Citizens on the protection of the rights of the LGBT population were also presented at a conference dedicated to the position of the transgendered persons held in the Hague and at the regional conference titled "Improvement of the Human Rights Situation of LGBT Population in the Western Balkans" held in Sarajevo.

At the annual conference of the European Network of Ombudsmen for Children (ENOC), the Deputy Protector of Citizens in charge of child rights presented the work of the Ombudsman in the field of child rights and participated actively in the work of the conference titled "Children on the Move – Children First".

In the reporting period, the Deputy Protector of Citizens was also a member of the ENOC Bureau and participated actively in the activities in connection with the amendments to the Statute of the Network, selection and revision of selection of associated and full members, examination of applications for admission of new members, preparation of the topic of the Annual Conference ("Children on the Move") and the Declaration of the European Network on the Position of Children on the Move, primarily children migrants and unaccompanied children.

The Protector of Citizens and ombudsmen of Belgium, Greece, France, Italy, Catalonia, Cyprus and Malta and organization "Centre for Youth Integration" jointly prepared a documentary film titled "Children on the Move: Children First!", which follows lives of children migrants and the problems they face every day. The film premiered at the ENOC Annual Conference and after that also to the members of the European Parliament.

In 2013, cooperation with UNICEF was focused on completion of the Project „Promoting Good Parental Practice in Serbia“.²⁹⁶

In the field of the rights of persons with disabilities, the UN Office of the High Commissioner for Human Rights (OHCHR) again provided support in 2013 to the work of the Protector of Citizens on the protection and improvement of the rights of persons with disabilities.

In the reporting period, the Protector of Citizens made a number of addresses at multilateral meetings dedicated to the rights of national minorities. These meetings included participation of the Protector of Citizens at the conference "Best Practices in the Region in Integration of the Roma" in Sarajevo. The regional report of the Organization for Security and Cooperation in Europe (OSCE) was presented at the conference, in which it was emphasized that the work of the Protector of Citizens in connection of the protection of the rights of the Roma provided the highest contribution to the actual improvement of the position of the members of this vulnerable group. The work and the results achieved by the the Protector of Citizens in addressing the status of "legally invisible" and homeless persons and the supervision of the exercise of the rights of the Roma are also of particular importance for countries in the region. Representatives of public administrations, independent authorities and local self-government from the Western Balkan countries participated in the work of the conference. In 2013, successful cooperation was continued with the UN High Commissioner for Refugees (UNHCR) on further addressing of the problems of "legally invisible persons", i.e. persons who are not entered into registers of birth.

The work of the Protector of Citizens in connection with the protection of collective rights of national minorities was also highly acclaimed at the conference of the Council of Europe titled "Promoting Human Rights and Minority Protection in South East Europe", at which it was emphasized that the Protector of Citizens issued much more recommendations dedicated to the protection of the rights of national minorities than similar institutions in the region and that he provided significant contribution to the improvement of the rights of national minorities and more responsible conduct of public authorities.

On invitation from the Ombudsman of FYR Macedonia, the Protector of Citizens participated in the work of a regional conference dedicated to the issues of ethnic discrimination. The conference mostly addressed anti-discrimination policies and actions of ombudsmen and anti-discrimination bodies in the region, as well as their preventative role and active contribution to prevention of any kind of discrimination, particularly the Roma.

As regards the rights of persons deprived of liberty, as part of regional cooperation the Protector of Citizens organized a meeting in Belgrade in March 2013, at which the Network of National Preventive Mechanisms in South East Europe Countries was formed, while in October the NPM of Austria also joined this Network. At the meeting held in

²⁹⁶ See more in the part on the projects in this Report and at: http://www.ombudsman.pravdeteta.com/index.php?option=com_content&view=article&id=426%3A2012-10-06-11-48-14&catid=37%3A2012-04-09-12-59-03&Itemid=90&lang=sr.

October in Belgrade the Medical Group of the Network was founded, which gathers medical experts who are members of monitoring teams which visit institutions where persons deprived of liberty stay.



Image 13 – Conference of Ombudsman Institutions for the Armed Forces

The Protector of Citizens exchanged his experiences in protection of members of armed forces with his colleagues in Norway (the Protector of Citizens was a host to one of earlier conferences held in Belgrade) and in Sarajevo. The Protector of Citizens shared his experiences in control of security services and in the introduction of efficient and effective external control of operations of public authorities with officials from Tunisia, Lybia and Palestine during the visit which was organized and financed by the the Geneva Centre for the Democratic Control of Armed Forces.

***Activities of the protector of citizens as national institution
for the promotion and protection of human rights***

In 2013, the Protector of Citizens carried out a number of activities as the national institution for the promotion and protection of human rights in Serbia (hereinafter referred to as "NHRI") granted with the highest "A" accreditation status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (hereinafter referred to as "ICC")²⁹⁷.

²⁹⁷ ICC is a global network of institutions for the promotion and protection of human rights, the internal accreditation system of which, based on Paris Principles, is recognized by the United Nations. ICC coordinates the relations between NHRIs and the United Nations in the field of human rights.

Two activities carried out by the Protector of Citizens in 2013 are of key importance from the aspect of his capacity as the national institution for the promotion and protection of human rights.

First, during adoption of the report for Serbia within the framework of the Universal Periodic Review at the 23rd session of the UN Human Rights Council, Protector of Citizens Sasa Jankovic used this opportunity to address the members of the Council through a video statement. In his statement, the Protector of Citizens commended commitment of the state to respect and improve human rights and emphasized that commitment alone was not enough and that compliance with the issued recommendations should be monitored closely in practice because practice still lags behind the declarative statements of will. Talking about overcoming of the issues in the exercise of certain rights and freedoms, the Protector of Citizens said that the right way was not to pass of new laws and form new independent authorities but uncompromised implementation of the regulations guaranteeing human rights and predominance of the rule of law over political will.

Assured that full and unbiased evaluation of the level of respect for human rights is key for proper focusing of activities carried out by government and other entities to improve the existing situation in the field of human rights in the state, the Protector of Citizens submitted his Observation on the Implementation of the International Covenant on Economic, Social and Cultural Rights²⁹⁸ to the competent UN committee. The Observations were sent within the framework of the second periodic reporting on the implementation of the covenant in the Republic of Serbia. In his Observations, the Protector of Citizens emphasized that the state struggled to provide to the most vulnerable social groups the minimum decent standard of living, sufficient social assistance, adequate health care, minimum education, support during pregnancy and maternity, sickness, disability, unemployment, lonely childhood and old age. He also emphasized that dozens of thousands of Serbian citizens are prevented from fully exercising their constitutionally guaranteed and legally protected rights to health care and old-age pension through compulsory insurance provided for by the law.

As part of his reporting activities in the field of international cooperation, the Protector of Citizens prepared and sent answers to various questionnaires of OHCHR. He also prepared contributions for reports according to the special UN procedures.

