



**Republic of Serbia**  
**COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND**  
**PERSONAL DATA PROTECTION**

**REPORT**  
  
**ON WORK OF THE COMMISSIONER FOR INFORMATION OF PUBLIC**  
**IMPORTANCE AND PERSONAL DATA PROTECTION**  
  
**FOR 2020**

**B e l g r a d e**  
**March 2021**

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## INTRODUCTION

The 2020 Report of the Commissioner for Information of Public Importance and Personal Data Protection is the **16th** Annual Report on Implementation of the Law on Free Access to Information of Public Importance<sup>1</sup> (hereinafter: “**LFAIPI**”), and the **12th** Report on Implementation of the Law on Personal Data Protection<sup>2</sup> (hereinafter: “**LPDP**”) submitted by the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: the Commissioner) to the National Assembly of the Republic of Serbia.

The National Assembly of the Republic of Serbia had, at the Second Special Session in the Twelfth Convocation, which was held on 26 December 2020, considered the Report on the implementation of LFAIPI and LPDP for 2019 in the plenum. On that occasion, the National Assembly of the Republic of Serbia had adopted a Conclusion in which it stated that the Commissioner had, in his report, pointed to the situation in the field of freedom of access to information of public importance and personal data protection, and it urged the Government to intensify its activities on making appropriate normative changes, especially regarding the amendments to LFAIPI, as well as in terms of improving the strategic framework in the field of personal data protection. It also urged the Government to regularly submit a report to the National Assembly on the implementation of this conclusion.

The key obstacles that have burdened the exercise of the right to freedom of access to information in 2020 are: legal framework, impossibility of administrative enforcement of the Commissioner's decisions, inadequate accountability of government bodies, difficult implementation of the Commissioner's powers and an increasing number of cases of abuse of the right to freedom of access to information of public importance.

These obstacles should be removed primarily by appropriate normative amendments, especially by appropriate amendments to the LFAIPI, as well as by the principled actions of the competent authorities aimed at exercising the right to freedom of access to information, in accordance with the law.

As regards the adherence and application of international standards in this area, it is necessary to ratify the Council of Europe Convention on Access to Official Documents, which entered into force on 1 December 2020 and which was signed by the Republic of Serbia on 18 June 2009.

The key issue in the field of personal data protection is that many provisions of the LPDP are generalized, given that they have only been taken over from the relevant international documents and, therefore, their application has been made difficult. Obstacles in exercising the right to personal data protection also exist due to the inconsistency of the provisions of all other laws related to the processing of personal data with the LPDP<sup>3</sup>, which creates confusion in practice.

In order to eliminate these shortcomings, it is necessary for all competent entities to achieve a systematic approach to the field of personal data protection. This implies updating the existing (i.e. adopting a new) Strategy on Personal Data Protection and adopting an Action Plan for its implementation. Moreover, the obstacles in exercising the right to personal data protection should be eliminated by harmonising the provisions of all other laws related to the processing of personal data with LPDP, by the end of 2021.

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<sup>1</sup> “Official Gazette of the RS”, No. 120/2004, 54/2007, 104/2009 and 36/2010, Article 1

<sup>2</sup> “Official Gazette of the RS”, No. 87/2018

<sup>3</sup> In accordance with Article 100 of LPDP, the deadline for harmonisation of regulations was until the end of 2020.

## General data

- **Name of the body:** Commissioner for Information of Public Importance and Personal Data Protection (The Commissioner)
- **Status:** Independent state body
- **Address:** Bulevar kralja Aleksandra 15, 11000 Belgrade
- **Registration number:** 17600524
- **Tax Identification Number:** 103832055
- **Address for filing physical submissions:** Bulevar kralja Aleksandra 15, 11000 Belgrade
- **E-mail address for filing electronic submissions:** [office@poverenik.rs](mailto:office@poverenik.rs)
- **Founding:** The Commissioner, as an independent state body that is independent in the exercise of its competencies, was established by the Law on Free Access to Information of Public Importance (LFAIPI) from 2004. The Law on Personal Data Protection<sup>4</sup> from 2008 extended the competence of the Commissioner to the field of personal data protection.

## Commissioner's competence

The competence of the Commissioner is divided into two levels: one refers to the protection of the right to freedom of access to information of public importance, in accordance with the LFAIPI, while the other refers to personal data protection and supervision over the implementation of LPDP.

### **1. According to the Law on Free Access to Information of Public Importance, the Commissioner:**

- monitors compliance with the obligations of authorities established by this Law, and reports to the public and the National Assembly thereon;
- provides an initiative for the adoption or amendment of regulations in order to implement and improve the rights to access information of public importance;
- proposes to the authorities to undertake measures in order to improve their work regulated by this Law;
- undertakes measures necessary for training of employees in state bodies and acquainting employees with their obligations in respect of the rights to access information of public importance, for the purpose of effective application of this Law;
- decides on appeals against decisions of authorities which violate the rights regulated by this Law;
- informs the public about the content of this Law, as well as about the rights regulated by this Law;
- initiates the procedure for assessing the constitutionality and legality of laws and other general acts;
- publishes and updates a manual with practical instructions for the effective exercise of the rights regulated by this Law, in Serbian language and in languages which, in accordance with the law, are defined as languages in official use;

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<sup>4</sup> “Official Gazette of the RS”, No. 97/2008, 104/ 2009 - other law, 68/2012 - CC, 107/ 2012, Article 1, paragraph

- acquaints the public with the contents of the manual for application of the Law through the press, electronic media, Internet, public forums and in other ways;
- issues instructions according to which the Information booklet on the work of the state body is published;
- controls the fulfilment of the obligation of state bodies to submit annual reports to the Commissioner on actions undertaken for the purpose of implementing LFAIPI;
- submits an annual report to the National Assembly on the actions undertaken by the authorities as regards the implementation of LFAIPI, as well as on its actions and expenditures in accordance with Article 36, paragraph 1 of LFAIPI;
- performs other tasks as determined by this Law.

## **2. According to the Law on Personal Data Protection, the Commissioner:**

- supervises and ensures the implementation of LPDP in accordance with his powers;
- ensures the raising of public awareness about risks, rules, protection measures and rights related to data processing, especially if it concerns the processing of data on a minor;
- provides the National Assembly, the Government, other authorities and organizations with his opinion, in accordance with the regulation, on legal and other measures related to the protection of the rights and freedoms of natural persons in regards to data processing;
- ensures the raising of awareness of data controllers and processors, as regards their obligations stipulated under this Law;
- at the request of the persons to whom the data refer, provides information on their rights stipulated under this Law;
- acts on the petitions of the persons to whom the data refer, determines whether there has been a violation of LPDP, and informs the petitioner about the course and the results of the procedure conducted in accordance with Article 82 of LPDP;
- cooperates with the supervisory authorities of other countries in respect of personal data protection, in particular in the exchange of information and provision of mutual legal aid;
- performs inspection supervision over the application of LPDP, in accordance with LPDP and similar application of the law governing inspection supervision, and submits a request for initiating misdemeanour proceedings if he finds that there has been a violation of LPDP, in accordance with the law governing misdemeanours;
- monitors the development of information and communication technologies, as well as business and other practices which are significant as regards personal data protection;
- drafts standard contractual clauses from Article 45, paragraph 11 of LPDP;
- compiles and publicly publishes the lists referred to in Article 54, paragraph 5 of LPDP;
- provides a written opinion referred to in Article 55, paragraph 4 of LPDP when he considers that the intended processing operations could produce a risk if risk mitigation measures are not undertaken;
- keeps records of Data Protection Officers referred to in Article 56, paragraph 11 of LPDP;
- encourages the preparation of a Code of conduct in accordance with Article 59, paragraph 1 of LPDP and provides his opinion and consent to the Code of conduct in accordance with Article 59, paragraph 5 of LPDP;
- performs activities of collecting evidence on the independence and expertise of legal entities, as well as on the absence of conflict of interest in the accreditation procedure of

legal entities that control the application of the Code of conduct in accordance with Article 60 of the LPDP;

- encourages the issuance of certificates for personal data protection and appropriate trademarks and labels in accordance with Article 61, paragraph 1, and prescribes the criteria for certification in accordance with Article 61, paragraph 5 of LPDP;
- conducts periodic reviews of certificates in accordance with Article 61, paragraph 8 of LPDP;
- prescribes and publishes criteria for accreditation of the certification body and performs activities of collecting evidence on the independence and expertise of legal entities, as well as on the absence of conflict of interest in the accreditation procedure of certification body, in accordance with Article 62 of LPDP;
- approves the provisions of contracts or agreements referred to in Article 65, paragraph 3 of LPDP which provides for personal data protection measures during their transfer in accordance with the law;
- approves binding corporate rules in accordance with Article 67 of LPDP;
- keeps internal records on violations of this Law and measures undertaken in the course of inspection supervision in accordance with Article 79, paragraph 2 of LPDP;
- prepares an annual report on his activities in accordance with Article 81 of LPDP and submits it to the National Assembly;
- performs other tasks as determined by this Law.

#### *Inspection and other powers*

The Commissioner is authorized to:

- order the controller and the processor, and also, if necessary, their representatives to provide him with all the information he requests in exercising his powers;
- checks and evaluates the application of the provisions of the law and in other ways supervises personal data protection by using his inspection powers;
- verifies the fulfilment of the conditions for certification in accordance with Article 61, paragraph 8 of LPDP;
- informs the controller or processor about possible violations of LPDP;
- requests and obtains access to all personal data from the controller and processor, as well as the information necessary for exercising his powers;
- requests and gains access to all premises of the controller and processor, including access to all means and equipment.

The Commissioner is authorized to undertake the following corrective measures:

- to issue a warning to the controller and the processor by submitting his written opinion that the intended processing operations may violate the provisions of LPDP in accordance with Article 55, paragraph 4 of LPDP;
- to issue a warning to the controller, i.e. to the processor if the processing violates the provisions of LPDP;
- to order the controller and the processor to act upon the request of the data subject as regards the exercising of his rights, in accordance with the LPDP;

- to order the controller and the processor to harmonise the processing operations with the provisions of LPDP, in a precisely determined manner and within a precisely determined deadline;
- to order the controller to inform the data subject about the violation of personal data;
- to impose a temporary or permanent restriction on the performance of the processing operation, including a ban on data processing;
- to order the correction, i.e. erasure of personal data or to limit the processing operation in accordance with Articles 29 to 32 of LPDP, as well as to order the controller to inform the other controller, the data subject and the recipients to whom the personal data were disclosed or transferred thereof, in accordance with Article 30, paragraph 3 and Articles 33 and 34 of LPDP;
- to revoke the certificate or to order the certification body to revoke the certificate issued in accordance with Articles 61 and 62 of this Law, as well as to order the certification body to refuse to issue the certificate if the conditions for its issuance are not met;
- to impose a fine on the basis of a misdemeanour order if, during the inspection, it was determined that there was a misdemeanour for which this Law prescribes a fine in a fixed amount, instead of other prescribed measures prescribed or in addition to them, depending on the circumstances of the case;
- to suspend the transfer of personal data to the recipient in another state or international organization.

The Commissioner is also authorized to:

- draft standard contractual clauses under Article 45, paragraph 11 of LPDP;
- provide his opinion to the operators in the procedure of prior obtaining of the Commissioner's opinion, in accordance with Article 55 of LPDP;
- provide his opinion to the National Assembly, the Government, other authorities and organizations, on his own initiative or at their request, as well as to the public, on all the issues related to personal data protection;
- register and publish the Code of conduct, to which he had given his consent, in accordance with Article 59, paragraph 5 of LPDP;
- issue certificates and prescribe criteria for issuing certificates, in accordance with Article 61, paragraph 5 of LPDP;
- prescribe the criteria for accreditation, in accordance with Article 62 of LPDP;
- approve the contractual provisions, i.e. the provisions to be included in the agreement, in accordance with Article 65, paragraph 3 of LPDP; approve binding corporate rules in accordance with Article 67 of LPDP;



## 1. SUMMARY OF THE REPORT ON WORK OF THE COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND PERSONAL DATA PROTECTION FOR 2020

A Summary of the Commissioner's Work Report for 2020 presents the situation regarding the implementation of LFAIPI and LPDP, the measures and activities undertaken by the Commissioner, as well as obstacles and challenges in exercising the right to access information of public importance and personal data protection.

**In 2020, the Commissioner received a total of 9,218 cases, of which 5,201 related to free access to information, 2,952 to personal data protection, and 1,065 to both areas of the Commissioner's activities.**

**The Commissioner completed the procedure in 9,497 cases, of which 5,470 in the area of access to information, 2,974 in the area of personal data protection, and 1,053 cases related to both areas.**

The largest number of cases related to: resolving complaints due to violation of the right to freedom of access to information of public importance (**3,584**); supervising (**205**) the processing of personal data and providing expert opinions in respect of the adoption and amendment of regulations or their application. A significant part of the activities was related to: holding trainings for the implementation of the new LPDP, usually through a conference call due to COVID-19 pandemic; cooperation with relevant bodies at the international and regional level and contribution to reporting activities related to the process of Serbia's accession to the European Union.

Full visibility of the role and work of the Commissioner, both in the field of free access to information of public importance and in the field of personal data protection, represents a constant task that the Commissioner achieved in 2020 via the media, his website, Open Data Portal, social networks etc. The media's attention was especially drawn to the Commissioner's statements related to the implementation of the new LPDP and the Commissioner's proposals for updating the Strategy on Personal Data Protection, amendments to the LSPIA, as well as to individual cases of violations of rights whose exercise is protected by the Commissioner. During 2020, the Commissioner gave **825 opinions** to data controllers on the proper application of LFAIPI and LPDP.

During 2020, the Commissioner gave **eight opinions** on draft laws requested by the authorities. Three opinions were given from the aspect of the general competence of the Commissioner, one opinion was given from the aspect of LFAIPI, three opinions were given from the aspect of LPDP and one opinion from the aspect of both laws. The Commissioner also gave

**14 opinions** on other general acts, of which one opinion on his own initiative, and 13 upon the request of the authorities. During 2020, the Commissioner gave a total of **574** reasoned opinions regarding the application of LPDP.

In 2020, the Commissioner submitted **three initiatives and one proposal**, as follows:

**To the Government:**

- Proposal to update the existing Strategy on Personal Data Protection from 2010 and to adopt an Action Plan for its implementation, as well as to form a Special Working Body which would monitor their implementation. (In the same letter, the Commissioner expressed his disagreement with the provision of item 4 of the Proposal of the Government's Decision on the formation of the Council for Monitoring the Implementation of LPDP, according to which the representative of the Commissioner's Office should be one of the members of this Council, due to numerous listed tasks of the said Council which were already defined in LPDP as tasks performed by the Commissioner);
- The initiative to amend the Decision on the List of States, Parts of Their Territories or One or More Sectors of Certain Activities in Those States and International Organizations Considered to Provide an Appropriate Level of Personal Data Protection, as regards the judgment of the European Court of Justice which declared the decision of the European Commission 2016/1250 of 12 July 2016 on the adequacy of protection under the EU-U.S. Privacy Shield mechanism as invalid. As a result, all transfers of personal data from the European Union to the United States, which were based on the Privacy Shield mechanism, are considered illegal following the court decision in question.

**To the Administrative Court:**

- The initiative to convene a session of the Case Law Department and a session of all judges of the Administrative Court to harmonise the practice of the Court, in order to prevent different actions of the Court in the same legal and factual situation.

**To the Public Prosecutor's Office:**

- The initiative (raised four times) to submit requests for review of decisions of the Administrative Court to the Supreme Court of Cassation. The initiatives were not adopted because the Public Prosecutor's Office considers that the conditions prescribed by law have not been met.

The Commissioner's Office has systematized 100 jobs with a total of 129 executors. The Commissioner's staffing plan for 2020 envisages that the Commissioner's Office shall have 110 employees in 2020. As of 31 December 2020, 92 persons were employed at the Commissioner's Office (85 employees under indefinite-term contracts and seven employees under fixed-term contracts). Moreover, four persons were hired on the basis of contracts on performance of temporary and occasional jobs.

The slow dynamics of filling vacancies at the Commissioner's Office was conditioned by objective reasons: a state of emergency which was declared due to the epidemiological situation in respect of the disease caused by the coronavirus (COVID-19), securing the necessary financial resources, and constituting a committee of the National Assembly.

In 2020, 22 employees have renewed their certificates, passed the verification procedure, and obtained the prescribed certificates from the Office of the National Security Council for access

to classified information in accordance with the Data Secrecy Law<sup>5</sup>, for access to "strictly confidential" data. The Commissioner's Office currently has a total of 28 employees with a certificate for access to classified information.