I PROJECTS

With financial support of the Government of the Kingdom of Norway, in early 2013, the Protector of Citizens launched the project "Promoting Human and Minority Rights through more Intense Contact between the Protector of Citizens and Citizens", the aim of which is to contribute to further capacity building and higher visibility of this institution in protection of human rights, as well as its higher availability for citizens in towns and smaller municipalities in Serbia. This two and a half-year project implemented in cooperation with the Librarian Association of Serbia and public libraries in fifteen selected municipalities and cities is a continuation of the pilot project *Electronic Access to the Protector of Citizens* implemented in 2011 and 2012. During the previous year, the total of 625 citizens contacted the Protector

298 Запажања на енглеском језику доступна су на: http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/SRB/INT_CESCR_IFN_SRB_15346_E.pdf, док се на српском могу прочитати на: http://www.zastitnik.rs/attachments/3035_ZG_%20Zapa%C5%BEanja%20o%20primeni%20MPEKSP.pdf.

of Citizens through a video link installed in local libraries, while 1357 sought information on the competences of the institutions. For the purposes of the Protector of Citizens, the Centre for Free Elections and Democracy carried out a public opinion survey on gender equality and the rights of vulnerable social groups (national minorities, LGBT population and persons with disabilities), as well as perception of the work of the Protector of Citizens, which will be presented in 2014. The development of software for electronic document management adjusted to the needs of the institution is also underway, which will significantly improve its efficiency in acting on citizens' complaints.

Within the framework of the five-year project Judicial Reform and Government Accountability which has been implemented in Serbia since 2011 by the U.S. Agency for International Development (USAID), in 2013 the Protector of Citizens carried out a number of activities with the aim to establish more efficient cooperation and communication with parliamentary committees. A number of trainings and consultative meetings were held to strengthen the capacity of employees in the Secretariat of the Protector of Citizens in the field of communication with complainants and public authorities.

One of the most important activities carried out in 2013 was training in human and minority rights and good administration, which was organized with the aim to improve employee's knowledge on specific human rights falling within the competence of the Protector of Citizens, as well as harmonisation of practice. Interactive training, which was partially financed from the donation of the Government of the Kingdom of Norway, was attended by the total of 42 employees, while a number of recognized experts in the fields of human rights and good administration participated in it.

With financial support from the UK Embassy in the Republic of Serbia, the project of monitoring of compliance with recommendations issued by the Protector of Citizens and action plans for improvement of the position of the Roma passed by the Government was implemented in 2012 and 2013. The aim of the project was to contribute to the improvement of the position of the Roma ethnic minority by the introduction of system solutions in implementation of the measures for inclusion of the Roma. The Commission on Studying the Life and Customs of the Roma of the Serbian Academy of Sciences and Arts (SANU) organized an expert debate on the implementation of affirmative measures in the field of education and employment of the Roma. With the aim to promote good practice in the implementation of inclusion at the local level, the Protector of Citizens published a brochure with examples of good practice in the actions taken by of local self-government.

In cooperation with the UN Office of the High Commissioner for Human Rights (OHCHR) and owing to the EU project Technical Assistance for Civil Society Organisations (TACSO) and the Embassy of the Kingdom of Norway to Serbia, the Protector of Citizens implemented a project to support deinstitutionalization or transformation of social security institutions where persons with disabilities stay. The project was implemented with the aim to build the capacities of the Protector of Citizens, local authorities, civil society organizations and other participants in this process which will be initiated in the following period in Serbia. For that purpose, the Guidelines of the European Expert Group on Deinstitutionalization, which are a collection of good practices and deinstitutionalization models applied in the European countries. The development of the Road Map is also underway, which will propose the strategy and the model for deinstitutionalization in Serbia and which will be submitted to the competent public authorities.

In 2012 and 2013, the Protector of Citizens implemented the project Promoting Good Parental Practice in Serbia in partnership with the United Nations Children's Fund (UNICEF), the aim of which is to contribute to the improvement of child rights and to decrease of violence against children by education of parents, teachers, professors and nurses in promotion of affirmative and democratic parenthood. During the previous year, members of the Panel of Young Advisors of the Protector of Citizens participated in debates held in den schools across Serbia at which they discussed the importance of and the reasons for the introduction of prohibition of corporal punishment in upbringing of children by law. On that occasion, the survey on attitudes of children and youth towards corporal punishment, previously carried out by the Panel of Young Advisors, was also presented. Positive effects of the project are in the first place reflected in the initiation of dialogue in the expert and general public on the harmfulness of corporal punishment of children and the promotion of positive methods of parenthood, the possibility to contact parents directly with the aim to provide them detailed information on this issue and good parental practices, as well as the provision of space an possibilities for children to give their own attitudes and opinions on this issue.

In 2013, the OSCE (Organization for Security and Cooperation in Europe) Mission to Serbia continued capacity building of the institution of the Protector of Citizens in the fields of promotion of gender equality and support to activities of the National Preventive Mechanism (NPM). As part of activities of the NPM, the Network of NPMs of Southeast Europe was introduced with the aim to exchange information and good practices in achievement of the mandate of NPM, and its Medical Group was also formed. The standing cooperative dialogue on the prevention of torture with representatives of public authorities was continued and a round table on the prevention of and punishment for torture was also held, which gathered representative of competent authorities, civil society organizations and international organizations.

PART V: TOTAL NUMBER AND CLASSIFICATION OF COMPLAINTS

Any natural person or legal entity, whether Serbian or foreign, who considers that his/her rights have been violated by act, action or failure to act of administrative authorities **may lodge a complaint with the Protector of Citizens**. The Protector of Citizens must handle every complaint, except where none of the grounds for handling in accordance with the Law are met, in which case he rejects a complaint and notifies a complainant about that, stating the reasons for rejection.

Any person (Serbian nationals, foreigners, legal entities, stateless persons, refugees, displaced persons, adults and children, various associations) who considers that administrative authorities inappropriately or incorrectly apply regulations of the Republic of Serbia or do not apply them may contact the Protector of Citizens. Complaints are lodged to the protector of Citizens free of charge, in writing or orally for the record with the Protector of Citizens.

In 2013, the Protector of Citizens recorded 5,042 complaints, which is an increase by about 13% in the number complaints compared with 2012.

**Table 40 – Characteristics of complainants and the manner
of lodging of complaints**

1. Men	2333	46.27%
2. Women	1411	27.98%
3. Legal entities	149	2.96%
4. Natural persons and legal entities combined	17	0.34%
5. Own initiative of the Protector of Citizens	37	0.73%
6. Parent on behalf of his/her child	308	6.11%
7. Anonymous complaints	34	0.67%
8. Serbian nationals	3795	75.27%
9. Foreign nationals	34	0.67%
10. Collective complaints	224	4.44%
11. Complaints received through e-mail	1695	33.62%
12. Complaints lodged through local ombudsmen	10	0.20%
13. Complaints lodged through foreign ombudsmen	1	0.02%

To ensure more efficient acting on complaints and their precise statistical processing, all complaints the Protector of Citizens receives during a year or initiates on his own initiative are recorded in specialist fields which include vulnerable population groups (children, persons with disabilities and the elderly, national minorities, persons deprived of liberty, complaints in the field of gender equality) and then also in the sectors which belong to the so-called good administration. Sectors of the administration mainly correspond to the sphere of competence of competent ministries.