**According to the Law, the work of the Commissioner and his Office is financed from the budget of the Republic of Serbia.** The Budget Law of the Republic of Serbia for 2020<sup>6</sup> allocated the funds to the Commissioner in the amount of **RSD 220,389,000.00**, which is **11.89% less** than the amount contained in the Draft Financial Plan of the Commissioner.

The Commissioner has a certificate on the introduction of information security management system according to the requirements of ISO 27001:2013 standard. The ISO/IEC 27001:2013 recertification is planned for the first quarter of 2021, when the certification for the current ISO/IEC 27701:2019 (PIMS) should also be performed.

During 2020, the testing of the web portal "eGovernment of the Commissioner" was completed, which has not yet entered the production phase due to problems caused by the pandemic, but which, following the commencement of its operation in 2021, will be a quality response to the obligation established by Article 53 of the Law on Electronic Government<sup>7</sup>, enabling the receipt of all types of electronic submissions that are, as regards the administrative proceedings, in all respects equated with the traditional paper/physical form.

In 2020, the infrastructure of the Commissioner's computer network was strengthened, both by performing works on arranging, assembling and replacing obsolete network devices, and by ensuring redundancy of the entire information system, by providing additional capacities for electronic data storage. With the official cessation of technical support for Windows 7, the operating system of the computer network was completely unified in 2020 by switching to the current Windows 10 Pro OS, which, from the aspect of information security, enables the creation of new group policies on Active Directory that were not in use previously.

During 2020, the Commissioner continued to perform maintenance of the Open Data Portal, at <https://data.poverenik.rs>, through which numerous data derived from his work are made available online to the entire public, in a machine-readable format and through visualizations.

In 2020, the Commissioner continued to achieve successful cooperation with international organizations and forums<sup>8</sup>, as well as with the representations of international or transnational organizations in Serbia.<sup>9</sup> The Commissioner particularly cooperated with the competent institutions from the region and the former Yugoslavia, in the field of personal data protection and in the field of free access to information of public importance.

In 2020, as in every previous year, the Commissioner submitted the Annual Report to the National Assembly and published it on his website.

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<sup>5</sup> "Official Gazette of the RS", No. 104/2009.

<sup>6</sup> "Official Gazette of the RS", No. 84/2019, 60/2020- regulation, and 135/2020

<sup>7</sup> "Official Gazette of the RS", No. 27/2018

<sup>8</sup> The Council of Europe, International Conference of Information Commissioners (ICIC) and Global Privacy Assembly (GPA).

<sup>9</sup> UNDP, OSCE, EU Delegation to the Republic of Serbia, Council of Europe Office in Belgrade, USAID Government Accountability Initiative.

The most numerous reports that the Commissioner submits to the competent authorities are the reports, i.e. Annexes to the reports related to implementation of the integration processes of the Republic of Serbia in the EU.

### **Activities of the Commissioner in the field of free access to information**

- **Protection of the right to free access to information by the Commissioner**

In 2020, in the area of free access to information, the Commissioner **processed a total of 8.298 cases** related to protection and promotion of this right. Of the said amount, 3.097 cases were carried over from the previous year, while 5.201 cases were received in 2020. The Commissioner **resolved 5,470 cases**, while 2,828 cases for which the procedure was not completed remained pending, so they were carried over to 2021.

The most common part of the Commissioner's activities in this area was **resolving complaints filed by the citizens, journalists and other seekers of information of public importance, due to failure of the authorities to comply with requests for access to information or failure to obtain information.**

Other activities were related to the following: providing assistance to citizens in exercising this right via written opinions and clarifications for actions, as well as assisting the authorities in the application of the law, in particular through providing opinions and training; monitoring the implementation of the legal obligation of the authority in terms of proactive publication of information or information booklet on work and undertaking measures in this regard; providing opinions in regards to the adoption of regulations and other legal initiatives; measures related to the administrative enforcement of decisions; preparation of publications and other ways of publishing views from the Commissioner's practice; participation in conferences and other professional gatherings; communication regarding the requests of information seekers submitted or forwarded to the Commissioner. The Commissioner also acted on requests for access to information by which citizens and media representatives requested information of public importance created as result of the Commissioner's work.

The main obstacles in exercising the right to access information in 2020 were: **impossibility of administrative enforcement of the Commissioner's decision, inadequate responsibility and difficult implementation of the Commissioner's authorities as well as a large number of cases of abuse of rights under LFAIPI.**

- ***Resolving complaints***

The number of complaints which have been formally filed to the Commissioner due to violation of the right to access information of public importance is constantly high, and generally shows a growth tendency year after year. In 2020, **a total of 3,286 complaints were received**, while 2,783 complaints for which the procedure was not completed were carried over from the previous year.

The complainants, i.e. information seekers in 2020 were mostly **individual citizens and citizens' associations.**

In 2020, the Commissioner **resolved a total of 3,584 complaints. The largest number of complaints, 1,908 or 53.23% of them, were filed due to complete ignoring of the requests**

**filed by information seekers or due to submission of a negative answer, without reaching a decision with reasons for rejecting such requests and instruction on legal remedy, as required by the Law.** Merely 787 complaints, or 21.96% of the total number of resolved complaints, were filed against the decisions of authorities rejecting the applicant's request as unfounded with a provided rationale. In 889 cases, i.e. in 24.8% of the total number of resolved complaints in 2020, the authorities did not fully respond to the requests by information seekers.

Complaints were **well founded** in a large number of cases, more precisely in respect of 2,996 complaints or **83.59%** of the total number of resolved complaints. In 2020, as was the case in previous years, there was a continuous trend that, in a large number of well-founded complaints, the Commissioner's appeal procedure ended with the **suspension of the procedure, amounting to 1,357 cases (37.86%)** after the authorities have acted upon the request of the seeker in the meantime, upon gaining knowledge of the complaint and the required statement by the Commissioner, but before reaching a decision on the complaint, where in 655 cases the parties formally withdrew their complaint.

Out of **1,086** decisions made by the Commissioner on the complaints by information seekers, ordering the authorities to make information available to them, the authorities failed to act in **281** cases, i.e. in **25.87%**, which means that the level of enforcement of the Commissioner's decisions is **74.13%** on average.

In 2020, the Commissioner had acted with special care and urgency on complaints regarding information about the disease caused by the coronavirus (COVID-19), bearing in mind the pandemic situation and the importance of such information. The Commissioner had received 214 such complaints, while the largest number of complaints was filed due to the so-called "silence of administration", as many as 149. A total of 135 of these complaints were resolved, while the requested information, in most cases, referred to jeopardizing and protection of public health, spending of budget funds, actions of authorities, as well as public procurements and donations during the coronavirus pandemic. Although the percentage of complaints by journalists, in relation to the total number of complaints filed in 2020, was only 8.64%, out of a total of 214 complaints received regarding information about the disease caused by the coronavirus (COVID-19), 59 of such complaints were filed by journalists, amounting to **27, 6%**.

In the structure of complaints resolved in 2020, the largest number, **1,354 complaints or 37.78%**, are **complaints against national state and other bodies and organizations**, of which 723 (53.4%) are complaints against ministries and their bodies. The number of complaints against public enterprises had increased by 11.6%, while a slight increase in the number of complaints, compared to the previous year, had also been recorded in regards to judicial bodies. The decrease in the number of complaints had been recorded in regards to local self-government bodies, national bodies and organizations, as well as in regards to provincial bodies.

In 2020, in the procedure of resolving complaints due to violation of the right to access information, the Commissioner had applied his authority under Article 26 of LFAIPI in **nine** cases, and requested from the authorities to provide him with insight into documents containing information which are the subject of the complainant's request, in order to determine whether the information contained in such documents can be made available at the request of the complainant or not.

The degree of upheld decisions of the Commissioner in court proceedings, since commencing with his work, had been at a high level, i.e. over **92%**, which serves as the best indicator of the quality of work of this state body.

- *Enforcement of the Commissioner's decisions*

In 2020, the Commissioner, at the motion of the parties-information seekers, had initiated procedures for the enforcement of his decisions, but could not enforce them by imposing fines. The procedures were concluded with the submission of a request to the Government to ensure the enforcement of his decisions by direct coercion<sup>10</sup>. The Commissioner submitted a total of 46 requests to the Government in order to secure the enforcement, but did not receive any feedback thereof<sup>11</sup>.

The problem of administrative enforcement of the Commissioner's decisions dates back to previous years, and exists in connection with the application of the new Law on General Administrative Procedure<sup>12</sup> by which the Commissioner should, in the procedure of administrative enforcement, impose very high fines to the authorities as executors in the form of penalties, in order to coerce them to enforce the decision and submit information. The cause of the problem of enforcement lies in different interpretations of the relevant norms on enforcement by the competent authorities involved in this process, as well as in their refusal of competence and cooperation in providing the data necessary for the enforcement.

The other prescribed mechanism that should lead to the enforcement of the Commissioner's decisions, which obliges the authorities to provide the complainants with the requested information, and which is within the competence of the Government, is also non-functional. It is a legal obligation of the Government to ensure the enforcement of Commissioner's decisions at his request, by direct coercion. In the Report of the General Secretariat of the Government of 17 January 2020, on the activities and measures undertaken by the Government in regards to the legal obligation to ensure the enforcement of the Commissioner's decisions, it is stated that "The Government of the Republic of Serbia, the General Secretariat of the Government, with regard to providing assistance to the Commissioner in the procedure of administrative enforcement of Commissioner's decisions, and as stipulated in Article 28, paragraph 4 of the Law on Free Access to Information of Public Importance, by applying measures within its competence, i.e. by ensuring the enforcement of the Commissioner's decisions by direct coercion, has the same possibilities as the Commissioner himself."

• **Protection of the rights before the Administrative Court and other courts**

Judicial protection of the right to freedom of access to information **before the Administrative Court** in administrative disputes is ensured with regard to the legality of the Commissioner's decisions and decisions of six bodies against which no filing of complaint to the Commissioner is allowed and which are exempted from protection before the Commissioner (National Assembly, President of the Republic of Serbia, Government of the Republic of Serbia, The Supreme Court of Cassation of the Republic of Serbia, the Constitutional Court and the Public Prosecutor's Office).

The right to file a lawsuit with the Administrative Court is provided to the party who is dissatisfied with the decision, as well as to the Republic Public Prosecutor, when the public interest is violated by the decision. Against the final decision of the Administrative Court, the party and the competent Public Prosecutor may submit **a motion for reviewing the court decision to the Supreme Court of Cassation.**

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<sup>10</sup> Article 28, paragraph 4 of LFAIPI

In 2020, **a total of 123 lawsuits against the Commissioner were filed with the Administrative Court.** The plaintiffs were: parties i.e. information seekers (99), the Republic Public Prosecutor (10) and first instance bodies<sup>13</sup> (14). The Administrative Court **had resolved a total of 11 lawsuits** filed by the Republic Public Prosecutor.

In 2020, inconsistencies have been observed as regards the unequal acting and case-law of the Administrative Court of the Republic of Serbia in cases in which decisions were reached on the costs of proceedings on complaints filed by complainants-information seekers in connection with the exercise of the right to access information of public importance. In its case-law thus far, the Administrative Court of the Republic of Serbia had, without any exceptions, rejected the plaintiffs' lawsuits filed for annulment of the Commissioner's decision by which, as a second instance body and when deciding on the administrative matter itself, it also reached a decision on the costs of the proceedings, namely the costs of representing the party, and rejected their requests for reimbursement of the costs of the proceedings as unfounded. However, as of February until the end of 2020, the Commissioner had received **five decisions** of the Administrative Court of the Republic of Serbia, in which the lawsuit filed by plaintiffs (complainants-information seekers) was adopted and a completely different position was taken, i.e. the Commissioner's decision was annulled in the part where the Commissioner rejected their requests for reimbursement of the costs of proceedings upon the complaint as unfounded. In the aforementioned decisions, the Administrative Court had not provided any reason why the position on the mentioned issue had changed. Simultaneously with those decisions, decisions were also made on rejecting the lawsuits for annulment of the Commissioner's decisions on the rejection of the request for reimbursement of the costs of proceedings.

During 2020, a total of 26 motions for reviewing the decisions of the Administrative Court were submitted to the Supreme Court of Cassation, of which **eight** were submitted by the Commissioner, none of which have been resolved.

In 2020, **eight** constitutional appeals were submitted to the **Constitutional Court** against the decisions of the Commissioner, on which the Court has not yet reached a decision.

- **Fulfilment of legal obligations of government bodies, supervision and liability**

In 2020, the level of fulfilment of the obligation to publish information booklets on work and submit reports to the Commissioner by the authorities had slightly increased. The Annual report was submitted to the Commissioner by 1,498 bodies to which this legal obligation applies. The analysis of the data had shown that the number of submitted reports of bodies from the category of **educational institutions** (schools) had increased **by slightly more than one third**, while the number of submitted reports of national bodies and organizations (agencies, directorates, institutes, funds, chambers, etc.) had decreased by 6 %; the analysis had also shown a slightly reduced number of reports of local self-governments (cities and municipalities).

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<sup>11</sup> Out of a total of 340 requests for ensuring enforcement, which the Commissioner had submitted to the Government since 2010, the Government has not provided feedback on any of them. In 2020 alone, the Commissioner requested from the Government to ensure the enforcement in 46 cases. Thus, the relevant legal provision on the role of the Government in ensuring the enforcement of the Commissioner's decisions has no practical effect from the very beginning, i.e. since 2010, when this issue was regulated by amendments to LFAIPI.

<sup>12</sup> "Official Gazette of the RS", No. 18/2016 and 95/2018 – authentic interpretation

<sup>13</sup> A total of 11 lawsuits filed by the first instance bodies have been rejected as inadmissible, while three have not yet been resolved.

**The Administrative Inspectorate of the Ministry of Public Administration and Local Self-Government**, which is responsible for supervising the implementation of LFAIPI, had informed the Commissioner that in 182 cases (out of 370 decisions submitted to the Administrative Inspectorate by the Commissioner), it was found that the authority had acted upon the Commissioner's decision and made the requested information available to the information seeker, while in other cases the acting of the Administrative Inspection is ongoing. **In 2020, the Administrative Inspection did not submit any requests for initiating the misdemeanour proceedings before misdemeanour courts in regards to 2,996 well-founded complaints resolved by the Commissioner in the same year, which confirms that there were violations of rights, i.e. violations of the law by the authorities.**

According to the data which the misdemeanour courts submitted to the Commissioner, these courts had a total of 5,198 requests for initiating misdemeanour proceedings due to violation of the right to access information in 2020, whereby all such requests have been submitted by information seekers as aggrieved parties.

In 2020, according to the data of the Misdemeanour Appellate Court in Belgrade, that court had decided in 1180 cases on appeals against decisions of misdemeanour courts in the matter of freedom of access to information, while 208 cases are pending. By analysing the submitted data, it can be concluded that the Misdemeanour Appellate Court had, in 2020, upheld the convictions reached by misdemeanour courts in a larger number of cases than was the case in previous years.

*Table presentation of the types and volume of the Commissioner's activities and measures in 2020  
In the field of access to information of public importance*

No.	Types of activities and measures	Number
1.	Cases received	5.201
2.	Pending cases carried forward from the previous year	3.097
3.	Total cases pending	8.298
4.	Resolved cases	5.470
5.	Received complaints	3.286
6.	Resolved complaints	3.584
7.	Opinions in regards to implementation of LFAIPI	238
8.	Responses to the Administrative Court in regards to lawsuits	109
9.	Acting on requests for access to information relating to the work/held by other public authorities – the Commissioner informed the information seekers about the procedure	179
10.	Motions for administrative enforcement of the Commissioner's decisions	120
11.	Decisions reached on allowing the enforcement of the decisions	99
12.	Decisions reached on penalties issued in the process of enforcement of decisions <sup>14</sup>	-
13.	Total amount of fines imposed in the process of enforcement of decisions, expressed in RSD <sup>15</sup>	-
14.	Requests sent by the Commissioner to the Government for assistance/enforcement of his decisions	46

<sup>14</sup> There were no conditions for adoption due to the lack of elements for their determination.

<sup>15</sup> There were no conditions for sentencing due to the lack of elements for their determination.



15.	Cases in which the Commissioner requested the Administrative Inspectorate to carry out a supervision and initiate misdemeanour proceedings	369
16.	Conclusions on termination of the enforcement of decisions	71
17.	Motions for administrative enforcement rejected due to formal reasons	3
18.	Written communication with public authorities in respect to implementation of LFAIPI (advisory and instructional communications to authorities with the aim of increasing the transparency of their work and other communication)	729
19.	Replies to petitions concerning the work of public authorities, unrelated to the Commissioner's scope of work	47
20.	Referred requests (Article 19)	435
21.	Motions for retrial (1 adopted and 1 rejected)	2
22.	Request for reviewing the decision of the Administrative Court	20 <sup>16</sup>
23.	The initiatives to the Republic Public Prosecutor's Office to submit a request to the Supreme Court of Cassation for reviewing the judgment of the Administrative Court	4

## **II Activities of the Commissioner in the field of personal data protection**

In 2020, the activities of the Commissioner in the field of personal data protection were extensive, which is conditioned by the current situation in that area. This is best observed through the data on the number of received cases (**2,952**), as well as through the data on the number of cases in which the Commissioner had concluded the proceedings (**2,974**).

The main obstacles to the effective exercise of the right to personal data protection are **numerous shortcomings of the LPDP, the inconsistency in respect of other laws related to the processing of personal data with the LPDP<sup>17</sup> and the absence of a strategic approach to the realization of this right, i.e. the absence of the implementation of the Strategy on Personal Data Protection that needs to be updated, or adoption of a new Strategy with an Action plan.**

### **• Supervision**

During 2020, the Commissioner had completed a total of **205 supervision procedures**, of which 200 supervision procedures were initiated under the new LPDP and 5 under the old LPDP.

Supervision procedures were completed as follows: 165 cases were concluded by establishing that there was a follow-up to the previously conducted supervision (these also included five cases initiated under the old LPDP), 30 cases were concluded because it was established that there were no violations of LPDP nor the elements for conducting the inspection supervision, six cases were concluded with the submission of a request for initiating misdemeanour proceedings, three cases were concluded with the filing of criminal charges, and one case was forwarded to the Ministry of Interior for further proceeding.

<sup>16</sup> The Commissioner had submitted eight requests to the Supreme Court of Cassation for reviewing the court decision, while in 12 cases the Commissioner provided responses to the Supreme Court of Cassation as regards the requests for reviewing the court decision submitted by the authorities.

<sup>17</sup> The Article 100 of the LPDP "Provisions of other laws, which refer to the processing of personal data, shall be harmonised with the provisions of this law by the end of 2020."

The structure of data controllers, over whom the Commissioner initiated the supervision procedure during 2020, indicates that **companies** are still the controllers in respect of which the Commissioner had initiated several supervision procedures (**29.6%**). Compared to the previous year, the number of supervisions over the state administration (21,5%) and healthcare institutions (11.7%) had significantly increased.

**The most common reason for initiating the supervision procedure is the security of personal data (30.8%).**

With the aim of preventive and educational action, the Commissioner had compiled **checklists**, which contain questions to which it is necessary to provide accurate and comprehensive answers. In this way, assistance is provided to the bodies supervised by the Commissioner so that they may be accustomed with their obligations in advance, i.e. so that they may know what they need to do in order to harmonise their business and actions with regulations and thus prevent damage, as well as what the authorized person from the Commissioner's office shall check when conducting the supervision procedure.

Since the beginning of the implementation of the new LPDP until the end of the reporting period, the Commissioner had sent checklists to the addresses of **484** data controllers, to which 368 data controllers have responded (while 116 operators had not), and 19 controllers have submitted their checklists to the Commissioner on their own volition.

Based on the received completed checklists, the Commissioner had assessed the level of risk concerning personal data processing in **387** cases.

The LPDP stipulates the obligation of the Commissioner to keep accurate and up-to-date records on Data Protection Officers. During 2020, a total of **947** data controllers, i.e. data processors, have submitted forms to the Commissioner with contact details on Data Protection Officers. Since the beginning of application of LPDP, a total of **3,059** data controllers, i.e. data processors have submitted personal data to the Commissioner for personal data protection, of which 1,837 are authorities, although slightly over 11,000 had a legal obligation to do so.

- **Petitions/complaints**

The new LPDP introduces the institute of petition instead of complaint. The data subject has the right to file a petition to the Commissioner if he/she considers that the processing of his/her personal data has been performed contrary to the provisions of the Law. The provisions of the law governing inspection supervision, in the part related to the handling of petitions, shall apply accordingly in the petition procedure. A person may exercise its right to lodge a petition with the Commissioner simultaneously with its right to initiate other administrative or judicial protection proceedings.

During 2020, the Commissioner received **139 petitions** and one complaint<sup>18</sup>.

The Commissioner had acted on 191 petitions and nine complaints and had **resolved 149 petitions** (98 from 2020 and 51 which were carried over from the previous year)<sup>19</sup>, while the

<sup>18</sup> No new complaints were formally filed, since the Commissioner's decision would be annulled by judgment of the Administrative Court and the case returned for retrial.

<sup>19</sup> In the decisions made on the filed petitions, the Commissioner had found that the petition was well-founded in 54 cases and had made a decision with an order to the data controller to act upon the request. The Commissioner had suspended the proceedings in 23 cases, because the data controller, prior to the Commissioner reaching a decision on the petition, had acted upon the request (21 cases), i.e. the petitioner withdrew his petition (two cases). The Commissioner had rejected 25 petitions due to formal reasons, while he found that 47 petitions were unfounded.

remaining 42 petitions were carried over to 2021. The Commissioner had **completed the proceedings on nine complaints** (one from 2020 and eight from 2019)<sup>20</sup>.

- ***Reasons for filing a petition with the Commissioner***

The most common reasons for filing a petition with the Commissioner are **the failure of the data controller to act upon the request (71), the rejection/dismissal of the request by the data controller (35), the controller's partial acting upon the request (32) and the expiration of the subsequent deadline (one)**.

- ***Violated rights due to which petitions were filed with the Commissioner***

The requests in regards to which, due to the appropriate failure to act by data controllers, petitions were filed with the Commissioner refer to the realization of: **rights to access data, rights to erasure of personal data, right to rectification of personal data**.

- ***The structure of data controllers against whom petitions have been lodged with the Commissioner***

Regarding the structure of data controllers against whom petitions were filed with the Commissioner, the largest number of petitions, as many as **101**, were lodged due to (failure to act) actions of authorities at all levels, i.e. of bodies and organizations entrusted with public authorities and public enterprises. The largest number of petitions (49) were filed due to (failure to act) actions of state administration bodies as data controllers and (failure to act) actions of judicial bodies (30). A total of 38 petitions were filed due to (failure to act) actions of the ministries, of which 26 petitions only against the Ministry of Interior and 9 against the Ministry of Defence, and three petitions due to (failure to act) actions of all other ministries together.

During the reporting period, the Commissioner had reached a total of **56**<sup>21</sup> binding and final decisions ordering the data controller to act on the request or to provide the requested information to the applicant, as well as to inform the data controller about the execution of the decision. A total of 46 data controllers have acted in full upon the Commissioner's decision, whom have also informed the Commissioner about it, while five data controllers have failed to act on the Commissioner's order. Other data controllers have not informed the Commissioner about their actions or the actions are pending.

• **Data transfer to other countries or international organizations**

During 2020, there were a total of **three requests** for data transfer. One request was submitted for data transfer to the United States of America based on contractual provisions, while a total of two requests for data transfer were carried over from the previous period. All three

<sup>20</sup> In the decisions made on the filed complaints, the Commissioner had found that the complain was well-founded in four cases, of which in two cases a decision was made with an order to the data controller to act upon the request. The Commissioner had annulled the data controller's decision and returned the case to the data controller for retrial in two cases. Other complaints were resolved by the Commissioner by rejecting them as unfounded (five cases).

<sup>21</sup> A total of 54 on lodged petitions and two on complaints.

requests have been resolved as follows: in one case, the proceedings have been suspended due to the applicant's withdrawal, while two requests for data transfer to Saudi Arabia have been rejected as unfounded.

- **Actions of state bodies in connection with the acts of the Commissioner in the field of personal data protection**

During 2020, a total of **34 lawsuits** were filed with the Administrative Court against the Commissioner's decisions, of which 24 were submitted to the Commissioner for comments. Out of the total number of filed lawsuits, 15 were filed by data controllers, most of which were filed by the Ministry of Interior, due to the Commissioner's order to erase the data related to the applicant, i.e. the petitioner from the records kept by that ministry. The remaining 19 lawsuits were filed by complainants/petitioners dissatisfied with the Commissioner's decision.

In 2020, the Administrative Court had resolved **nine** lawsuits, dismissing the lawsuit as unfounded in seven cases, rejecting one lawsuit and upholding one lawsuit.

During 2020, the Commissioner had filed **three criminal charges**, two of which were for the criminal offence under Article 146 of the Criminal Code<sup>22</sup> (Unauthorized Collection of Personal Data) and one for the criminal offences under Articles 144 (Unauthorised Photography) and 145 of the Criminal Code (Unauthorised Publication and Presentation of another's Texts, Portraits and Recordings). During 2020, the Higher Public Prosecutor's Office in Belgrade had informed the Commissioner that the criminal charge filed for the criminal offence unauthorized collection of personal data under Article 146, paragraph 3 of the Criminal Code was rejected due to statute of limitations.

In 2020, the Commissioner had submitted **six requests for initiating misdemeanour proceedings** for violations of the provisions of LPDP. During 2020, in respect of all misdemeanour requests that he had submitted so far, the Commissioner had received 44 decisions of misdemeanour courts (34 decisions of first instance courts and 10 decisions of second instance court).

***Table overview of activities and measures of the Commissioner in the field of personal data protection in 2020***

No.	Types of activities and measures	Number
1.	Cases received	2,952
2.	Resolved cases	2,974
3.	Inspection supervision	205
4.	Checklists	503
5.	Petitions	149
6.	Complaints	9
7.	Responses to lawsuits	23
8.	Notices on personal data processing	30

<sup>22</sup> "Official Gazette of the RS", No. 85/2005, 88/2005 – corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019

9.	Applications	371
10.	Requests for data transfer	3
11.	Request for approval of binding corporate rules	1
12.	Opinions	574
13.	Opinions to Code of Conduct (Article 59 of LPDP)	1
14.	Preliminary opinions (Article 55 of LPDP)	12
15.	Analyses	3
16.	Records on the requests for access to retained data	143
17.	Records on Data Protection Officers.	947

- **Training**

Based on the Agreement between the Commissioner and the Faculty of Security Studies of the University of Belgrade on long-term educational, scientific, technical and business cooperation in the field of education of personnel in charge of personal data processing and protection. The Faculty of Security Studies had, during 2020/2021, implemented a short study programme titled "Training of managers for personal data protection", with the aim of providing professional training and education to persons for performing tasks related to personal data protection. The Commissioner, the Secretary General of the Commissioner's Office and the Assistant Secretary General of the Department for supervision have also participated as lecturers in the courses within this programme.

During 2020, the Commissioner had organized and implemented a large number of trainings in the field of personal data protection. The aim of the trainings was for persons who perform the tasks regarding personal data protection to acquire new or upgrade the existing knowledge about the right to personal data protection, as well as to get acquainted with the new obligations that the data controllers and processors of personal data have in accordance with LPDP. The Commissioner had, in accordance with the available human and material capacities, organized trainings by target groups and by territorial distribution.

In addition to trainings organized and implemented by the Commissioner, either independently or in co-organization with other institutions, trainings in the field of personal data protection are conducted continuously and are organized by the National Academy of Public Administration, for the needs of civil servants. The representatives of the Commissioner also participate in these trainings in the role of lecturers, in addition to other lecturers.

- **Activities of the Commissioner's Office during the state of emergency from 16 March to 8 May 2020**

Based on the Decision on Declaring a State of Emergency, the Commissioner had issued:

- a) The Decision on the work of the Commissioner for Information of Public Importance and Personal Data Protection during the state of emergency of 16 March 2020
- b) The Decision on the organization of the work process of the Commissioner for Information of Public Importance and Personal Data Protection in the application of measures for protection against the infectious disease COVID-19 following the lifting of the state of emergency while epidemiological measures are still ongoing of 8 May 2020.

All measures listed in these decisions were applied at the Commissioner's Office during the state of emergency, and most of them are applied even after the state of emergency had ceased.

The state of emergency had lasted for 54 days. During that time, a total of 594 cases have been opened at the Commissioner's Office, while 485 cases have been resolved, which is several times less than in the same period last year, when a total of 1,447 cases were opened and 1,308 cases were resolved.

## **2. SITUATION AND OBSTACLES IN EXERCISING THE RIGHT TO FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE AND THE RIGHT TO PERSONAL DATA PROTECTION**

### **2.A. RIGHT TO FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE**

#### **2.A.1. Legal framework**

In the Republic of Serbia, the exercise and protection of the right to free access to information of public importance guaranteed by the Constitution are regulated by LFAIPI. This Law was amended three times - in 2007, by making the conditions for the election of the Commissioner stricter; in 2009, by amending the procedural and penal provisions; and in 2010, when the competence for the enforcement of the Commissioner's decisions was determined.

Since 2012, the Commissioner has been pointing out the need to further improve this Law in the interest of the public's right to know, as well as to strengthen a democratic and open society and remove obvious obstacles in practice. The process of amending this Law, which had commenced back then, had been interrupted due to the parliamentary elections.

The last process of amending the LFAIPI had been initiated the competent ministry<sup>23</sup> in December 2017, but the procedure for establishing the Proposal, i.e. the adoption of the Law on Amendments to this Law has not been completed. The new deadline for its adoption is the fourth quarter of 2021<sup>24</sup>.

The proposed amendments to LFAIPI, which were the subject of public debate, consultations with the competent authorities, including the Commissioner, as well as the assessments of the European Commission back in 2018 and 2019, contained certain improvements such as expanding the application of the Law to new entities in the public sector and improving the publication of information on a proactive basis.

The latest official version of the Draft Law was available on the Ministry's website from 2019. This process of amending the law was also interrupted due to the parliamentary elections which were held in 2020.

It is encouraging that, immediately following the constitution of the Government of the Republic of Serbia, the competent ministry had formed a Special Working Group for the

<sup>23</sup> The Ministry of Public Administration and Local Self-Government of the Republic of Serbia.

<sup>24</sup> Revised AP 23 adopted at the session of the Government of the Republic of Serbia on 10 July 2020, available on the website of the Ministry of Justice, at the following link: <https://www.mpravde.gov.rs/tekst/30402/revidirani-akcioni-plan-za-poglavlje-23-i-strategija-razvoja-pravosudja-za-period-2020-2025-22072020.php>

preparation of the text of the Draft LFAIPI<sup>25</sup>, one of whose members is the Commissioner himself.

The basic amendments to LFAIPI proposed by the Commissioner are:

- 1) to entrust the supervision over the implementation of LFAIPI to the Commissioner instead of the Administrative Inspection,
- 2) prescribing the authorization for issuing misdemeanour orders for a certain number of misdemeanours under this Law, and especially for the so-called “silence of administration”,
- 3) prescribing that the request for initiating misdemeanour proceedings cannot be submitted before the complaint is filed with the Commissioner, i.e. before the complaint procedure before the Commissioner is completed, as well as that the request for initiating misdemeanour proceedings should be submitted by the Commissioner
- 4) prescribing an administrative sanction imposed on the authority for failing to enforce the Commissioner's decision in the nominal monetary amount, and
- 5) establishment of organizational units of the Commissioner's Office in other cities, outside its headquarters in Belgrade.

The Commissioner's proposal is based on the facts that the Administrative Inspection does not submit requests for initiating misdemeanour proceedings against responsible persons who are part of government bodies, even in cases of the most serious violation of the rights of information seekers. Also, the institute of a misdemeanour order and the possibility of the Commissioner to impose a fine himself would be especially effective, and would certainly lead to a reduction in the very pronounced phenomenon that the authorities ignore the requests of information seekers with impunity. At the same time, the proposed solution would relieve the misdemeanour courts of acting on the requests submitted by the citizens themselves, who were damaged due to failure to obtain the requested information from the authorities, and it would also relieve the citizens themselves, which is most important. This would simultaneously also prevent the abuses of rights in cases when information seekers submit the requests for initiating misdemeanor proceedings not to gain access to the requested information, but in order to cover the costs of the proceedings to the detriment of the State budget.

The opening of organizational units outside of Belgrade would also facilitate the exercise of the rights to access information of public importance and personal data protection to citizens who do not live in the capital, which is in the interest of decentralization - hence, decentralization would be in the general interest.

The constant postponement of the adoption of amendments to LFAIPI necessarily leads to the postponement of amendments to the bylaw on the preparation and publication of Information booklets on work<sup>26</sup>. This delays the implementation of the Commissioner's initiative to publish Information booklet on work of state bodies in digital form, on a common electronic platform for which the Commissioner has already created appropriate conditions, which should lead to greater transparency and easier monitoring of the implementation of this legal obligation.