Table 41 – Classification of complaints by fields and sectors, their number and percentage compared with the total number of complaints

Rights of persons deprived of liberty	297	5.89%
Gender equality	147	2.92%
Child rights	376	7.46%
Rights of persons with disabilities and the elderly	341	6.76%
Rights of national minorities	209	4.15%
Justice sector	524	10.39%
Defence sector	115	2.28%
Internal affairs sector	312	6.19%
Finance, economy and regional development sector	392	7.77%
Sector of agriculture, trade, forestry, water management, environment, infrastructure, energy and mining	396	7.85%
Urban planning, construction and cadastre sector	473	9.38%
Public administration and local self-government sector	391	7.75%
Labour sector	347	6.88%
Health of health care, social security and pension and disability insurance	502	9.96%
Sector of security services and independent oversight	20	0.40%
Sector of culture, education, science, youth and sport	200	3.97%
Total	5042	

Table 42 shows the data on percentage share of complaints from various districts

Table 42 – Number and classification of complaints according to addresses of complainants with percentage share

Belgrade	1533	30.40%
Autonomous Province of Vojvodina	745	14.78%
Other parts of Serbia (all districts with less than 100 complaints lodged)	596	11.82%
Without information on the address (received by e-mail, without specified address)	517	10.25%
Nisavski district	349	6.92%
Raski district	218	4.32%
Sumadjiski district	138	2.74%
Branicevski district	132	2.62%
Zlatiborski district	126	2.50%
Jablanicki district	121	2.40%
Macvanski district	120	2.38%
Pcinjski district	110	2.18%
Rasinski district	106	2.10%
Pomoravski district	105	2.08%
Foreign country	47	0.93%
Presevo, Bujanovac and Medvedja	43	0.85%
Autonomous Province Kosovo and Metohia	36	0.71%
Total	5042	

5.1. CLASSIFICATION OF COMPLAINTS ACCORDING TO RIGHTS VIOLATED

By examination of 5,045 complaints lodged with the Protector of Citizens in 2013, it was found that most of the violations of rights reported by the citizens were violations of economic and social rights and violations of the principles of good governance.

Chart 25 – Number and classification of complaints according to rights violated

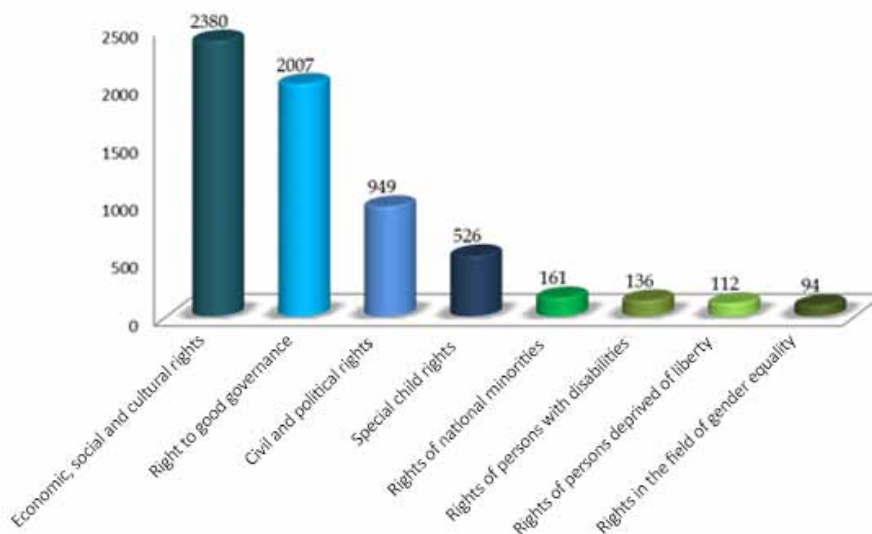


Table 43 shows types of rights violated, their number and percentage share in the number of complaints lodged.

The number of rights violated is always higher than the number of complaints lodged because many complaints include multiple violations of rights.

Table 43 – Types of rights violated, their number and percentage share in the total number of all registered violations of rights in complaints

Field of law	Number of rights violated	% in the total number of complaints lodged y
Economic, social and cultural rights	2380	37.40%
Right to good administration	2007	31.54%
Civil and political rights	949	14.91%
Special rights of children	526	8.27%
Special rights of national minorities	161	2.53%
Special rights of persons with disabilities	136	2.12%
Special rights of persons deprived of liberty	112	1.76%
Special rights – gender equality	94	1.48%
Total violated rights in 5,042 complaints	6365	

In their complaints, citizens mainly reported violation of the principles of good administration. This is indicative of the fact that the principles of good administration are violated in all administrative authorities before which the citizens, including vulnerable groups, exercise their rights, which makes the issue of violation of this right even more sensitive and difficult.

The share of political and civil rights, economic, social and cultural rights and the right to good administration in the total number of violated rights reported in complaints is presented in the following three tables.

Table 44 – Overview of violated civil and political rights, their number and percentage share in the total number of registered violations of these rights in complaints

Right to a fair trial and trial within reasonable time	399	42.04%
Right to legal protection and legal remedy	140	14.75%
Right to legal aid	75	7.90%
Right to protection against discrimination	62	6.53%
Right to freedom and safety	37	3.90%
Right to inviolability of physical and psychological integrity	36	3.79%
Right to personal identification documents	29	3.06%
Right to damage compensation	27	2.85%
Right to protection from torture, inhuman and degrading treatment	24	2.53%
Right to citizenship	15	1.58%
Right to personal data protection	13	1.37%
Right to life	12	1.26%
Right to protection against groundless deprivation of liberty	12	1.26%
Right to language and script	11	1.16%
Right to privacy	10	1.05%
Other rights	47	4.95%
Total	949	

Table 45 – Overview of violated economic, social and cultural rights, their number and percentage share in the total number of registered violations of these rights in complaints

Right to work and rights arising from work	556	23.36%
Right to protection of property	538	22.61%
Protection of consumers' rights	279	11.72%
Right from pension and disability insurance	279	11.72%
Right to health care and health insurance	272	11.43%
Education, upbringing and addressing students' issues	142	5.97%
Right to social security	71	2.98%
Prohibition of abuse at work	60	2.52%
Right to healthy environment	60	2.52%
Right to be informed	32	1.34%
Right to housing	24	1.01%
Right to protection of family, mother and single parent	6	0.25%
Other rights	61	2.56%
Total	2380	

Table 46 – Overview of violated rights in the field of good administration, their number and percentage share in the total number of registered violations of rights in the field of good administration in complaints

Right to protection against administrative silence	357	17.79%
Right to observance of law	327	16.29%
Right to receive a decision within the legally stipulated time limit	318	15.84%
Right to efficient work of authorities	275	13.70%
Right to fair treatment by authorities	222	11.06%
Right to respect created legal expectations	216	10.76%
Right to protection against the violation of procedure	109	5.43%
Right to absence of abuse of powers	86	4.29%
Right to protection against the failure to act on judicial decisions	47	2.34%
Right to equal treatment of citizens	27	1.35%
Other rights	23	1.15%
Total	2007	

5.2. CLASSIFICATION OF COMPLAINTS ACCORDING TO AUTHORITIES AGAINST WHICH THEY WERE LODGED

Most of the complaints pertain to the work of representatives of executive authorities, particularly ministries, against which about 30% of all complaints were lodged. The citizens mainly complained about the work of authorities and organizations in the field of pension and disability insurance, employment, health care, education, social security, tax authorities, public enterprises and institutions, judicial authorities and administrative authorities in local self-government.