Having in mind the aforementioned, it can be concluded that further postponement of adoption of the amendments to LFAIPI is not in the interest of citizens and the exercise of their rights. The Commissioner expresses his hope that the deadline for adoption of amendments to LFAIPI, which has been changed and moved several times under the Action Plan for Chapter 23, shall be met this time.

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<sup>25</sup> Decision on establishment No. 011-00-00205/2020-O1 of 11 January 2021.

<sup>26</sup> Instructions for preparation and publication of Information booklet on work of the state body ("Official Gazette of the RS", No. 68/2010), issued by the Commissioner

Moreover, the issue of competence regarding the reuse of information regulated by the Law on Electronic Government from 2018 has still not been resolved. Namely, the issue of protection of this right, i.e. which body would be competent for its protection, had arose back then. If the intention of the legislator was for it to be in the competence of the Commissioner (having in mind the provision stipulating that the provisions on the procedure of exercising the right to free access to information of public importance are applied to the procedure of exercising the right to reuse information), then, in Commissioner's opinion, this necessarily requires that the competence of the body for protection of rights is explicitly stipulated under the Law on Electronic Government or LFAIPI.

When it comes to international documents, the Commissioner once again points out that the Minister of Justice had signed the Council of Europe Convention on Access to Official Documents of 18 June 2009 back in 2009, but that the Government had not yet initiated the procedure for ratification of that Convention by the National Assembly. The significance of this Convention, which entered into force on 1 December 2020, reflects in that it is the first general legally binding document of the Council of Europe in terms of access to official documents, regardless of the fact that LFAIPI itself, in certain segments, provides an even higher level of rights than the minimum required by the Convention, which the Convention itself allows.

### **2.A.2. About exercising the public's right to know in 2020 and obstacles**

The institute of the right to free access to information of public importance in the Republic of Serbia is continuously used to a large extent. It is mostly used individually by citizens, followed by citizens' associations, journalists and media representatives, government bodies themselves, political parties and their members, attorneys, business entities and others. The applicants had experienced the most difficulties in regards to accessing information regarding the actions of the authorities in the exercise of their powers, spending of budget funds, public procurements and other uses of public funds, records of public property etc. The number of complaints related to jeopardizing or protection of public health has significantly increased - by four times more than in 2019, which is understandable given the global health crisis and the pandemic caused by COVID-19. Moreover, the number of complaints filed due to the difficulties in obtaining information on environmental threats has increased, which has doubled compared to the previous year.

The situation regarding the exercise of the right to free access to information of public importance in 2020 had not changed significantly compared to the previous year, and, from the Commissioner's point of view and because of a large number of complaints due to the so-called "silence of administration" and the large number of well-founded complaints due to violation of rights, cannot be assessed as satisfactory. This conclusion is reached even when all the challenges and difficulties in the work of public authorities, which have been caused by the pandemic, are taken into account.

Namely, during the state of emergency in 2020, the deadlines in administrative proceedings (for acting on requests, etc.) have been suspended<sup>27</sup>. After the expiry of the suspended deadlines, the Commissioner had provided the public authorities with another opportunity to act upon the requests and requested new comments from the bodies on acting

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<sup>27</sup> Article 3 of the Decree on Application of Deadlines for Administrative Proceedings During the State of Emergency ("Official Gazette of the RS" No. 41/2020 and 43/2020) stipulates, *inter alia*, that deadlines which expire during a state of emergency shall be considered to have expired upon the expiry of 30 days from the date of cessation of the state of emergency. The aforementioned Decree was ratified by the Law on Ratification of Decrees issued by the Government, with the co-signing by the President of the Republic of Serbia during the state of emergency ("Official Gazette of the RS", No. 62/2020)



on the requests following the expiry of the postponed deadline. Unfortunately, the authorities have often used the situation caused by the pandemic as an excuse for failure to act upon requests for access to information, even when there was no justification for such.

In short, the situation is such that obtaining information from the authorities is still greatly hindered without filing a complaint with the Commissioner or lawsuit before the Administrative Court where complaint is not allowed, which best illustrates the government's attitude towards human rights.

There is still a phenomenon where, in a large number of cases, public authorities act upon the request and submit information only after the applicant files a complaint with the Commissioner and the Commissioner submits it to the authority for comments. This necessarily leads to the suspension of the procedure for resolving complaints, but simultaneously causes unnecessary harassment of those seeking information and unnecessary spending of public funds in connection with the processing of complaints and the engagement of employees at the Commissioner's Office. Providing information only after learning about the complaint actually shows that there were no essential reasons for failure to act upon the submitted requests, as well as that such irresponsible and irrational attitude of the authorities towards citizens and public funds could and should have been avoided.

Information is denied under the pretext that they are confidential, or that providing information would violate someone's privacy (even in case of office holders and officials, with the information concerning their work) or under the guise of abuse of rights by information seekers, and all that, very often, without providing adequate argumentation and evidence. The Commissioner is not able to actually check the facts regarding the increasingly frequent answers by the authorities that they do not possess the requested information, since he was not entrusted with the function of supervising the implementation of LFAIPI, with the body responsible for implementation being Administrative Inspection. This is exactly the reason why the Commissioner considers that, by entrusting supervision over the implementation of LFAIPI to the Commissioner, the exercise of the right of access to information would significantly improve, bearing in mind the burden of the Administrative Inspection.

Unfortunately, it is often the case that the authorities do not provide information to information seekers even after the Commissioner's order; hence the level of unenforced decisions is still high, especially in cases on complaints by journalists. Although journalists use LFAIPI as a basic tool in performing their work, they find it increasingly difficult to obtain information on the work of authorities, and this is confirmed by the very high percentage of unenforced decisions reached by the Commissioner on their complaints, ordering for information to be made available to them. The number of unenforced decisions of the Commissioner on complaints by journalists and media representatives is significantly higher compared to the general trend as regards other complainants, which is not justified since journalism is a profession that seeks information to write and report about to the public on topics of general public interest.

In 2020, there were situations when the authorities denied "confidential" information even to the Commissioner himself upon requesting them so that he could make a decision on the complaint, and such behaviour remains unpunished. In more than half of the requested files (9) for inspection, the authorities refused to comply in five (5) cases. More information on these cases is provided in the continuation of this Report.

The described situation regarding the freedom of access to information was significantly contributed by the fact that the legal mechanisms of enforcement of the Commissioner's decisions, i.e. the mechanisms of imposing fines, are completely blocked and make it difficult for information seekers to obtain information. In addition, there is no support from the Government to ensure the enforcement of the Commissioner's decisions, in

accordance with the law, by means of direct coercion. Together, this represents the greatest obstacle to exercising of rights.

The responsibility for unfounded denial of information to information seekers, i.e. to the public, is reduced solely to the initiative of the information seekers as aggrieved parties, given that the competent authority does not submit requests for initiating misdemeanour proceedings against responsible persons working within government bodies. Thus, failure to fulfil the legal obligation to a large extent, in terms of proactive disclosure of information and undertaking other measures to improve publicity of the work, remains unpunished. The Commissioner sees a possible solution to this issue in the amendments to LFAIPI and the adoption of his proposal, by which he would be authorized to submit requests for the initiation of misdemeanour proceedings and the issuance of misdemeanour warrants.

Apart from the fact that, year after year, there is a very large number of complaints on which the Commissioner conducts proceedings, the work of the Commissioner's Office has been burdened by a large backlog in resolving cases for many years due to inadequate number of employees and large influx of cases due to failure to act or inappropriate actions of authorities. The inability of the Commissioner to decide on the complaint within the legal deadline of 30 days opens the possibility of conducting administrative-court proceedings before the Administrative Court, due to which the court awards court costs at the expense of the Commissioner. The frequency of lawsuits and the Commissioner's efforts to prevent the occurrence of court costs additionally burden the work of Commissioner's Office and disrupt the order of resolving complaints. At the same time, it negatively affects the exercise of the rights of those citizens who do not resort to lawsuits against the Commissioner in case of delay in making a decision on complaints. Consequently, although not caused by the Commissioner's fault, this may also affect the trust of citizens in respect of this institution as a protector of the right to freedom of access to information, which has been on a high level for many years judging by the number of complaints and recognitions that the Commissioner had received.

Despite all the obstacles, the effects of the Commissioner's acting on obtaining the information on the work of public authorities are still at a high level, in terms of ratio of the number of cases in which information seekers have exercised their right in respect of the well-founded complaints. In addition, despite all the challenges brought by 2020, the Commissioner was able to resolve more complaints than he received, thus reducing the backlog from previous years.

The degree of upheld decisions of the Commissioner in court proceedings, since commencing with his work, has also been at a high level, i.e. over **92%**, and that is the best confirmation of the quality of work of this state body.

### **2.A.3. The main obstacles in exercising the right to access information**

The obstacles that have burdened the exercise of the right to freedom of access to information in 2020 are almost identical to those from 2019. However, an example of good practice is that the National Assembly had, a second year in a row and after several years of not considering the report of the Commissioner at the sessions of the National Assembly, i.e. in the plenum, considered the Report of the Commissioner for 2019 and adopted the appropriate conclusions on that occasion.<sup>28</sup>

The essence of obstacles to exercising the right to access information is reflected in the following:

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<sup>28</sup> The Conclusion of the National Assembly of the RS No. 72 of 26 December 2020 - "Official Gazette of the RS" No. 157/2020

### ***2.A.3.1. Impossibility of administrative enforcement of the Commissioner's decisions***

The issue of administrative enforcement of the Commissioner's decisions, which dates from previous years, was still present in 2020. The cause of the problem of enforcement lies in different interpretations of the relevant norms on enforcement by the competent authorities involved in this process, as well as in their refusal of competence and cooperation in providing the data necessary for the enforcement. In fact, this issue is expressed in connection with the application of the new Law on General Administrative Procedure (1 June 2017) by which the Commissioner should, in the procedure of administrative enforcement, impose very high fines to the authorities as executors in the form of penalties, in order to coerce them to enforce the decision and submit information.

The genesis of this issue is presented in detail in the Commissioner's Annual Report for 2017; hence, it will not be repeated in this Report. The Ministry of Public Administration and Local Self-Government has concluded that the issue of enforcement of the Commissioner's decisions should be resolved through amendments to LFAIPI in a "precise and applicable" manner.

Since the Law on Amendments to LFAIPI has not yet been adopted, i.e. it was returned to the phase of drafting of a new Draft Law following the formation of the new Government, the problem of enforcement of the Commissioner's decisions is still present.

The other prescribed mechanism that should lead to the enforcement of the Commissioner's decisions, which obliges the authorities to provide the complainants with the requested information, and which is within the competence of the Government of the Republic of Serbia, was also non-functional in 2020. It is a legal obligation of the Government to ensure the enforcement of Commissioner's decisions<sup>29</sup> at his request, by direct coercion<sup>30</sup>. Out of a total of 340 requests<sup>31</sup> for ensuring enforcement, which the Commissioner had submitted to the Government since 2010, the Government has not provided feedback on any of them. In 2020 alone, the Commissioner requested from the Government to ensure the enforcement in 46 cases. Thus, the relevant legal provision on the role of the Government in ensuring the enforcement of the Commissioner's decisions has no practical effect from the very beginning, i.e. since 2010, when this issue was regulated by amendments to LFAIPI.

In the Report of the General Secretariat of the Government<sup>32</sup> on the activities and measures undertaken by the Government in regards to the legal obligation to ensure the enforcement of the Commissioner's decisions, it is stated that "The Government of the Republic of Serbia, the General Secretariat of the Government, with regard to providing assistance to the Commissioner in the procedure of administrative enforcement of Commissioner's decisions, and as stipulated in Article 28, paragraph 4 of LFAIPI, by applying measures within its competence, i.e. by ensuring the enforcement of the Commissioner's decisions by direct coercion, has the same possibilities as the Commissioner himself."

Therefore, the justification of the stated legal solution, which refers to the enforcement of the Commissioner's decisions, is questionable.

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<sup>29</sup> Article 28, paragraph 4 of LFAIPI

<sup>30</sup> The procedure of enforcement of the decision by direct coercion is regulated by Article 200 of the Law on General Administrative Procedure: "The law does not explain in detail what is meant by direct coercion; different forms of physical coercion come into consideration, depending on the obligation of the executor. The body responsible for the enforcement also uses the assistance of law enforcement in these cases (Article 193, paragraph 3 of LAP)" - Commentary on the Law on General Administrative Procedure - Zoran R. Tomić (2017)

<sup>31</sup> The data refers to the situation on 31 December 2020

<sup>32</sup> 08 No. 021-52/2021 of 20 January 2021

### ***2.A.3.2. Inadequate responsibility***

The responsibility of the authorities for violating the right to free access to information, from the most drastic forms, i.e. complete ignoring of citizens' requests and non-compliance with the executive and binding decisions of the Commissioner to non-fulfilment of other legal obligations of government bodies, was once again symbolic in 2020, and it was initiated almost exclusively by requests for initiating misdemeanour proceedings by information seekers as aggrieved parties.

The situation regarding the responsibility for violating the right to access information is best illustrated by the fact that, in 2020, the competent body - Administrative Inspection did not submit any requests for initiating the misdemeanour proceedings before misdemeanour courts in regards to 2,996 well-founded complaints resolved by the Commissioner in the same year, which confirms that there were violations of rights, i.e. violations of the law by the authorities. Also, the degree of fulfilment of other legal obligations related to publishing the Information booklet, submitting reports to the Commissioner, and conducting staff training was on an overall level of 30%, with over 3.800 administrative bodies being subject to these obligations, which means that the vast majority of administrative bodies ignores this obligation, with impunity.

The Commissioner has been pointing out for years that the absence of responsibility for the violation of this right, and not only the misdemeanour responsibility, undoubtedly encourages those responsible within the administrative bodies to continue to behave in this way, in the belief that they will not bear any consequences. In addition, the years-long absence of full responsibility for the violation of rights is the main cause of a very large number of complaints filed with the Commissioner. The Commissioner's objective inability to resolve all complaints within the legal deadline causes dissatisfaction among citizens, and is often the reason for filing lawsuits and causing costs and unnecessary budget expenditures, which have already been discussed in this report.

In such a state of affairs, the citizens whose rights were violated have, in their capacity as aggrieved parties, also submitted requests for initiating misdemeanour proceedings to the misdemeanour courts in 2020, in a much larger number than in the previous year. According to the data of the misdemeanour courts, a total of 5,198 requests were submitted in 2020. In the continuation of the report, in the part on statistical data, the stated data and the outcome of the proceedings before the misdemeanour courts are presented.

These data support the validity of the Commissioner's proposal to entrust the function of supervising the implementation of the LFAIPI to this body.

### ***2.A.3.3. Difficult implementation of the Commissioner's authority***

In 2020, in the procedure of resolving complaints due to violation of the right to access information, the Commissioner had applied his authority under Article 26 of LFAIPI in **nine** cases, and requested from the authorities to provide him with insight into documents containing information which are the subject of the complainant's request, in order to determine whether the information contained in such documents can be made available at the request of the complainant or not.

Four administrative bodies have acted at the request of the Commissioner and submitted the requested documents, namely: Ministry of Finance - Tax Administration, Ministry of Construction, Transport and Infrastructure, Basic Court in Smederevo, and Holding Corporation "Krušik" A.D., Valjevo.

In four cases, the administrative bodies did not submit the requested documents, namely: The High Judicial Council in Belgrade, the Commercial Appellate Court in Belgrade, the Security Intelligence Agency in Belgrade, and the Ministry of Defence.

The Pulmonary Diseases and TB Clinic in Niš did not submit the requested documents, because, as stated, they were destroyed in the meantime.

The following is an overview of individual cases:

The information which the High Judicial Council in Belgrade denied refers to the audio recording of conversations with candidates under the competition for selection of judges for the Misdemeanour Court in Valjevo, published in "Official Gazette of the RS" No. 14/18, of 23 February 2018.

The Commercial Appellate Court in Belgrade did not submit the decision of that court 8 Pž 5514/17, of 22 August 2019 to the Commissioner.

The Security Intelligence Agency in Belgrade did not provide documents from which it can be established when did Saša Pavlov (Mayor of the City of Pančevo) started working for the Security Intelligence Agency and when his employment was terminated, as well as the list of positions he worked at and in what period.

The Ministry of Defence did not submit proof that the requested information were defined and marked as confidential, nor the conclusion of the National Security Council of the RS No. 2-3-2/17, of 13 March 2017.

The Pulmonary Diseases and TB Clinic in Niš did not submit a decision on designating companies and other legal entities that produce items and provide services of importance for the defence of RS Pov. No. 00326/2015 of 28 November 2015, because, as stated, the requested documents were destroyed in the meantime.

## **2.A.4. Typical cases of inadequate action of public authorities on requests for access to information in 2020**

### **1. Failure to provide information on spending of public money**

The Commissioner is always of the consistent view that information on the spending of public money and of public funds must always be available to the public.