Table 47 classifies complaints according to the various authorities against which they were lodged with percentage share in the total number of authorities against which complaints were lodged. The number of authorities is always higher than the number of complaints, because many complaints include violation of rights by several authorities.

**Table 47 – Classification of complaints according to various authorities
against which they were lodged**

Ministries	1088	21.58%
Institutions and other public services	953	18.90%
Agencies, institutes, funds, administrations	929	18.43%
Local self-government	677	13.43%
Judicial authorities	633	12.55%
Companies, employers, natural persons	533	10.57%
Public enterprises	344	6.82%
Independent national authorities and independent bodies	59	1.17%
Highest national authorities	44	0.87%
Provincial autonomy	13	0.26%
National councils of national minorities	2	0.04%
Total all authorities	5275	

Table 48 shows ministries against which the citizens lodged most complaints.

Table 48 – Classification of complaints according to various ministries against which they were lodged

All ministries in the total number of complaints	1088	21.58%
Individual ministries compared with all ministries		
Internal Affairs	375	34.47%
Defence	118	10.85%
Education, Science and Technological Development	129	11.86%
Labour, Social Policy and Employment	109	10.02%
Construction and Urban Planning	133	12.22%
Finance	42	3.86%
Justice and Public Administration	55	5.06%
Health	41	3.77%
Agriculture, Forestry and Water Management	13	1.19%
Economy	10	0.92%
Other ministries	63	5.79%

The following table (Table 49) shows subtypes of authorities within large groups of authorities to which they belong and which are presented in Table 48. The table presents their number and percentage share in the total number of authorities from the group of authorities to which they belong.

Table 49 – Classification of complaints according to various authorities against which they were lodged

Institutions and other public services in the total number of complaints	953	18.90%
Individual institutions compared with all institutions		
In the field of social security	299	31.37%
In the field of education	252	26.44%
In the field of health care	220	23.08%
In the field of enforcement of penal sanctions	182	19.10%
Funds, institutes, agencies, administrations, etc. in the total number of complaints		
	929	18.43%
Individual authorities in the group compared with all authorities which belong to the group		
Pension and Disability Insurance Fund	369	39.72%
Republic Geodetic Authority	131	14.10%

Part V: Total number and classification of complaints

Republic Health Insurance Fund	141	15.18%
Tax Administration	103	11.09%
National Employment Service	44	4.74%
Privatisation Agency	28	3.01%
Agency for Restitution	17	1.83%
Commesariat for Refugees and Migration	14	1.51%
Security services (SIA,MSA, MIA)	7	0.75%
Other agencies	38	4.09%
Other administrations	37	3.98%
Local self-government authorities in the total number of complaints	677	13.43%
Individual authorities in the group compared with all authorities which belong to the group		
City of Belgrade and city municipalities	249	36.78%
Other cities	199	29.39%
Other municipalities	229	33.83%
Judicial authorities in the total number of complaints	633	12.55%
Individual authorities in the group compared with all authorities which belong to the group		
Primary courts	351	55.45%
Higher courts	77	12.16%
Court of Appeal	58	
Commercial courts	43	6.79%
All prosecutor's offices	43	6.79%
Magistrates' courts	28	4.42%
Other judicial authorities	33	5.21%
Public enterprises in the total number of complaints	344	6.82%
Individual authorities in the group compared with all authorities which belong to the group		
Local public enterprises	176	51.16%
National public enterprises	168	48.84%
Other authorities in the total number of complaints	553	10,57%

5.3. OUTCOME OF HANDLING OF COMPLAINTS

The Protector of Citizens investigates every complaint, except complaints falling outside his competence and complaints which are untimely, premature, anonymous, incomplete or lodged by an unauthorized person.

In 2013, the Protector of Citizens investigated 5,042 cases he received that year, including 5,005 written complaints and 37 complaints initiated on his own initiative, of which he closed investigation in 3,121 cases. About 2,500 complaints from the previous years were also investigated, of which completed investigation of 1,584 complaints, which means that in 2013 investigation was completed for the total of **4,705** complaints.

Table 50 – Outcome of handling of complaints from 2013 and from previous year as at 31 December 2013

Inadmissible complaints	2560	54.41%
Unfounded complaints	1203	25.57%
Authority rectified the irregularity upon learning that control of its work was initiated (investigation closed)	560	11.90%
Complaints covered by recommendations	183	3.89%
Complaints dropped by complainants	142	3.02%
Opinion of the Protector of Citizens	32	0.68%
Stateamen of the Protector of Citizens	19	0.40%
Death of a complaininat	6	0.13%
Total:	4705	

The Protector of Citizens rejects most of the received complaints because the conditions to handle them required by the Law have not been complied with. Complaints are rejected because they fall out of the competence of the Protector of Citizens, because they are untimely, premature, anonymous and incomplete.

Table 51 – Reasons for rejection of complaints in 2013

Declined jurisdiction - complainant referred to competent authority	1139	44.49%
Untimely	97	3.79%
Premature – provided advice on available legal remedies	768	30.00%
Anonymous	39	1.52%
Incomplete	492	19.22%
Complaint falls within the competence of another ombudsman	25	0.98%
Total:	2560	

A significant part of handling of complaints by the Protector of Citizens is provision of legal aid advice, which the Protector of Citizens provides even in cases when he rejects a complaint because it falls outside his competence or because it is premature. In such cases, the Protector of Citizens refers complainants to the competent authority or gives him/her advice on available legal remedies.

As presented in Table 52, in **74.49%** of inadmissible complaints, the Protector of Citizens provided to citizens legal aid advice in the exercise of their rights before the competent authorities.

Table 52 – Provided legal aid advice

	Number	Percentage
Inadmissible complaints	2560	100%
Declined jurisdiction - complainant referred to competent authority	1139	44.49%
Premature - provided advice on available legal remedies	768	30.00%
Total: provided legal aid advice	1907	74.49%

In addition to the provision of legal aid advice to the citizens through replies to complaints they lodged, more than 18,000 citizens contacted the Protector of Citizens in reception offices in Belgrade, Presevo, Bujanovac and Medvedja in 2013, to whom assistance was given by providing oral advice and referring to competent authorities and stipulated procedures for handling of their requests before those authorities.

In investigation of 2,145 complaints, in addition to those rejected for the reasons specified by the law (2,560), the Protector of Citizens identified irregularities in operations of administrative authorities in over 37% of cases and the authorities subsequently rectified the identified irregularities or they received recommendations or opinions of the Protector of Citizens explaining how to rectify the identified irregularities.

Table 53 – Outcome of launched investigations

1. Irregularities identified in operations of authorities		
Investigation closed	560	26.11%
Recommendations issued	183	8.53%
Opinion of the Protector of Citizens	32	1.49%
Statement of the Protector of Citizens	19	0.89%
Total	794	37.02%
2. No irregularities identified in operations of authorities		
Unfounded complaints	1203	56.08%
Complainants dropped complaints	142	6.62%
Death of a complainant	6	0.28%
Total	1351	62.98%
Total 1 and 2	2145	100%

PART VI: RECOMMENDATIONS, OPINIONS AND LEGISLATIVE INITIATIVES OF THE PROTECTOR OF CITIZENS

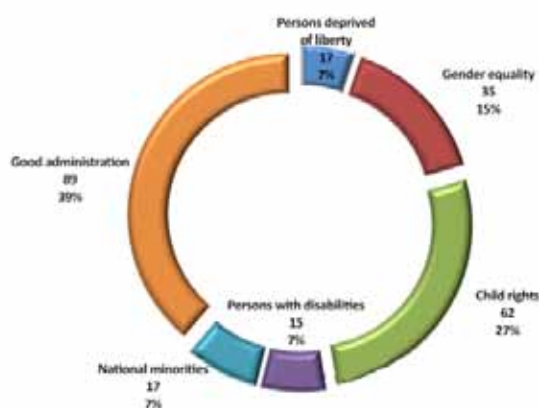
6.1. RECOMMENDATIONS

In 2013, acting upon citizen complaints or upon own initiative in 183 cases (from 2013 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 230 recommendations to the authorities requesting from them to remedy the observed deficiencies.

Recommendations are also recorded according to the field of the law to which they relate, i.e. depending on whether they relate to the protection and improvement of the rights of vulnerable groups (persons deprived of liberty, children, persons with disabilities, national minorities), whether they relate to the field of gender equality or whether they relate to the respect of the good governance principles.

Out of the total number of recommendations issued, the majority – 89 or 39% – relate to the promotion of the respect of the good governance principles.

Chart 26 – Overview of recommendations by the field of the law



Note: As part of activities of the National Preventive Mechanism, the Protector of Citizens issued 263 recommendations relating to persons deprived of liberty to competent bodies in 2013, meaning that the total number of recommendations is 493, while the total number of recommendations relating to persons deprived of liberty is 275.

Percentage of implementation of recommendations of the Protector of Citizens by fields is presented in table 54.

Table 54 – Recommendation by fields with percentage of compliance

Field	Number	Implemented	%	Unimplemented	%	Within specified time limit	%
Persons deprived of liberty	12	8	66.67%	1	8.33%	3	25.00%
Gender equality	35	26	74.29%	7	20.00%	2	5.71%
Child rights	62	62	100.00%	0	0.00%	0	0.00%
Persons with disabilities	15	6	40.00%	0	0.00%	9	60.00%
Ethnic minorities	17	6	35.29%	11	64.71%	0	0.00%
Good governance	89	27	30.34%	44	49.44%	18	20.22%
Total	230	135	58.70%	63	27.39%	32	13.91%

Authorities implemented 124 recommendations within the specified time limit, while 11 recommendations were implemented upon expiry of the specified time limit, which means that the total of 135 recommendations (over 68%) were implemented. The authorities did not implement 63 recommendations, while the time limit specified for the authorities to implement recommendations has not expired for 32 recommendations.

The highest percentage of implementation is observed in the recommendations relating to child rights which were issued to education and social security institutions and in the recommendations relating to gender equality.

The lowest percentage of implementation was observed in the sectors of administration, where only 30.34% of issued recommendations were implemented, about 50% of recommendations were not implemented, while the time limit for implementation of 60 days of the date of service of a recommendation has not expired for about 20% of recommendations. Recommendations relating to the rights of ethnic minorities have the highest percentage of non-compliance.

The authorities and organizations to which recommendations were mainly issued are presented in table 55.

Table 55 – Authorities to which recommendations were issued

Ministries	66	28.70%
Local self-government	48	20.87%
Social security institutions	44	19.13%
Police administrations and stations	16	6.96%
Education institutions	16	6.96%
Compulsory social insurance organizations	14	6.09%
Directorates within ministries	8	3.48%
Public enterprises	6	2.61%

Health institutions	5	2.17%
Independent public authorities	3	1.30%
Serbian army	2	0.36%
Prisons	2	0.87%
Total	230	

Table 56 – Issued-to-unimplemented recommendations ratio by authorities

Authority	Number of recommendations issued	Number of unimplemented recommendations	%
Public authorities	6	6	100.00%
Administrative authorities within ministries	8	5	62.50%
Local self-government	48	15	31.25%
Ministries	44	19	43.18%
Social security institutions	66	15	22.73%

Table 57 presents authorities which most frequently failed to implement recommendations of the Protector of Citizens and the number and percentage of non-compliance compared with the total number of unimplemented recommendations y.

Table 57 – Leaders in non-compliance with of recommendations

Ministries	19	23.81%
Local self-government	15	30.16%
Social security institutions	15	23.81%
Public enterprises	6	9.52%
Administrative authorities within ministries	5	7.94%
Independent public authorities and independent bodies	2	3.17%
Compulsory social insurance organizations	1	1.59%
Total	63	

The highest percentage of unimplemented recommendations compared with the number of the recommendations issued to various authorities is observed in public enterprises (EDB Beograd (Belgrade Power Utility Company) and Srbijagas (Serbian national gas company)) because the total of six recommendations was issued to them and none of these recommendations was implemented.

All recommendations which were not implemented by administrative authorities within ministries are actually recommendations which were not implemented by the Tax Administration.

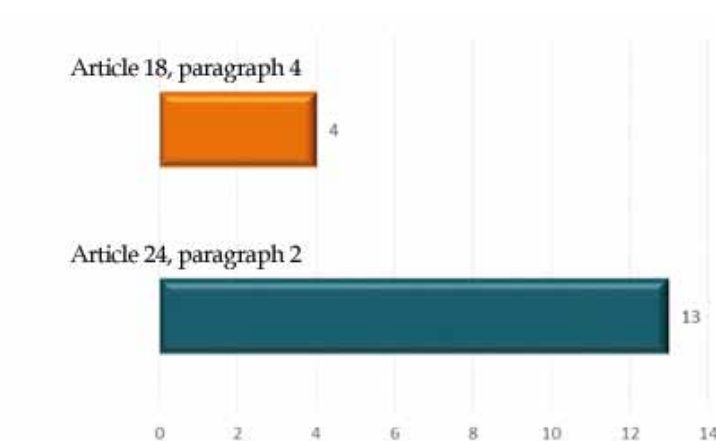
6.2. OPINIONS

In 2013, the Protector of Citizens issued 17 opinions to public authorities, including:

Thirteen (13) opinions in accordance with the legal provision giving him power to act preventively by giving advice and opinions on the issues from his competence, with the aim to improve operations of administrative authorities and protection of human rights and freedoms.

Four (4) opinions in accordance with the legal provision giving him power to provide his opinion on draft laws and other regulations to the Government and to the National Assembly in the process of preparation of regulations if such regulations concern the issues relevant for the protection of citizens' rights.