In accordance with the above, the Commissioner had ordered the Mayor of the City of Belgrade<sup>33</sup>, i.e. the Assembly of the City of Belgrade<sup>34</sup>, to submit information to the information seeker whether he has in his possession the requested information regarding the erection of the monument to Stefan Nemanja on Savski trg, i.e. the documents in which these information are contained, from which it is possible to find out: the contracting parties, the content of the contract, the contractual costs, royalties, awards, executed and forthcoming transactions concerning the construction, transport and erection of the monument; in the case of possession of these information, he is to provide the information seeker with copies of documents containing such information. Since the aforementioned bodies did not act within the deadline ordered by the Commissioner and have not submitted the stated information to the seeker, the Commissioner had reached decisions<sup>35</sup> allowing the enforcement of the said

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<sup>33</sup> Commissioner's Decision No. 071-01-3459/2020-03 of 7 December 2020

<sup>34</sup> Commissioner's Decision No. 071-01-3460/2020-03 of 7 December 2020

<sup>35</sup> Enforcement decision No. 071-04-277/2021-03 of 2 February 2021 and No. 071-04-278/2021-03 of 2 February 2021.

decisions and left an additional deadline for submitting the requested information, under the threat of a fine. Since the Commissioner was not able to enforce his decisions due to his inability to collect the fines for reasons already mentioned in this report, the Commissioner had sent requests to the Government<sup>36</sup> for providing assistance in the procedure of administrative enforcement of his decisions, all in accordance with Article 28. paragraph 4 of LFAIPI. The Commissioner's decisions were not enforced even after the Commissioner had submitted the case files to the Administrative Inspection.

An illustrative example is also the inadequate conduct of public authorities on the request for access to information, in which the Municipal Administration of Municipality of Surdulica denied the information seeker the access to information related to the calculation of costs of business trips of the Mayor of Surdulica in Surdulica, with rationale that the complainant has no legitimate interest, i.e. no interest or basis to, as a citizen of the City of Belgrade, perform a check-up in regards to the vehicle fleet of the Municipal Administration of Municipality of Surdulica and calculate the costs of business trips of the Mayor of Surdulica, as an official of the local self-government unit, because such check-up is performed by the budget inspection or other competent institutions and not by natural persons without a legal basis and without stating a justified interest for providing this type of information. The Commissioner had annulled the decision of the Municipal Administration of Municipality of Surdulica and ordered that body to make the requested information<sup>37</sup> available to the information seeker, stating, *inter alia*, that the requested information regarding the calculation of costs of business trips of the Mayor of Surdulica, for a certain period, paid from the municipal budget, i.e. the requested information refers to the financial and material operations of public authorities and is related to the legal and rational disposal of financial resources from the budget of the Municipality of Surdulica. In doing so, the subject of this administrative matter is the exercise of the right to free access to information of public importance, whereby this right, in accordance with the provisions of Articles 5 and 6 of LFAIPI, belongs to all under equal conditions, including the complainant and the public in general, regardless of whether the information seeker is a citizen of Belgrade or Surdulica, i.e. is a citizen of the Republic of Serbia or some other country, because the subject of the right to free access to information of public importance can be anyone, without restrictions, both legal and natural person, whereas when it comes to a citizen as a natural person, it does not matter whether he is a domestic or foreign citizen, as well as whether and where he has a permanent or temporary residence in the territory of the Republic of Serbia. Since the information regarding the calculation of costs of business trips of the Mayor of Surdulica have been requested by the request in question, and not information regarding the "movement" of local self-government officials, as stated by the first instance body, the Commissioner had pointed out that the requested information, bearing in mind that they relate to the financial and material operations of public authorities, are of such nature that they should be publicly published, with regular updates and in a timely manner, on the official electronic website of the Municipality of Surdulica, with the primary purpose of informing the public, but also for eliminating any doubts about the regularity and legality of work of municipal public authorities. The proactive publication of information on the budget and means of work, i.e. about revenues and expenditures, represents an obligation of the authorities prescribed by the provision of Article 39, paragraph 1, item 2) of LFAIPI and item 2 of the Instructions for preparation and publication of Information booklet on work of the state body. In addition, the more information a public authority publishes on a proactive basis, the less requests it will receive for access to information of public importance. The authority had

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<sup>36</sup> Letters to the Government No. 071-04-277/2021-03 of 22 February 2021 and No. 071-04-278/2021-03 of 22 February 2021.

<sup>37</sup> Commissioner's Decision No. 071-01-1411/2020-03 of 14/08/2020

acted on the aforementioned decision of the Commissioner and had submitted the requested information to the information seeker.

## **2. Information related to the jeopardizing and protection of public health**

Information related to jeopardizing, i.e. protecting the health of the population belongs to the category of the so-called "privileged" information of public importance, in relation to which the public's interest to know always exists and cannot be proven otherwise. When public authorities recognize that such information is involved, but also when it comes to information that is indirectly significant for health and environmental issues, they should react promptly and make that information available even without any intervention by the Commissioner. Unfortunately, they often do not do so even after the final, binding and enforceable decisions of the Commissioner reached on complains due to denial of such information.

One of the biggest issues in the field of access to information is still the "silence" of public authorities, which consequently leads to the fact that the largest number of complaints filed with the Commissioner are against public authorities due to their failure to act on requests for access to information (so-called "silence"), which is especially unacceptable when it comes to information relating to public health. Namely, during the pandemic, the provision of timely and accurate information is essential, because citizens make their decisions regarding their behaviour in health crisis to a significant extent based on data and information received from the competent public authorities. The fact that raises concern is that, in 2020, the percentage of complaints due to the so-called "silence of the authorities" regarding the information on COVID-19 is significantly higher in relation to the percentage of complaints filed due to same reason in relation to all complaints filed with the Commissioner<sup>38</sup>.

However, the authorities also often act wrongly when instructing information seekers to request information from other authorities, instead of making the information which is in their possession available. Thus, the Pulmonary Diseases and TB Clinic in Niš had acted wrongly when it informed the complainant that the Clinic did not have information regarding medications, application of diagnostic methods and procedures for treatment of hospitalized patients, etc., as well as that the information on testing persons for COVID-19, the number of infected and deceased can be provided by the National Health Insurance Fund of the Republic of Serbia. This is due to the fact that the authority was obliged to act in accordance with the cited provisions of Article 16 of LFAIPI, i.e. to inform the complainant whether it possesses the requested information and, if so, to provide him/her with copies of documents containing such information, regardless of whether it is competent for them, and not to refer the complainant to other authorities, i.e. to the National Health Insurance Fund of the Republic of Serbia. Only in case when it does not possess the documents containing the requested information can the authority, in terms of Article 19 of LFAIPI, forward the request to the Commissioner and inform the Commissioner and the information seeker about the whereabouts (to his knowledge) of such documents, which it did not do in the present case. Therefore, the Commissioner had ordered the Clinic to make the requested information available to the information seeker<sup>39</sup>. The Clinic had executed the Commissioner's decision and submitted the requested information.

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<sup>38</sup> Out of a total of 3,584 complaints filed with the Commissioner in 2020, 1,908 or 53.23% of them have been filed due to the so-called „silence of the authorities“, while out of 214 complaints filed regarding the information on COVID-19, 149 complaints or 69.62% have been filed due to failure to act by public authorities, i.e. due to the so-called „silence“.

<sup>39</sup> Decision No. 071-01-1696/2020 -03 of 27 July 2020

### 3. Information related to environmental protection

Information related to endangering, i.e. protecting the environment also belong to the category of the so-called "privileged" information of public importance, in relation to which the public's interest to know always exists and cannot be proven otherwise. The authorities are obliged to act with urgency and special care upon filing of such requests.

The first-instance authorities very often deny information that is extremely important for issues of protection and endangerment of the environment, unjustifiably invoking trade secrecy or confidentiality of information.

The Commissioner had annulled the decision of the Public Enterprise "*Elektroprivreda Srbije*", by which the request for access to information was rejected, and which requested a copy of the Environmental Impact Assessment of TPP "Kolubara" on surfaces in the immediate proximity following the conducted environmental protection measures, prepared by the Institute for Application of Nuclear Energy, University of Belgrade in 2011, and ordered the authority to make the requested information available to the complainant<sup>40</sup>. Explaining his decision, the Commissioner had stated that the first-instance authority, which bears the burden of proof, had not provided evidence as regards the justification for prohibiting access, in the instant case, to the requested information, i.e. it did not prove in what way would the submission of the requested information to the complainant incur legal and other consequences for the interests protected by law at to what extent, which prevail over the interest for accessing such information, i.e. it had not proven that there is a causal link between the potential disclosure of such information and the violation of the public interest. The fact that the first-instance authority had stated that, in the instant case, these are the information that according to the Law on Protection of Trade Secrets constitutes a trade secret is not in itself a sufficient condition to exclude access to the requested information in terms of LFAIPI; however, it is necessary for the first-instance authority to, in accordance with the provisions of Article 8 of the Law, prove that this course of action is necessary in a democratic society in order to protect some of the overriding interests over the interest of the public to know. When reaching this decision, the Commissioner especially had in mind that, in the instant case, these are information that are, by their very nature, environmental information, and which are of special importance to the public from the point of view of environmental protection and preservation. The aforementioned Commissioner's decision has been enforced.

Significant public attention, from the aspect of environmental protection, was aroused by the case of the company "Zijin" regarding air pollution in Bor with sulphur dioxide, due to which the Ministry of Environmental Protection had initiated proceedings before the Commercial Court in Zaječar for economic offence. Namely, the decision of that Ministry had rejected the request for access to information of public importance, by which the complainant had requested the submission of copies of all documentation related to the proceedings initiated by the Ministry of Environmental Protection, as a party to the proceedings, against the company "Zijin", which is being conducted before the Commercial Court in Zaječar due to the alleged air pollution in Bor with sulphur dioxide, as follows: lawsuits, applications, charges, responses to lawsuits, criminal charges, attachments to submissions, which are part of court records, as well as information on the number under which the said proceedings are conducted, together with copies of documentation related to the control of Republic Inspector Emila Tošić, on the basis of which the said court proceedings were initiated, providing rationale that the submission of information would jeopardize, hinder or complicate the conduct of the court proceedings. The Commissioner had annulled the said decision and returned the case for a retrial<sup>41</sup>.

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<sup>40</sup> Commissioner's Decision No. 071-01-2937/2020-03 of 21 December 2020

<sup>41</sup> Commissioner's Decision No. 071-01-1646/2020-03 of 8 September 2020



Explaining his decision, the Commissioner had stated that the first-instance authority had not determined for what reasons, i.e. in what way and due to which circumstances would enabling access to the requested documents in the instant case, i.e. proceedings, jeopardize, hinder or complicate further conduct of the court proceedings, whereby the reasons for denying access to information cannot be abstract and hypothetical, and must be specific and clear. Moreover, it is not clear from the case file that the first-instance authority took into account the fact that, in the instant case, there is an increased public interest to know the requested information, given that it relates to air pollution in Bor and the actions taken for the protection of the environment, as well as that the public is already familiar with some of the information related to the said proceedings (in the daily newspaper "Danas" of 24 April 2020, under the title "Zijin before court due to air pollution in Bor", it is stated, *inter alia*, that the report submitted by the Inspector Emilija Tošić shows that, on 21 and 22 November 2019, the concentration of sulphur dioxide (SO<sub>2</sub>) in Bor was 4.6 times higher than the limit prescribed by law, and in certain hours had reached up to 8.3 times higher levels than what is allowed, while in the news of "Radio Slobodna Evropa" on 2 December 2019, titled "Criminal charges filed against the director of Chinese company "Zijin" due to pollution", it was stated that a report was submitted to the Basic Public Prosecutor's Office stating that the director of company "Zijin", Mr. Long Yi, had committed the criminal offence of environmental pollution, as well as that a report was filed against the Mayor of Bor and the Minister of Environmental Protection, who are charged with the criminal offence of failing to undertake measures concerning environmental protection). The Commissioner had ordered the first-instance authority to supplement and establish the facts relevant for reaching a just decision in a retrial, and to decide again on the complainant's request in accordance with the provisions of LFAIPI<sup>42</sup>.

## **2.B. RIGHT TO PROTECTION OF PERSONAL DATA**

### **2.B.1. Legal framework**

#### ***2.B.1.1. International legal framework***

- **European Union**

**1. Charter of Fundamental Rights of the European Union** - Respect for private and family life and protection of personal data are guaranteed by Articles 7 and 8 of the Charter. The Charter represents an integral part of the Treaty of Lisbon, and is binding for the EU institutions and bodies and Member States

**2. General Data Protection Regulation (GDPR)** - the Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and

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<sup>42</sup> Acting upon the Commissioner's decision, the first-instance authority had again rejected the request in question, against which the complainant had filed an appeal, which has not yet been decided on at the time of writing of this report.

repealing Directive 95/46/EC<sup>43</sup> represents a key document in this area that has been directly applied in EU Member States since May 2018.

**3. Police Directive** - the Directive 2016/680 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977 had came into force in May 2018. The Police Directive ensures the protection of the personal data of victims, witnesses and criminal suspects and facilitates cross-border cooperation in the fight against crime and terrorism.

The Community law in the field of personal data protection includes other regulations, as well as judgments of the Court of Justice of the European Union and decisions of the European Data Protection Board<sup>44</sup>. A strong impetus to the further improvement of the appropriate personal data protection is given by the European Data Protection Supervisor<sup>45</sup>, but also by special departments and high officials for personal data protection of Europol and Eurojust.

The readiness of the Republic of Serbia for European integration, especially after 1 September 2013, when the Stabilization and Association Agreement<sup>46</sup> between the European Communities and their Member States, on one side, and the Republic of Serbia, on the other, also imposed an obligation on the Republic of Serbia to harmonise its legislation relating to personal data protection with Community's legislation and other European and international regulations on privacy (Article 81 of the Agreement). Observed from the aspect of international law, the harmonisation of national legislation in the field of personal data protection with the law of the European Union represents an international legal obligation of the Republic of Serbia, which is regulated not only by the Stabilization and Association Agreement but also by its status of candidate for EU membership, which implies that the foreign and domestic policy of the candidate country must be in line with the policy of the European Union and its *acquis*.

- **Council of Europe**

**1. European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**<sup>47</sup> – Article 8 guarantees the right to respect for private and family life.

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<sup>43</sup> [www.poverenik.rs/en/међународни-документи6/међународни-документи-архива.html](http://www.poverenik.rs/en/међународни-документи6/међународни-документи-архива.html)

<sup>44</sup> The European Data Protection Board, the former Working Group under Article 29, has the status of an EU body. It is composed of representatives of national data protection authorities and the European Data Protection Supervisor. The Board has broad decision-making powers in disputes between national data protection authorities, and provides advice and guidance on key concepts from the GDPR and the Police Directive.

<sup>45</sup> The European Data Protection Supervisor is an independent supervisory body that guarantees that EU institutions and bodies respect their obligations concerning data protection. The main tasks of the Supervisor are supervision, counselling and cooperation.

<sup>46</sup> The Law on Ratification of the Stabilization and Association Agreement between the European Communities and their Member States, on one side, and the Republic of Serbia, of the other ("Official Gazette of the RS - International Agreements", No. 83/2008).

<sup>47</sup> The ECHR had entered into force on 3 September 1953, and has 47 signatories. The Republic of Serbia became a signatory on 3 March 2004.

2. **Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data**<sup>48</sup> - the first legally binding international document in the field of personal data protection.
3. **Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows**<sup>49</sup>
4. **Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108+)**<sup>50</sup>

#### ***2.B.1.2. National legal framework***

The legal framework for personal data protection in the Republic of Serbia consists of the following regulations:

##### **1. Constitution of the Republic of Serbia**

The provisions of Article 42 guarantee the right to protection of personal data<sup>51</sup>

##### **2. Law on Ratification of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data**<sup>52</sup>

##### **3. Law on Ratification of the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows**<sup>53</sup>

##### **4. Law on Ratification of the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data**<sup>54</sup>

##### **5. Law on Personal Data Protection - LPDP**

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<sup>48</sup> Convention 108 had entered into force on 1 October 1985, and has 55 signatories. The Republic of Serbia became a signatory on 01 January 2006.

<sup>49</sup> The Additional Protocol had entered into force on 1 July 2004, and has 44 signatories. The Republic of Serbia became a signatory to the Additional Protocol on 08 December 2008.