Chart 27 – Number and types of the opinions issued by the Protector of Citizens



The rights the Protector of Citizens tried to improve by his opinion are presented in Table 58.

Table 58 – The rights which are improved by opinions issued by the Protector of Citizens

Opinions in the field of economic, social and cultural rights	8	47.06%
Opinions in the field of improvement of compliance with the good administration principles	4	23.53%
Opinions in the field of the protection of rights of vulnerable and minority population groups	3	17.65%
Opinions in the field of civil and political rights	2	11.76%
Total	27	

The opinions issued by the Protector of Citizens in the field of the protection of rights of vulnerable population groups included the protection of the rights of national minorities (2) and child rights (1).

6.3. LEGISLATIVE INITIATIVES

The Protector of Citizens can use his legal right to submit legal initiatives if two cumulative conditions are complied with:

- When it is necessary to amend text of a law or a draft law to ensure full and unhindered exercise of citizens' rights guaranteed by the Constitution and other laws, regulations and general enactments, as well as ratified international agreements and generally accepted rules of the international law.
- When other authorized backer, competent for a specific field (usually the Government) fails to use its legislative initiative to ensure respect, exercise, protection and improvement of citizens' rights and there is a danger of delay.

Proposing of amendments and laws to the National Assembly is the last step the Protector of Citizens take, as a rule only when he finds that the "first-line" backer will not take the necessary steps to the benefit of the citizens' rights on the basis of an initiative, a recommendation or other proposal made by the Protector of Citizens.

This is why the legislative activity of the Protector of Citizens is mainly reflected in submission of meaningful initiatives to public administration authorities, the operations of which he controls, to prepare and propose normative amendments. Only in exceptional cases the Protector of Citizens submits legislative proposals directly to the National Assembly.

In 2013, the Protector of Citizens submitted two initiatives for amendments to regulations to the competent ministries, including: the Initiative to amend the Law on the Protector of Citizens submitted to the Ministry of Justice and Public Administration and the Initiative to amend the Law on Sport submitted to the Ministry of Youth and Sport.

By the end of the reporting period, the competent ministries have not adopted the submitted initiatives for amendments to the laws.

The Protector of Citizens also submitted the following legislative initiatives to the National Assembly: the Amendment to Article 14 of the Draft Law on Amendments to the Law on Military Security Agency and the Military Intelligence Agency, which was adopted; and the Initiative for amendments to the Draft Law on Amendments to the Law on Budget System, which was only partially complied with by the parliamentary Committee on Finance, State Budget and Control of Public.

In 2013, the Protector of Citizens submitted three draft laws to the National Assembly, including: the Draft Law on Amendments to the Law on Non-Contentious Proceedings;

the Draft Law amending the Labour Law and the Draft Law on Amendments to the Law on Financial Support to Families with Children (the second and the third draft laws were supported by 60,000 citizens' signatures). The National Assembly have not adopted any of these draft laws in the reporting period.

Draft Law on Amendments to the Law on Non-Contentious Proceedings

The Draft Law on Amendments to the Law on Non-Contentious Proceedings contains only amendment to one article of the currently applicable Law, i.e. Article 71.k. Without the proposed amendment to the Law, the administrative authority competent for granting citizenship is exempted from the principle of compulsory application of court decisions and court decisions can be subject to out-of-court control, i.e. control by administrative authorities.

Draft Law amending the Labour Law and Draft Law on Amendments to the Law on Financial Support to Families with Children

The Protector of Citizens submitted to the National Assembly the Draft Law amending the Labour Law with the aim to ensure financial support to parents who care without external assistance for their seriously ill children and children with developmental disorders and disabilities, who, due to the nature of their conditions, need constant care and assistance, until the system offers them adequate services, when parents could continue to work or search for a job. The Draft Law on Amendments to the Law on Financial Support to Families with Children was also prepared and proposed.

The adoption of these laws would significantly improve the position of children with developmental disorders and disabilities and seriously ill children who, due to specific, serious diseases and conditions, need constant assistance and care. The proposed laws improve the position of these children even after coming of age since risks for families to place their adult children in social security institutions would be significantly reduced and parents would be able to both work and provide necessary care to their children. In addition, the quality of lives of these children and the exercise of their rights would be improved, which would also have long-term financial positive effects for Serbia. Additional necessary support would be provided to parents of this vulnerable population of children to ensure the livelihood of families and children, which needs are much greater because of serious diseases and conditions of these children.

ANNEX I

II HUMAN AND MATERIAL RESOURCES

Organizational Structure

The Secretariat was established to carry out expert and administrative tasks within the mandate of the Protector of Citizens.

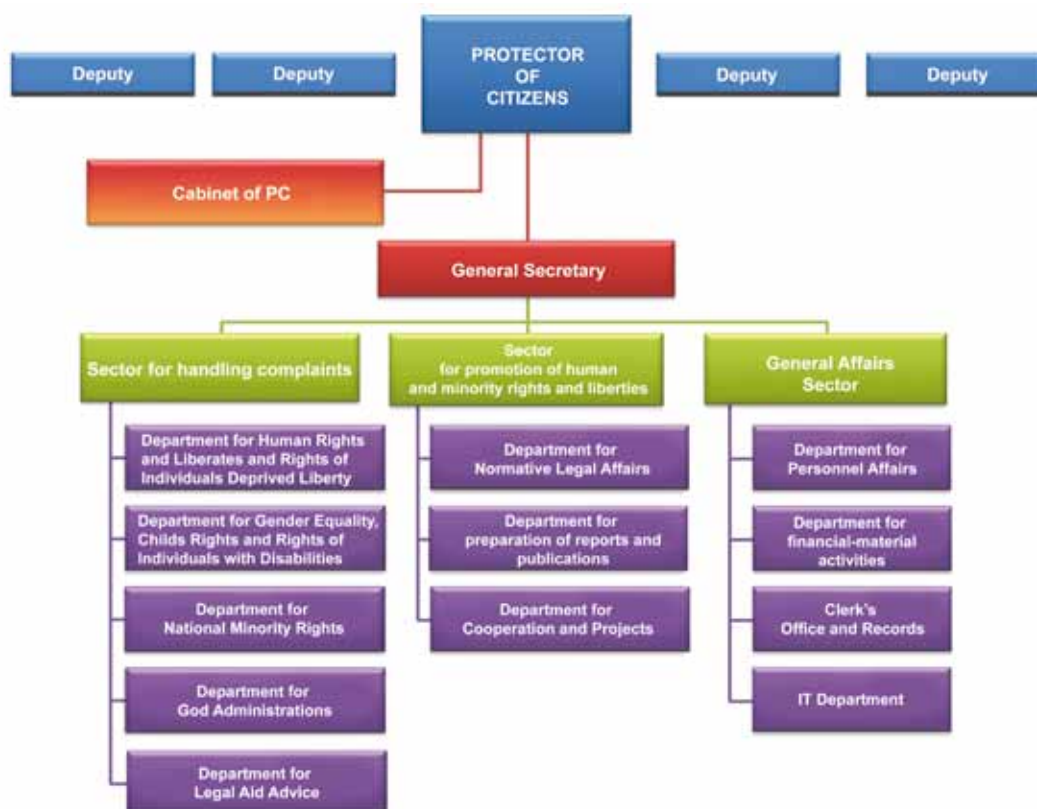
The Rulebook on Internal Organization and Job Classification in the Secretariat of the Protector of Citizens specifies the total of 63 public officials, employees and appointees.

On 31 December 2013, the Secretariat of the Protector of Citizens employed a total of 75 persons. There are 46 civil servants employed for an indefinite term. The remaining 29 are civil servants and appointees in fixed term employment, including 7 employees on jobs at the cabinet, 3 civil servants employed until the return of regular employees from sick leave and 19 civil servants employed due to the increased workload. The total number of employees includes 60 employees with higher education and 15 with secondary school education. The Secretariat employs 54 women and 21 men. The above number of employees does not include the Protector of Citizens Sasa Jankovic and his deputies: Ms Tamara Luksic Orlandic, Mr. Goran Basic and Mr. Milos Jankovic whose term in office expired on 28 October 2013.

Upon taking their oaths on 2 December 2013, new deputies of the Protector of Citizens Ms Gordana Stevanovic, Mr. Robert Sepi, Ms Vladana Jovic and Mr. Milos Jankovic took office. They have been appointed by the Decision of the National Assembly of the Republic of Serbia No. 78 of 26 November 2013.

Taking into account the volume of work, the current number of employees is not sufficient for prompt and appropriate work of the institution. The constant increase of the number of citizens who contact the Protector of Citizens and the increase in the number of procedures resulting from it lead to the significant increase in workload, which has not been reflected in an amendment to the Rulebook on Internal Organization and Job Classification which would specify a higher number of jobs in the Secretariat of the Protector of Citizens.

ORGANIZATIONAL CHART



PREMISES AND EQUIPMENT FOR WORK

The Resolution 77 No. 361-6754/2013 of 2 August 2013 passed by the Commission for Housing and Allocation of Official Buildings and Offices of the Government repealed the Resolution 77 No. 361-1652/2010 of 29 March 2010 passed by the Commission for Allocation of Official Buildings and Offices of the Government and temporarily allocated to the Protector of Citizens the premises in Belgrade, Deligradska 16, of the total surface area of 1502.25 m², consisting of 57 offices, an archive room, conference rooms and a garage for five vehicles. This Resolution allocated to the Protector of Citizens je additional 14 offices previously used by a part of the Office of the Commissioner for Information of Public Importance and Personal Data Protection, which was moved to other location.

The above Resolution specified that the Protector of Citizens will use the premises in Deligradska 16 until conditions are complied with to implement the Resolution 77 No. 361-3066/2011 of 27 April 2010 of the Commission for Allocation of Official Buildings and Offices of the Government, which allocated to the Protector of citizens the preemies of a property consisting of a facility in Belgrade, Karadjordjeva 48, with the aim to ensure permanent premises necessary for operations of this authority.

The head office of the Protector of Citizens is still in a building in Belgrade, Deligradska 16, which he has been using since 4 May 2010.

The premises in Deligradska 16 are sufficient for the current number of employees in the institution and for providing services to the citizens. The premises also comply with the

minimum requirements necessary for the provision of services to the citizens and for work of civil servants, i.e. for respect of their right to safety and privacy of complainants, healthy working conditions and dignity of the authority.

Independent provision of equipment for work was continued in 2013, particularly provision of computers and accessories and other technical devices. The Secretariat has desktop and laptop computers, equipment for video presentations, telecommunication devices, equipment for simultaneous translation and necessary office equipment. The Secretariat has a fleet of city cars and mid-range cars for courier tasks and for transport of civil servants while they carry out control and supervision of operations of public authorities and a van registered for seven passengers, intended primarily to carry out tasks from the sphere of competence of the National Preventive Mechanism.

In 2013, the work on the building and in the premises of the Protector of Citizens in Deligradska 16 in Belgrade were completed and a certificate of occupancy was obtained after installation of a hydraulic passenger elevator, which facilitated access to all premises for persons with disabilities.

In this manner, with minimum effort and with activities and measures taken in the previous period, this authority has been made fully available to persons with disabilities as it is to other citizens.

Local offices in Presevo, Bujanovac and Medvedja

Pursuant to the Law on the Protector of Citizens²⁹⁹ and the General Enactment on Organization and Operations of the Secretariat, the Protector of Citizens passed the Decision on Establishment of Local Offices of the Protector of Citizens in Municipalities of Presevo, Bujanovac and Medvedja. The offices were established to improve availability of the institution of the Protector of Citizens and to ensure more efficient protection and improvement of human and minority freedoms and rights of citizens in that area.

The local offices are headquartered in:

1. Presevo, in the building of the Coordination Centre for the municipalities of Presevo, Bujanovac and Medvedja, Save Kovacevica 12;
2. Bujanovac, Karadjordjev trg bb, the premises in the building of the Primary Court in Vranje, Judicial Unit Bujanovac. On 6 December 2011, the office was moved to the new premises allocated with approval from the Ministry of Justice from its previous temporary headquarters in the building of the municipality of Bujanovac, in the press centre of the Coordination Body for the municipalities of Presevo, Bujanovac and Medvedja.
3. Medvedja, in the building of the Cultural Centre of the municipality of Medvedja, Jablanicka 63.

The Office employs two civil servants, junior advisors Ms Ana Glisic-Petrova and Mr. Bekim Ajdini. The Office is opened for complainants according to the following schedule: Monday and Tuesday – the municipality of Bujanovac; Wednesday and Thursday – the Municipality of Presevo and Friday – the Municipality of Medvedja. The Office was officially opened on 28 June 2011.

Office furniture, computer and communication equipment have been purchased for the offices from the funds of the UNDP donation within the framework of the PBILD project, "Strengthening Capacities for Inclusive Local Development in South Serbia".

299 Official Gazette of RS Nos. 79/05 and 54/07.

ANNEX II

I FINANCIAL STATEMENT

Pursuant to the Law On Amendments to the Law on the Budget of the Republic of Serbia for 2013, funds in the amount of **RSD 163,824,000.00** have been allocated to the Protector of Citizens, which is an increase of 0.6 % compared with **RSD 162,836,000.00** allocated in 2012.

In 2013, the Protector of Citizens spent a total of **RSD 156,263,921.97**, i.e. 95.39 % of allocated budget funds, which is an increase 5.41 % compared with the funds spent in 2012, when a total of **RSD 148,237,423.73** were spent.

The funds allocated from the budget were used to finance regular activities of the Protector of Citizens, in accordance with the financial plan.