<sup>50</sup> The Protocol has not yet entered into force, has been opened for signatures on 10 October 2018, and has 11 signatories. The Republic of Serbia became a signatory to the Protocol on 26 May 2020

<sup>51</sup> Constitution of the Republic of Serbia, Article 42 - Protection of personal data shall be guaranteed. Collecting, keeping, processing and using of personal data shall be regulated by the law. Use of personal data for any purpose other than the one for which they were collected shall be prohibited and punishable in accordance with the law, unless this is necessary for conducting criminal proceedings or protecting the safety of the Republic of Serbia, in a manner stipulated by the law. Everyone shall have the right to be informed about personal data collected about him/her, in accordance with the law, as well as the right to court protection in case of their abuse.

<sup>52</sup> "Official Gazette of the FRY - International Agreements", No. 1/92, "Official Gazette of the State Union of Serbia and Montenegro - International Agreements", No. 11/2005 - other law, and "Official Gazette of the RS - International Agreements", No. 98/2008 - other law and 12/2010)

<sup>53</sup> "Official Gazette of the RS - International Agreements", No. 98/2008

<sup>54</sup> "Official Gazette of the RS - International Agreements", No. 4/2020

The LPDP is a key regulation in the field of personal data protection, which was adopted in November 2018 with a delayed implementation of nine months, starting from 22 August 2019.

In accordance with the need to complete the national legal framework, the Commissioner had, based on the obligations and authorities granted to him under LPDP, adopted certain bylaws<sup>55</sup> which further regulate the area of personal data protection, which are:

1. Rulebook on the Form and Manner of Keeping Record of the Data Protection Officer<sup>56</sup>
2. Rulebook on the Form and Manner of Keeping Internal Records on Violations of the Law on Personal Data Protection and Measures Undertaken in the Course of Inspection Supervision<sup>57</sup>
3. Rulebook on the Form of Notification on Personal Data Breach and Manner of Notifying the Commissioner for Information of Public Importance and Protection of Personal Data on Personal Data Breach<sup>58</sup>
4. Rulebook on the Complaint Form<sup>59</sup>
5. Decision on the List of Types of Personal Data Processing Operations for Which an Assessment of the Impact on the Personal Data Protection Must be Performed and the Opinion of the Commissioner for Information of Public Importance and Personal Data Protection Must be Sought<sup>60</sup>
6. Decision on Amendments to the Decision on the List of Types of Personal Data Processing Operations for Which an Assessment of the Impact on the Personal Data Protection Must be Performed and the Opinion of the Commissioner for Information of Public Importance and Personal Data Protection Must be Sought<sup>61</sup>
7. Rulebook on the Form of Identification Card of an Authorized Person for Conducting Inspection Supervision in Accordance with the Law on Personal Data Protection<sup>62</sup>
8. Decision on Determining Standard Contractual Clauses<sup>63</sup>

In addition to the bylaws passed by the Commissioner, one bylaw was also passed and published by the Government of the RS -

1. Decision on the List of States, Parts of Their Territories or One or More Sectors of Certain Activities in Those States and International Organizations Considered to Provide an Appropriate Level of Personal Data Protection.<sup>64</sup>

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<sup>55</sup> All bylaws which have been published in the "Official Gazette of the RS" and on the Commissioner's website [www.poverenik.rs/en/подзаконски-акти4.html](http://www.poverenik.rs/en/подзаконски-акти4.html)

<sup>56</sup> "Official Gazette of the RS", No. 40/2019

<sup>57</sup> "Official Gazette of the RS", No. 40/2019

<sup>58</sup> "Official Gazette of the RS", No. 40/2019

<sup>59</sup> "Official Gazette of the RS", No. 40/2019

<sup>60</sup> "Official Gazette of the RS", No. 45/2019 and 112/2020

<sup>61</sup> "Official Gazette of the RS", No. 112/2020

<sup>62</sup> "Official Gazette of the RS", No. 61/2019

<sup>63</sup> "Official Gazette of the RS", No. 5/2020

<sup>64</sup> "Official Gazette of the RS", No. 55/2019

## **2.B.2. Basic obstacles in exercising the right to personal data protection**

### ***2.B.2.1. Shortcomings of LPDP***

The LPDP provides better protection of the right to personal data protection, and prescribes a greater scope of obligations and responsibilities for all data processors. However, the main obstacles in exercising the right to personal data protection are numerous shortcomings of LPDP, which primarily relate to unclear provisions and copied mechanisms that do not exist in the domestic legal system, which calls into question its applicability. The text of LPDP, to a large extent, represents an adapted translation of the General Regulation (with the fact that its integral part - the Preamble, which is a necessary starting point for the interpretation of the Regulation, is not included in LPDP), as well as the so-called "Police Directive", which regulates the processing of personal data by the competent authorities in connection with criminal proceedings and threats to national security. Due to the inappropriate manner of transposing the "Police Directive", two parallel regimes have been established under LPDP in terms of data processing, one of which is general, while the other, which refers to "competent authorities", is special.

The LPDP does not adequately elaborate the procedural provisions in regards to the Commissioner's acting on complaints. The LPDP contains a provision according to which the data subject has the right to file a complaint to the Commissioner, as well as that this does not affect the right of such person to initiate other proceedings for administrative or judicial protection. Given that the bodies before which the proceedings can be conducted (the Commissioner, Administrative Court, Higher Court) have no obligation to inform each other, nor to check whether any proceedings are being conducted with another body, there is a problem of applying the principle of "*ne bis in idem*" (no twice in the same [thing]). This means that legal certainty is called into question in any proceedings in which several mechanisms for the protection of the rights of persons are initiated.

Bearing in mind that several issues under LPDP are not regulated at all or at least not adequately, i.e. that some provisions are not sufficiently specified, that many articles contain inappropriate number of views/positions, and that there is an extremely large number of cases of exemption from applying LPDP, its effective implementation is difficult; hence, it is necessary to amend it.

### ***2.B.2.2. Lack of harmonisation between other laws and LPDP***

The obligation under Article 100 of the LPDP, which stipulates that the provisions of other laws, which refer to the processing of personal data, shall be harmonised with the provisions of LPDP by the end of 2020, has not been fulfilled.

Considering that LPDP, in regards to the previous data protection regime, regulates the matter in a more extensive manner, including prescribing the quality and content of other regulations, that a large number of regulations were adopted before the entry into force of LPDP, and that in some cases the Commissioner's opinions on draft laws have not been transposed to the final provisions of the adopted laws, it is necessary to amend the relevant regulations, i.e. to consider the adoption of new ones.

### ***2.B.2.3. Lack of implementation of the Strategy on Personal Data Protection***

The Strategy on Personal Data Protection has been adopted in 2010. An Action Plan for its implementation has never been adopted.

Based on the fact that, in contemporary society, there are many things that pose a serious threat to the right to protection of personal data, and thus to many other human rights, in the Republic of Serbia it is necessary to provide appropriate legal and factual conditions by strategic approach for the development and operation of national capacities for personal data protection. It is necessary to create the required normative and all other preconditions in order to act pre-emptively, as well as to in any other way prevent the endangerment of this right which is guaranteed by international instruments and national legislation.

Given the aforementioned, it is necessary to update the existing or adopt a new Strategy on Personal Data Protection and determine the goals, measures and activities, the role and responsibility of the executive, supervisory bodies, and other entities in exercising the right to personal data protection in contemporary conditions.

### **2.B.3. Illustrated cases related to the right to protection of personal data**

#### ***2.B.3.1. Illustrative cases of pre-emptive action of the Commissioner***

**1. The company has submitted a request for obtaining an opinion of the Commissioner on whether, from the aspect of application of LPDP, there is a legal possibility for that company to request from natural persons, who are the citizens of the Republic of Serbia and with whom it plans to conclude an employment contract or otherwise employ them, that, on the basis of the existence of a legitimate interest and prior to concluding the contract, submit to it an excerpt from the criminal records, i.e. a certificate from the police department of the Ministry of Interior confirming that such persons have not been convicted or prosecuted, i.e. that no investigation was initiated in regards to them.**

The response sent by the Commissioner to the applicant states the following:

"Pursuant to the provisions of Article 19, paragraph 1 of LPDP, the processing of personal data related to criminal convictions, criminal offences and security measures may be performed on the basis of Article 12, paragraph 1 of that Law, but only under the supervision of the competent authority or, if processing is permitted by the Law, with the application of appropriate special measures in order to protect the rights and freedoms of data subjects.

However, the processing of personal data in the field of work and employment is one of the special cases of processing; therefore, Article 91, paragraph 1 of the Law stipulates that the provisions of the law governing labour, employment and collective agreements apply to processing in these areas, with the application of the provisions of that law.

Pursuant to the cited provisions of the Law, the employer, as a data controller, for the purpose of concluding an employment contract, i.e. for the purpose of hiring a certain person, may collect and further process only the data relating to such person whose data processing is an obligation or authorization of the employer stipulated under the law regulating work, i.e. the employment.

This means that, out of six possible legal bases for the processing of personal data provided for under Article 12, paragraph 1 of the Law, the employer may, for the purpose of concluding an employment contract, i.e. for the purpose of hiring a certain person, perform the processing necessary for compliance with the legal obligations of the data controller, in terms

of item 3), or the processing which is necessary in order to exercise the statutory powers of the data controller, in terms of item 5) of the said Article of the Law.

Accordingly, the employer should not resort to using the legitimate interest of the data controller or a third party, in terms of Article 12, paragraph 1, item 6) of the Law, to process personal data for the purpose of concluding an employment contract, i.e. for the purpose of hiring a certain person.“

**2. The company had submitted a request for obtaining an opinion from the Commissioner on whether, in order to control compliance with the obligation to wear protective face masks in order to combat the spread of COVID-19 pandemic, it can establish processing of employee data through a video surveillance system which, based on the obtained consent of all employees, was introduced in order to protect the personal safety and security of the employer's property.**

The response sent by the Commissioner to the applicant states the following:

“When it comes to the processing of personal data in the field of work, the LPDP in Article 91, paragraph 1 refers to the application of the law governing work and employment and collective agreements, with the application of the provisions of such law.

The Ministry of Labour, Employment, Veteran and Social Affairs, based on the authorization established by the Occupational Safety and Health Law, had adopted the Rulebook on Preventive Measures for Safe and Healthy Work to Prevent the Occurrence and Spread of Epidemic of Infectious Disease<sup>65</sup>, which prescribes preventive measures that the employer is obliged to apply in order to prevent the occurrence and spread of infectious disease and eliminate risks for safe and healthy work of his employees, as well as of persons who find themselves in the work environment, when the competent authority declares an epidemic of an infectious disease.

Accordingly, in order to obtain an opinion on the admissibility of video surveillance of employees in order to control compliance with the obligation to wear protective face masks in the conditions of the declared epidemic of the infectious disease COVID-19, you are free to contact the said Ministry.

From the point of view of the Commissioner's competence regarding the application of LPDP, we would like to inform you that Article 54, paragraph 1 of this Law stipulates that, if it is probable that some kind of data processing would cause a high risk for the rights and freedoms of natural persons, the data controller is obliged to, prior to commencing with the data processing, assess the impact of the envisaged processing operations on the protection of personal data.

The list of types of processing operations, for which an impact assessment must be performed, is determined by the Decision on the List of Types of Personal Data Processing Operations for Which an Assessment of the Impact on the Personal Data Protection Must be Performed and the Opinion of the Commissioner for Information of Public Importance and Personal Data Protection Must be Sought.

The provisions of item 2, sub-items 5) and 7) of the said Decision stipulate that the impact assessment, *inter alia*, must be performed in case of using new technologies or

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<sup>65</sup> “Official Gazette of the RS”, No. 94/20

technological solutions for personal data processing or with the possibility of processing personal data used to analyse or predict the economic situation, health, preferences or interests, reliability or behaviour, location or movement of individuals, as well as in the case of processing biometric data for the purpose of unique identification of employees by the employer and in other cases of processing of personal data by employees using applications or systems for monitoring their work, movement, communications, etc.

Accordingly, if the video surveillance of employees, in order to control compliance with the obligation to wear protective face masks, is allowed from the point of view of application of regulations governing occupational safety and health, the employer is obliged to, in accordance with LPDP, prior to commencing with the intended processing of personal data, perform an impact assessment on the protection of personal data in order to determine the technical, organizational and personnel measures which need to be undertaken with the aim of personal data protection. It is necessary to draft an act on the performed impact assessment, so that the employer would be able to, in accordance with the principle of "responsibility for his actions" under Article 5, paragraph 2 of LPDP, present the compliance of processing with this Law, i.e. application of principles regarding processing under Article 5, paragraph 1 of this Law.

In this context, we hereby note that any processing of personal data, including the processing of data relating to employees, must be carried out in accordance with the appropriate legal basis and specifically defined, explicit, justified and lawful purpose, while the processed data must be appropriate, essential and limited to what is necessary in respect of the purpose of processing. If the subject is not the processing necessary for fulfilling the legal obligation of the data controller, it is necessary to also take care that employees have the right to privacy in their work environment, and that they can not always expect from the employer to monitor them via a video surveillance system when performing regular tasks, due to which the employer should consider the necessity and proportionality of the intended processing in relation to the given circumstances, including the possibility of achieving an appropriate result in a way that is less intrusive. If he uses a video surveillance system, the employer is obliged to provide the employees with a clear notice in regards to all the relevant aspects of processing, in accordance with the provisions of Article 23 of LPDP.

We particularly note that the "consent" of the data subject, as a legal basis for the processing of personal data, implies voluntary, specific, informed and unambiguous expression of willingness of such person, by which the person, by statement or clear affirmative action, gives his/her consent to processing of personal data related to him/her (Article 4, item 12) of LPDP). The provisions of Article 15 of this Law prescribe certain conditions that must be met in order for the processing, which is performed on the basis of data subject's consent, to be considered lawful, which also stipulate that, *inter alia*, the data controller must be able to indicate that the person has provided its consent to the processing of his/her personal data; if the consent is given in the context of a written statement relating to other matters, the request for consent must be presented in such a way that sets it apart from those other matters, in an understandable and easily accessible form, and using clear and simple words; that prior to giving consent, the data subject must be informed about the right of revocation, as well as the effect of revocation, and that the revocation of consent must be just as simple as giving consent, etc. A person who had revoked its previously given consent cannot suffer harmful consequences due to the loss of the legal basis for further processing of personal data on him/her. Therefore, an expression of willingness of a natural person, without the possibility of its amendment or revocation and not causing legal consequences for the position of that person,



cannot be considered a valid consent in terms of LPDP, which is particularly necessary to keep in mind when dealing with situations where there is no complete equality of willingness of the participants, as is the case with the relationship between the employer and the employee. Consequently, the consent given by the employee can be an appropriate legal basis for the processing of personal data only when the employee is free and willing to give it, but also to revoke a previously given expression of willingness, without fear of suffering undesirable consequences.”

**3. The authority had requested an opinion from the Commissioner on the act on impact assessment of the intended actions of processing personal data, the performance of which is within the competence of that authority. The submitted act states the legitimate interest of that authority as the legal basis for data processing.**

The Commissioner's opinion states, *inter alia*, the following:

“Article 12, paragraph 1, item 6) of LPDP stipulates that the legitimate interest of the data controller or a third party is envisaged as one of the possible legal bases for the processing of personal data.

However, when it comes to the processing of personal data performed by a public authority within its competence, the legislator has excluded the possibility of applying a legitimate interest as a legal basis for the processing of personal data (Article 12, paragraph 2 of the Law).

Therefore, in the act on impact assessment in regards to personal data protection, it is necessary to correctly and clearly state the legal basis for the subject processing of personal data.”

***2.B.3.2. Illustrated cases related to the exercise of the rights of data subjects in the petition procedure***

**1. Removing links from search engine indexing system (right to be forgotten)**

The Commissioner had received a petition due to the violation of the right to remove links from the indexing search system of the Internet search engine “Google”, which lead to the texts of a certain media registered in the territory of the Republic of Serbia, and which contain information about the petitioner.

When deciding on the merits of the petition, the Commissioner had performed a balancing test between the right to personal data protection and the right to freedom of the media and the right to information, which are also constitutionally and legally guaranteed rights, and had found in the instant case that the petition was unfounded, because the processing, in terms of paragraph 5, item 1) of LPDP, was necessary for the exercise of freedom of expression and information.

This is because the Commissioner had found that the links, the removal of which is sought by the request, do lead to journalistic articles containing personal data on the petitioner, but in the form of information on his conduct as a director of a Joint Stock Company owned by the Republic of Serbia, at the position he still holds, and about the business of that company and information concerning the budget and spending of funds from the budget of the said company, the public procurement procedure and employment in that company, as well as basic information from the biography of the petitioner and information concerning the reporting of property to the Anti-Corruption Agency by the petitioner, to which he, as an official, is obliged. In this regard, since the petitioner has the status of an official and a person who has a role in public life, the said being information for which public's interest to know exists, his conduct as a director of the said company and the conduct of the company itself is inevitably and consciously scrutinized, both by journalists and the public in general, for which reason his right to data protection is narrower in relation to other persons.