Table 59 – Execution of the budget for 2013

Account position	Description	Allocated	Spent	%
1	2	3	4	5
411	Salaries, benefits, allowances			
411111	Salaries based on cost of labour		82,895,722.98	79.25
411112	Allowance for overtime working hours		1,790,395.09	1.71
411115	Allowances for time spent at work (years of services)		5,776,060.58	5.52
411117	Sick leave up to 30 days		682,095.52	0.65
411118	Compensation wage during absence from work-annual leave, paid leave		6,363,702.60	6.08
411119	Other allowances and compensation for employees		3,149,332.16	3.01
411131	Salaries of temporarily hired persons		155,844.18	0.15
411151	Compensation for unused annual leave		635,270.29	0.61
Total 411		104,602,000.00	101,448,423.40	96.99
412	Contributions			
412111	Contributions for pension and disability insurance		10,137,514.23	57.21
412211	Contributions for health insurance		5,658,207.42	31.93
412311	Contributions for unemployment		690,025.41	3.89
Total 412		17,721,000.00	16,485,747.06	93.03

Annex II

1	2	3	4	5
414	Social benefits to employees			
414111	Maternity leave		4,438,032.73	62.2
414121	Sick leave over 30 days		192,873.62	3.35
414314	Assistance in case of death of an employee or a member of his/her immediate family		58,000.00	1.01
414411	Benefits in case of medical treatment of an employee		-356,676.07	-6.20
Total 414		5,750,000.00	4,332,230.28	75.34
415	Compensation for employees			
415112	Transportation allowance (to and from work)		3,316,671.42	96.14
Total 415		3,450,000.00	3,316,671.42	96.14
416	Awards and bonuses			
416111	Jubilee awards		165,790.41	66.32
Total 416		250,000.00	165,790.41	66.32
421	Fixed expenses			
421121	Costs of banking services		44,702.74	0.51
421225	Central heating		125,691.44	1.43
421323	Property protection services		3,420,478.73	38.87
421391	Contributions for the use of construction land etc.		732,813.57	8.33
421411	Telephone, telex and telefax		723,348.49	8.22
421414	Mobile phone services (<i>cell phones, internet</i>)		2,248,787.95	25.55
421422	Delivery services		569,102.78	6.47
421512	Car insurance		360,842.00	4.10
421513	Equipment insurance		77,513.00	0.88
421522	Health insurance for employees		168,391.00	1.91
421619	Rent of other premises		22,396,52.00	0.25
421911	TV licence fee		10,000.00	0.11
421919	Other expenses not mentioned elsewhere		54,000.00	0.61
Total 421		8,800,000.00	8,558,068.22	97.25
422	Travel expenses			
422111	Travel allowance expenses for business trips		1,692,973.60	42.32
422121	Transportation allowances for business trips		115,119.79	2.88
422131	Accommodation costs for business trips		435,996.41	10.90
422194	Compensation for use of own car		6,226.22	0.16
422199	Other expenses for business trips in the country		1,320.00	0.03
422211	Travel allowance expenses for business trips abroad		633,853.93	15.85
422221	Transportation allowances for business trips abroad		593,164.65	14.83
422231	Accommodation costs for business trips abroad		203,721.63	5.09
422299	Other expenses for business trips abroad		-28,548.76	-0.71
Total 422		4,000,000.00	3,653,827.47	91.35
423	Contracted services			
423111	Translation services		652,760.17	7.02
423211	Software development services		201,600.00	2.17
423291	Other computer services (<i>installation of packages of legal, economic regulations</i>)		73,363.82	0.79

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1	2	3	4	5
423311	Services of education and professional advancement of employees		649,072.00	6.98
423321	Seminar fees		100,852.00	1.08
423391	Expenditures for professional examinations		58,952.00	0.63
423399	Other expenditures for professional education		3,250.00	0.03
423419	Other printing services		1,352,450.00	14.54
423431	Marketing and advertising services		102,900.24	1.11
423432	Publishing of tenders and informative advertisements		120,830.00	1.30
423499	Other media services		387,240.00	4.16
423599	Other professional services (<i>outsourcing</i>)		3,196,643.72	34.37
423621	Catering services (<i>organization of conferences, round tables, meetings</i>)		445,737.90	4.79
423711	Entertainment (<i>organization of conferences, round tables, meetings</i>)		364,223.25	3.92
423712	Gifts (<i>appropriate gifts for foreign delegations</i>)		51,836.22	0.56
423911	Other general services (<i>membership in international organizations</i>)		1,219,425.92	13.11
Total 423		9,300,000.00	8,981,137.24	96.57
425	Repairs and maintenance			
425119	Other services and materials for current repairs and maintenance of the building		14,100.00	4.70
425211	Mechanical repairs		212,577.22	70.86
Total 425		300,000.00	226,677.22	75.56
426	Material			
426111	Office stationery		2,002,145.18	30.80
426311	Professional literature for regular needs of employees		308,945.18	4.75
426312	Professional literature for education of employees		211,600.00	3.25
426411	Petrol		3,166,060.78	48.70
426491	Other material for means of transport		563,456.80	8.67
426819	Other material for cleaning		54,771.60	0.84
426919	Other material for special purposes		60,440.00	0.93
Total 426		6,501,000.00	6,367,419.54	97.95
462	Grants to international organizations			
462121	Current grants for international membership fees		666,974.91	
Total 462		1,000,000.00	666,974.91	66.70
482	Taxes, compulsory fees, fines and penalties			
482131	Vehicle registration		159,831.00	79.92
482211	Republic fees		20,230.00	10.12
Total 482		200,000.00	180,061.00	90.03
512	Machinery and equipment			
512212	Built-in equipment		47,066.00	2.41
512221	Computer equipment		1,737,568.80	89.11
512241	Electronic equipment		96,259.00	4.94
Total 512		1,950,000.00	1,880,893.80	96.46
TOTAL		163,824,000.00	156,263,921.97	95.39

In addition to the funds specified by the Law on the Budget, in 2013 the Protector of Citizens also used **funds from donations of international organizations and certain foreign countries.**

Table 60 – Ongoing projects

No.	Project	Financed by	Project budget	Project duration	Short description / Purpose / Beneficiaries
1	Judicial Reform and Government Accountability (JRGA)	USAID		2011 – 2016	Contribution to the promotion of responsible and efficient government, strengthening of the capacity of the Protector of Citizens and support to cooperation of this institution with civil society organizations and other independent institutions.
2	Promoting Human and Minority Rights through more Intense Contact between the Protector of Citizens and Citizens	Government of the Kingdom of Norway	€ 422,242.00 (contribution of the Government of the Kingdom of Norway €379,482.00)	30 months: December 2012- June 2015	Contribution to the improvement of protection and respect of human rights of the citizens, particularly those living in towns and small municipalities in Serbia. The project will be implemented in cooperation with public libraries in 15 municipalities/cities in the territory of Serbia and NGOs dealing with human rights.
3	Support to Strengthening of the Institution of the Protector of Citizens	OSCE		12 months: January 2013 – December 2013	Contribution to strengthening of the capacity of the Protector of Citizens for the work on improvement of gender equality.
4	Capacity building of the Protector of Citizens for Efficient Monitoring of the Implementation of Deinstitutionalization	Embassy of the Kingdom of Norway	€ 30,000.00	7 months: June – December 2013	OHCHR is the implementing agency and the Protector of Citizen is the beneficiary of the project the aim of which is to contribute to the improvement of the position of persons with disabilities in Serbia through the deinstitutionalization process. The project will improve the capacities of the Protector of Citizens for monitoring of the exercise of the rights of persons with disabilities and the implementation of the Convention on the Rights of Persons with Disabilities.

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