Given that the petitioner has a role in public life, that the original content was published for journalistic purposes, that the inaccuracy of the data presented in the journalistic articles to which the links in question lead has not been proven, nor has it been proven that the petitioner suffers damage due to the processing in question given that the civil proceedings for compensation of damages is still ongoing, that this is not a matter of processing data on criminal offences or processing of special types of data, and that the photographs published in these articles do not represent biometric data in terms of Article 4, item 15) of the LPDP because they were not obtained by special technical processing, that he is not a minor, and that there is no other criterion on the basis of which the right to protection of personal data of the petitioner could prevail over the right to freedom of expression and information, the Commissioner had found that, in the instant case, the public interest in accessing information on the petitioner prevails in relation to his right to protection of personal data; hence, the removal of the links in question would constitute a disproportionate restriction on the right to freedom of expression in order to protect the right to respect for private life.

## **2. Legitimate interest as a legal basis for processing data on former members of the religious community**

The petitioner is an excommunicated member of a religious community who had submitted a request to that religious community, which is a data controller, to erase all personal data related to him which associate his persona to that religious community.

Acting upon the request, the data controller had provided a reply to the petitioner, stating that it had permanently erased all information pertaining to him except for his name and surname, as well as the date of his accession, i.e. excommunication from the religious community, which the data controller still keeps based on the legitimate interest.

In assessing the legitimate interest, the data controller took into account the following in the act "Assessment of legitimate interest - Former members", which it had presented to the Commissioner: that there is a clearly defined and justified legitimate interest of the data controller reflected in the preservation of religious principles, provisions and norms of the religious community, to ensure that a person is not baptised twice and in order to prevent abuses, all as described in detail in the said act; that the processing of data on former members is necessary, given that without personal data or with less data the aforementioned interest cannot be realized; that, on the other hand, there is a minimal risk for the persons whose personal data are processed, given that the data are not public, they are not shared with third parties, and are not used for commercial purposes or for propaganda purposes; that technical, organizational and personnel measures have been applied in order to prevent the abuse of the

subject data; that the petitioner could have reasonably expected that his data would be processed even following his withdrawal from membership; that the petitioner was aware of the possible consequences of his withdrawal; that the processing in question does not contribute to the difficult or impossible exercising of the rights and freedoms of persons, loss of control over data, financial loss etc.

Therefore, the Commissioner had found that the data controller had correctly assessed that its legitimate interest prevailed over the interests and fundamental rights and freedoms of the petitioner, and that the petition was unfounded and that, in the instant case, the conditions for erasing data stipulated under Article 30, paragraph 2 of the same law were not met, nor the conditions for erasure prescribed by the rules on data processing of the data controller, because the processing of data on former members of the data controller, including data on the petitioner, is legal and permitted, in accordance with Article 12, paragraph 1, item 6) and Article 17, paragraph 2, item 4) of LPDP.

### **3. Erasing data about the patient and his health status from the discharge list**

The Commissioner had received a petition by AA, filed by the petitioner against the health institution as a data controller, for violating the right to erase the data on his health status from the discharge list.

The Commissioner found that the petition was unfounded because the data on the patient and his health status, which were entered into the basic medical document by the healthcare worker, can not be erased in accordance with Article 30 of LPDP. Social data, personal medical history, as well as findings and opinions entered by the healthcare worker on the basis of objective knowledge gained directly from the patient, as well as subjective assessments based on professional knowledge and experience, are processed and collected for purposes specifically defined by the Law on Medical Documentation and Records in the Field of Healthcare, and represent the lawful processing of data by the data controller. Keeping medical documentation and records on the provision of healthcare services and health status of patients represents an integral part of the professional medical work of health care institutions; hence, the erasure of these data and their rectification cannot be subject to exercising the rights under LPDP, because a competent healthcare worker is responsible for rectification of possibly inaccurate personal data which have been entered in the discharge list, in accordance with Article 22 of the Law on Medical Documentation and Records in the Field of Healthcare.

### **4. Exercising the right to a copy of the loan agreement with accompanying documentation**

The Commissioner had received a petition from AA filed for violation of the right to access personal data by “Vojvođanska banka”, a member of OTP Group from Novi Sad, as a data controller because it failed to act upon his request, submitted on the basis of LPDP, and was not provided with a copy of a loan agreement number A and cash loan agreement approved in October 2013 with accompanying documentation.

In the statement on the petition, the data controller had stated, *inter alia*, that in a case when a person addresses it with a request submitted pursuant to Article 26 of LPDP, the right is exhausted by submitting information on what data are being processed, and not by allowing the person to obtain a private document for its use for other purposes, i.e. that LPDP does not prescribe an explicit obligation to the data controller to submit a copy of the contractual documentation to the clients.

After reviewing the petition, it was assessed that the petition was well-founded, and a decision was made ordering the data controller to submit the requested copies of the loan agreement to the applicant, i.e. the petitioner, because, at the Commissioner's findings, loan agreements with accompanying documentation are indeed personal data relating to him, in terms of the provision of Article 4, paragraph 1, item 1) of the LPDP, and that the aim of the provision of Article 26 of LPDP, which prescribes the rights of persons to gain insight into and acquire a copy of the data, is not only to inform persons, i.e. provide information regarding the processing of their personal data, but that it also includes the right of a person to receive a copy of such data.

**5. The exercise of the rights and freedoms of other persons may not be jeopardized by the exercise of the right to deliver a copy to the person to whom this information relates.**

The petitioner had filed a petition with the Commissioner against the Technical School, as a data controller, for violating the rights related to the processing of personal data, because the data controller did not provide her with insight into and a copy of the data relating to her, which are contained in student applications for her exemption from the Examination Board for the Final grade examination, for the academic year 2016/2017.

Responding to the allegations from the petition, the data controller had stated that the petitioner's request to be granted access to the data related to her, which were contained in the applications submitted by the students to the school principal, requesting the exemption of the teacher-petitioner from the Examination Board for the Final grade examination, was not granted because the applications, in addition to the data on the petitioner, also contain the names and surnames of the students and confidential information about them. Providing insight into the mentioned documents and issuing a copy of such documents would endanger the rights of students, i.e. the applicants, so in accordance with Article 28 of LPDP, the data controller decided to limit the petitioner's access to the requested data.

Based on the established facts, a decision was made that the petition was ill-founded.

Applications which are the subject of the request, and which relate to the petitioner, represent personal data in terms of the provision of Article 4, paragraph 1, item 1) of LPDP. However, in the Commissioner's opinion, provision of access to the requested data to the petitioner, without endangering the rights and freedoms of the persons who wrote the requests, is not possible in terms of Article 26, paragraph 4 of LPDP, because, by gaining insight into the requested data, it was found that these requests were handwritten by student applicants; hence, the petitioner, as their teacher, could identify the applicants based on their handwriting, which would indisputably jeopardize their right to privacy.

***2.B.3.3. Illustrative cases of violation of the right to personal data protection established in the supervision procedure***

**1. Data breach in the COVID-19 Information System**

On 17 April 2020, the Commissioner's Office received a report from the SHARE Foundation on a possible compromise of data from the COVID-19 application because, by

initiating an online search on the website of the Health Center Rakovica, one could find a username and password for accessing this application, which was located at <https://ws.rfzo.rs/covid/>.

On this occasion, the Commissioner's Office had found that, by entering the keywords for conducting online search, one would be presented with the page of the Health Center Rakovica, at which one could find the data containing usernames and passwords for logging into the application COVID-19 Records made publicly available; by using the access credentials, one could then access personal data which are recorded in this application, which has been, in the performance of the action *ex officio*, been conducted for the purpose of fixation of visual evidence by using a mobile phone.

On this occasion, the Commissioner's Office had contacted the person responsible for data protection of the Health Center Rakovica by phone, who was then instructed to immediately remove the said page, as well as to request from the National Health Insurance Fund of the Republic of Serbia (hereinafter: NHIF) to revoke the password in question. At around 3:00 p.m., the same person has confirmed that the page has been removed, and that the password has been revoked. On the same occasion, the Commissioner's Office had pointed out the obligation of the Health Center Rakovica to inform the Commissioner about the violation of personal data, in terms of Article 52 of LPDP.

On the same day, the Commissioner's Office had contacted NHIF's person responsible for data protection by phone, to whom it explained that the NHIF is obliged, as a data processor, to inform the COVID-19 Information System data controller, i.e. the Institute of Public Health of Serbia "Dr Milan Jovanović Batut", without delay and in accordance with Article 52 of LPDP, on the violation of personal data which had occurred, who is further obliged to inform the Commissioner about the said violation.

On 22 April 2020, the Institute of Public Health of Serbia "Dr Milan Jovanović Batut" had submitted the notification on the violation of personal data to the Commissioner, with an explanation of reasons why it did not act within 72 hours of learning of the said violation. The notification was accompanied by accompanying documentation. The same notification reads as follows: *"Description of possible consequences of the violation: since no attempt to log in was recorded, there may be no consequences related to the disclosure of personal data... according to the data available at this time, the data was not compromised."*

By the document of 27 April 2020, the data controller had informed the Commissioner about the technical measures for the protection of personal data that it undertook, that it was necessary to establish epidemiological surveillance through a centralized software solution, and that the state of emergency, which was declared on 15 March 2020, had unfortunately changed the order of activities related to the establishment of new records on personal data, and that no data which was kept by the health institution, for which access data were publicly available online, were compromised. The following was also attached to this document: Records on the processing operations made on 24 April 2020; Email containing the draft contract sent by the operator to the NHIF on 24 April 2020; Document on the impact assessment of processing in regards to personal data protection using the software solution COVID-19 of 21 April 2020; Opinion of the data controller's person responsible for personal data protection on the impact assessment of 24 April 2020.

The Commissioner had also obtained the relevant information from the NHIF, which has, on 4 May 2020, to the question raised by the Commissioner (bearing in mind that the NHIF provides technical support in the management of this information system, it is necessary to provide the Commissioner with the appropriate evidence (log files), if the data had been compromised in the disputed period, or due to unauthorized logging onto the system) and following the description of all technical measures for personal data protection, replied that "...

thanks to all the above-mentioned protection measures, no data was compromised, i.e. all the data on the citizens are secured”.

The data controller had confirmed that, at the time of initiation of the supervision procedure by the Commissioner, it had not concluded a contract nor any other legally binding act with the data processor in the COVID-19 Information System (COVID-19 IS), which regulates the subject and duration of processing, nature and purpose of processing, the type of personal data and the type of person to which the processed data relates, as well as the rights and obligations of the data controller, in the manner prescribed by Article 45 of LPDP.

In the supervision procedure, it was determined that the data controller, contrary to Articles 42 and 50 of LPPD, did not, prior to commencing with the data processing in the COVID-19 Information System (COVID-19 IS), undertake the appropriate technical, organizational and personnel measures for the protection of personal data contained in the said system, as a result of which the Health Center Rakovica, as the recipient, had made these data available to an unlimited number of natural persons. In this way, the data controller had acted contrary to the principle of "integrity and confidentiality" under Article 5, paragraph 1, item 6 of LPDP.

Due to the absence of a contract or other legally binding act concluded with the NHIF, as a data processor, the relations between the data controller and the data processor were not adequately regulated, nor were the appropriate technical, organizational and personnel measures for the protection of personal data undertaken, as a result of which the NHIF had awarded the healthcare institutions, as recipients, unique access credentials for accessing the COVID-19 Information System, and that, on that occasion, it failed to provide more detailed instructions, as a result of which the Health Center Rakovica had published these same credentials on its website.

Moreover, on 9 June 2020, the Commissioner had, on the basis of the conducted supervision procedure, filed criminal charges with the Higher Public Prosecutor's Office in Belgrade - Special Department for Cybercrime, against an AA official, due to the existence of grounds for suspicion that he had, in Majdanpek, while conducting his work *ex officio* in the period between 8 May 2020 and 9 May 2020, disclosed the personal data of 24 (twenty four) persons and their: names and surnames, Unique Master Citizen Number (JMBG), dates of birth, mobile phone numbers and addresses of residence, which are contained in the COVID-19 Information System, to unauthorized persons, which are the same data contained in the document “Report on the first round of contact persons with confirmed patients on SARS-Cov-2, created on 8 May 2020 at 21:32:46”, subsequently published on the social network “Facebook”, by which he had committed the crime of unauthorized collection of personal data under Article 146, paragraph 3 in conjunction with paragraph 1 of the Criminal Code, which also indicates to the inadequate data protection measures which should have been undertaken against the recipients of such data.

The Data Controller, in the Notice on personal data violation of 22 April 2020, had stated that “...no attempt to log in has been recorded...”. Furthermore, the data controller, in his statement of 27 April 2020, had stated that “... All actions relevant to the business process supported by the Application are recorded in system and user logs... The Application records all user IP addresses from which the Application was accessed...”, and that “... no data, which was kept by the healthcare institution where the data on access to the application "COVID-19 Records" were publicly available online, have been compromised.”

Given that the representative of the Commissioner's Office had accessed the said application via a mobile phone, in order to perform the fixation of visual evidence in the procedure (which was also documented by images), and the Data Controller did not even

register the said access to the data concerned, brought into question the system of recording actions of importance for the business process in the subject application.

Prior to commencing with the data processing in the COVID-19 Information System (COVID-19 IS), the Data Controller did not conduct the impact assessment in regards to the planned processing operations on the protection of personal data, despite this being an obligation stipulated under Article 54 of LPDP. For this reason, the Data Controller did not consider all the potential risks in respect of the processing of personal data in this information system, some of which were already conducted; therefore, the data was compromised in the manner described under this act.

The fact that the Data Controller had subsequently performed the conclusion of the contract and the preparation of the impact assessment in regards to data protection does not affect the identified irregularities, because these actions are performed before commencing with the processing, and not during it.

The Commissioner had in mind the specific circumstances of establishing this Information System, in order to protect public health and prevent the epidemic, but particularly stresses that the observed violations of personal data could have been prevented had the provisions of LPDP been adhered to, i.e. that the Data Controller had, in a timely manner, regulated the relationship with the NHIF and the recipients, undertook adequate organizational, technical and personnel measures and qualitatively assessed the risk, i.e. the impact of processing on personal data protection. Given that the aforementioned was not the case, the processing was performed in a legally unregulated manner, with the application of inadequate organizational, technical and personnel protection measures (as shown in the examples under this act), and without considering the risk to the privacy of citizens.

Due to all the above, the Commissioner had issued Warnings to the Institute of Public Health of Serbia "Dr Milan Jovanović Batut", the Health Center Rakovica, and the NHIF, in accordance with Article 79 of LPDP.

## **2. Violation of LPDP by employers using the application "*Granica*" ("Border") for the purpose of controlling the abuse of temporary incapacity for work**

An application had been submitted to the Commissioner by the applicant alleging that the Novi Sad Police Directorate had violated LPDP by using the data on the dates and border crossings at which the applicant had crossed the state border in order to initiate disciplinary proceedings against him.

Regarding the allegations from the submitted application, the Commissioner had initiated a supervision procedure, in which it was determined that the data controller, i.e. the Head of the Disciplinary Section of the Novi Sad Police Directorate, on the basis of legal authorization, had addressed the NHIF - South Banat District Branch and had received a statement from this branch that the applicant did not have permission of the professional medical body to travel from his place of residence.

Regarding the allegations from the statement of the data controller that, in regards to the situation in question, it had relied on Article 12, item 5 of LPDP, which stipulates that data processing is legal if it is necessary in order to perform the activities in the public interest or exercise the legally prescribed powers of the data controller, the data controller was instructed that the conditions for the legality of data processing under Article 14, paragraphs 1 and 2 of LPDP have not been met.

Namely, no legal provision stipulates that, for the purpose of conducting disciplinary proceedings against an employee of the Ministry, it is permitted to perform a check-up in the application "*Granica*" in order to check the crossing of the state border.

In accordance with the aforementioned, it was found that the processing of data in the situation in question has been performed contrary to the principle of legality under Article 5, paragraph 1, item 1) of LPDP, because there is no legal basis for such processing.

In the situation where the data controller, in the capacity of the employer, had used the legal authority to, prior to submitting the initiative for initiating the disciplinary proceedings, examine all the circumstances relevant to initiating the disciplinary proceedings, and that, in case of reasonable doubt that the employee abuses the use of temporary incapacity for work, had performed a field inspection in that regard, the Data Controller would act in accordance with the Law on Police and the Decree on the manner of conducting disciplinary proceedings in the Ministry of Interior, as regulations which determine the legal basis and, at the same time, the purpose and manner of providing evidence for initiating and conducting the disciplinary proceedings.

The provisions of Article 68 of the Law on Border Control<sup>66</sup> stipulate that, for the purposes of performing border control, the Border Police keeps records on persons and vehicles on which the border check-up has been performed.

The provisions of Article 35 of the Law on Records and Data Processing in the Field of Internal Affairs<sup>67</sup> prescribe *the data which are processed for the purpose of performing border control activities*, which include border check-ups at border crossings and state border surveillance outside border crossings in accordance with a special regulation.

Furthermore, the provisions of Article 10 of the said law stipulate that the data collected for the purpose of performing activities within the scope of the Ministry are exchanged between the organizational units, in accordance with their scope and *stated purpose*.

Therefore, contrary to the allegations in the statement of the data controller, the aforementioned regulations do not contain a provision authorizing that the "Data collected for the purpose of border control" may be processed "in order to prevent the committing and detection of violations under Article 263 of the Law on Health Insurance, and afterwards for the purpose of initiating and conducting disciplinary proceedings with the Data Controller, due to serious violation of official duty under Article 207, paragraph 1, item 14 of the Law on Police, and in conjunction with Article 263 of the Law on Health Insurance".

It follows from the aforementioned that, in the described situation, the conditions for existence of data processing for *special purposes*, under Article 6, paragraph 3 of LPDP, are not met, nor are the conditions under Article 7, paragraphs 1 and 2 ("that further processing is prescribed by law"), because neither the Law on Border Control, nor the Law on Records and Data Processing in the Field of Internal Affairs or the Law on Police contain a provision which stipulates that the data collected for the purpose of performing border control activities may be *further processed* for the purpose of initiating and conducting disciplinary proceedings against the employee; on the contrary, Article 190, paragraph 6 of the Law on Police *explicitly stipulates* that in cases of grounded suspicion that employees abuse the temporary incapacity for work, the immediate superior may, *solely for the purpose of obtaining evidence*, carry out an *on-the-spot check* in this regards (and not the control of crossing of the state border by the employee), and then request from the competent health care institution to determine the health capacity of the employee.

In this regard, the data controller had, by collecting data on state border crossings (name and surname, date of birth, nationality, country of issuing, expiration date, document number,

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<sup>66</sup> "Official Gazette of the RS", No. 24/2018

<sup>67</sup> "Official Gazette of the RS", No. 24/2018



document type, JMBG of the officer, location code, location name, entry date, entry/exit) for the period from 14 September 2014 until 18 October 2019 – a total of 71 data on state border crossings from the application "Granica", and using such data to initiate and conduct disciplinary proceedings against the employee, performed the processing of personal data which is contrary to the provisions of Article 5, paragraph 1, item 3), because the collected data had to be appropriate, relevant and limited to what is necessary as regards the purpose of data processing, i.e. the purpose of initiating and conducting disciplinary proceedings against the employee in case of grounded suspicion that employee had abused his right to paid leave due to illness could have been achieved in another way which would have posed less risk for the privacy of the person, especially bearing in mind that the procedure for initiating disciplinary proceedings is stipulated by law, in which case the Data Controller would have acted in accordance with the principle under Article 5, paragraph 1, item 3) of LPDP.

Having in mind the aforementioned, it has been found that the data controller, by collecting and further processing the data on state border crossings (name and surname, date of birth, nationality, country of issuing, expiration date, document number, document type, JMBG of the officer, location code, location name, entry date, entry/exit) in respect of the employee-applicant, for the date 18 October 2019, as well as for the period from 14 September 2014 until 18 October 2019 – a total of 71 data on state border crossings from the application "Granica", and by using such data to initiate and conduct disciplinary proceedings against the said employee due to abuse of sick leave - had processed such data contrary to the principle of legality, for a purpose not specifically defined, explicit, justified and lawful, whereby the data are not limited to what is necessary in relation to the purpose of processing, from which it follows that the data processing in question was performed contrary to Article 5, paragraph 1, items 1) -3) of LPDP.

In accordance with the aforementioned, the Commissioner had issued a Warning to the Ministry of Interior of the Republic of Serbia, as a controller of personal data, in regards to the following personal data of the police officer-applicant: the date of crossing and the location of border crossing at which he crossed the state border on 18 October 2019 (as well as the data on state border crossings from 14 September 2014 until 18 October 2019), contained in the application "Granica", which it had collected and used to initiate and conduct disciplinary proceedings against the said police officer for abusing the right to paid leave in case of illness, thus acting in a manner contrary to Article 5, paragraph 1, items 1) -3) of LPDP.

### **3. Violation of LPDP by measuring and recording the body temperature of employees on their arrival at work, within the measures for preventing the spread of infectious disease COVID-19**

The Commissioner for Information of Public Importance and Personal Data Protection had, through an authorized person and in accordance with Article 78, paragraph 2 of LPDP, performed a supervision over the implementation of LPDP by the Seismological Survey of Serbia, based in Belgrade, Tašmajdanski Park bb (hereinafter: "Data Controller"), and on the basis of information he obtained from the application stating that "...in accordance with the measures for preventing the spread of infectious disease COVID-19 ... upon their arrival at work, the guards or secretary shall perform the measuring of the body temperature of employees and *enter the values obtained in such manner into the daily records on working hours* that are otherwise kept...".

In the supervision procedure, *inter alia*, it was determined: that the Data Controller has the status of an authority; that it acts as an employer in the performance of its obligations in regards to the personal data of its employees and other hired persons; that the recording of

"temperature", which represents medical data/data concerning health status and thus special personal data, is an integral part of professional medical work of healthcare institutions, private practice and other legal entities and healthcare workers and associates; that the Data Controller, in relation to employees and other hired persons, does not have the authority of "healthcare institution, private practice ...".

From the established factual situation, it follows that the Data Controller had, in the capacity of the employer and by implementing the Plan concerning the application of measures for prevention of occurrence and spread of the epidemic of infectious disease COVID-19 at the Seismological Survey of Serbia No. 01-313-1 / 2020 of 20 July 2020, in accordance with the regulations in force (in accordance with the Occupational Safety and Health Law and in proportion to the purpose to be achieved), in the section No. 3, prescribed the following preventive measures: providing information to the employees; *non-contact temperature measurement*; wearing a protective face mask; maintaining personal hygiene; social distancing – everything listed with a description of activities for each of the measures, responsibilities for the implementation of measures, and responsibilities for the control of such measures and activities, with a provision stipulating the following: "The stated preventive measures *for preventing the spread of COVID-19* are applied at all workplaces and apply to all locations, employees, other hired persons and persons who come to the Seismological Survey of Serbia on other grounds."

The provisions of Article 5, paragraph 2 of LPDP stipulate that the data controller is responsible for the application of the principles under paragraph 1 of that Article, as well as of the principle of "data minimization" under item 3) of paragraph 1 of the same Article, which stipulates that only those data that are *appropriate, relevant and limited* to what is *necessary* in relation to the *purpose of processing* are allowed to be processed. The following further means that, in each specific case, it must be assessed whether it is necessary and appropriate to process a certain data for the respective purpose or if such purpose can be achieved even without processing such data. In the instant case - whether for the purpose of preventing the spread of COVID-19, i.e the application of preventive measures for preventing the occurrence and spread of epidemic of the infectious disease COVID-19, it is appropriate and necessary to record the body temperature of employees and other hired persons as special type of personal data.

Since one of the preventive measures, which the Data Controller in its capacity of the employer had prescribed in the subject Plan of measures, is "non-contact temperature measurement" – it can be concluded that the Data Controller is informed that recording (as well as keeping) measured temperature is *inappropriate, irrelevant and unnecessary* for the purpose of preventing the spread of COVID-19/application of preventive measures for preventing the occurrence and spread of epidemic of the infectious disease COVID-19 – because, *for example*, it would be more appropriate to prescribe rules for dealing with employees when high temperature is recorded, which would ensure, *inter alia*: that the employee does not enter the official premises in order to avoid contact with other employees; to oblige such employee to report to the competent doctor..., to determine which of the employees shall replace the absent employee, etc.

Due to the aforementioned, it follows that the processing of the data in question is contrary to the principle of "data minimization" under Article 5, paragraph 1, item 3) of LPDP.

Even in the situation when the Data Controller, in the described case and by the internal general act - the Plan of measures for preventing the occurrence and spread of epidemic of the infectious disease COVID-19 at Data Controller's organization, has prescribed the recording of measured body temperature as a preventive measure, the same processing procedure would be prohibited because the internal act of the employer may not violate the principles under

Article 5, paragraph 1 of LPDP, that is, in the instant case, the principle of “data minimization”, which is a principle of special importance when it comes to the processing of special types of personal data under Article 17, paragraph 1 of LPDP.

In this regard, the Data Controller has been referred to Article 17, paragraph 1 of LPDP, which stipulates the prohibition of processing data on health status, while paragraph 2, items 1) to 10) of the same Article stipulates the exceptional admissibility of their processing. Therefore, in addition to the general prohibition of processing of such data, the cases are also prescribed in which, exceptionally, the data processing is allowed, provided that the data controller has met one of the legal bases under Article 12, paragraph 1 of LPDP, which is required as a condition for legality of such processing, which is not the case in this situation.

Furthermore, the provisions of Article 5, paragraph 1, item 1) of LPDP prescribe the principle of “*legality, fairness and transparency*” which implies that data must be processed lawfully, fairly and transparently in relation to the data subject, and that only the data processing which is performed in accordance with this law, or other law which regulates data processing, can be considered to be lawful. *Given that the other law does not prescribe recording and keeping of measured body temperature, as a type of data on health status, in order to prevent the spread of COVID-19/apply the preventive measures for preventing the occurrence and spread of epidemic of the infectious disease COVID-19, the legality of the said data processing is assessed based on provisions of LPDP.*

Taking into account all the facts relevant for deciding in this supervision procedure, as well as the stated legal provisions, it was found that the Data Controller had performed the recording and keeping of the data on measured body temperature of employees, as a type of health data, *contrary to Article 17 of LPDP for processing special types of personal data, and without valid legal basis under Article 12, paragraph 1 of LPDP, therefore violating the principles of legality, fairness and transparency under Article 5, paragraph 1, item 1) of LPDP by performing the said data processing.*

In accordance with the established facts and the legal basis under Article 79, paragraph 2, items 4) and 6) of LPDP, the Commissioner had reached a Decision, by which he ordered the Seismological Survey of Serbia, as a controller of personal data, to: 1. harmonize the data processing operations with the provisions of LPDP; 2. within 5 days from the day of receipt of the Decision, delete all the collected and stored data on the measured body temperature of employees and other hired persons with the purpose of preventing the spread of COVID-19, i.e. the application of preventive measures for preventing the occurrence and spread of the infectious disease COVID-19, and to, within the same deadline, inform the persons from whom the data were collected about the deletion of such data. The Commissioner also forbade the Data Controller to process personal data, namely to perform the collection and storage of data on measured body temperature of employees and other hired persons with the purpose of preventing the spread of COVID-19, i.e. the application of preventive measures for preventing the occurrence and spread of the infectious disease COVID-19.

#### **4. “Red Cross of Serbia” – violation of LPDP by collecting and publishing the photos of employees, volunteers, and humanitarian aid beneficiaries on the official website and their “Facebook” page**

The Commissioner had, through authorized persons and in accordance with Article 78, paragraph 2 of LPDP, performed the supervision of application of LPDP by the data controller, and based on the information he acquired from his insight into the official website and “Facebook” page of the Data Controller, as well as based on his insight into the letter of the Red Cross of Serbia No. 0103/JR/no:1240/1 of 18 June 2019, which was obtained by the

Commissioner in performing supervision procedure in respect of the Red Cross of Serbia – Red Cross of Medveđa in the case 072-04-2647/2019-07 of 17 September 2019. By gaining insight into the official website and the "Facebook" page of the Data Controller at the following internet addresses: [www.redcross.org.rs](http://www.redcross.org.rs), <https://bit.ly/2pwWdk8> and <https://www.facebook.com/redcrossofserbia/>, it was found that these contain a large number of photographs and videos in which natural persons can be seen. Moreover, by insight into the letter of the Red Cross of Serbia sent to the Red Cross of Vojvodina and all Red Cross organizations in cities and municipalities of the Republic of Serbia where the programme of assistance in the form of provision of family food and hygiene packages is being implemented, it was found that the Secretary General of the Red Cross of Serbia had issued an order to take photos of humanitarian aid beneficiaries at the time of receipt of the aid packages, and for these photographs to be made available later, i.e. submitted to the Ministry of Labour, Employment, Veteran and Social Affairs, as well as to the Cabinet of the President of the Republic of Serbia.

*Collecting, publishing and making available, i.e. forwarding* the photographs of employees, volunteers and humanitarian aid beneficiaries is an act of personal data processing; hence, it is subject to the general principles of personal data processing stipulated by provisions of Article 5, as well as the lawfulness of processing stipulated by provisions of Articles 12 and 14 of this law.

Regarding the statement by the data controller, in order to verify the allegations related to the legal basis of the personal data processing in question, the provisions of the Law on the Red Cross of Serbia<sup>68</sup> have been inspected, to which the data controller referred, *inter alia*, when it was determined that this law did not contain the *legal authorization* for the subject personal data processing performed by collecting, publishing and forwarding photographs of the employees, volunteers and humanitarian aid beneficiaries to the Cabinet of the Ministry of Labour, Employment, Veteran and Social Affairs, the Cabinet of the Ministry of Health, the Cabinet of the Ministry of Finance, the Cabinet of the Ministry of Public Administration and Local Self-Government, as well as to a large number of persons employed at these ministries.

Moreover, when it comes to the provisions of the Cooperation Agreement No. 401-01-490/2019-09 from 10 April 2019, concluded between the Red Cross of Serbia and the Ministry of Labour, Employment, Veteran and Social Affairs, the Statute of the Red Cross of Serbia, Guidelines for editing and communication on social networks, acts of the International Committee of the Red Cross, and contractual obligations concluded by the Red Cross of Serbia with domestic and foreign donors, to which the data controller refers, it was found that these also cannot represent a legal basis for collecting, publishing and forwarding photographs to the above-mentioned authorities, because they can only regulate certain aspects of personal data processing, but can not establish an authorization for processing, because the legal authorization for data processing is established in accordance with the provisions of Article 12 of LPDP.

Furthermore, when it comes to the consent of the person and notification which the data controller states as the lawful legal basis for the subject processing, it was found that this consent cannot constitute a lawful legal basis in terms of the provisions of Article 4, paragraph 1, item 12) and Article 15 of LPDP, bearing in mind that the consent and notification on taking photographs do not meet the conditions prescribed by the above provisions, which means that, in the instant case, the data controller had violated the provisions of Article 5, paragraph 1, item 1) in conjunction with Article 12, paragraph 1, item 1) of LPDP.

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<sup>68</sup> "Official Gazette of the RS", No. 107/2005

Namely, an expression of willingness without the possibility of its rectification or revocation, without causing legal consequences for the position of that person, cannot be considered as valid consent in terms of this Law, which is especially necessary to keep in mind when it comes to personal data processing of employees by the employer, i.e. on the humanitarian aid beneficiaries, whom are at unequal terms with the provider of humanitarian aid.

When it comes to the purpose of the subject personal data processing, and in regards to the allegations of the data controller who had stated that this is a matter of fulfilling contractual obligations with its donors, hence the transparency and publicity in work, and since Article 5, paragraph 1, item 2) prescribes that data may be collected for purposes which are specifically determined, explicit, justified and lawful, and that personal data must be appropriate, relevant and limited to what is necessary in relation to the purpose of processing, as well as that Article 14, paragraph 2 stipulates that, if the processing referred to in Article 12, paragraph 1, item 3) of this Law is used, the law shall determine the purpose of such processing, and the processing referred to in Article 12, paragraph 1, item 5) of this Law is used, the law shall prescribe that processing is necessary for the purpose of performing the activities in the public interest or performing the legally prescribed powers of the data controller, it follows that the purpose of the processing in question is not in accordance with the provisions of Article 5, paragraph 1, item 2) of LPDP.

In this regard, it was found that the data controller had, by collecting, publishing and forwarding the photographs of the employees, volunteers and humanitarian aid beneficiaries to the Cabinet of the Ministry of Labour, Employment, Veteran and Social Affairs, the Cabinet of the Ministry of Health, the Cabinet of the Ministry of Finance, the Cabinet of the Ministry of Public Administration and Local Self-Government. as well as to a large number of persons employed at the said ministries, conducted the processing of personal data that is contrary to the provision of Article 5, paragraph 1, item 3) because the same purpose (fulfilment of contractual obligations with the donor and transparency and publicity in work) could have been achieved in another way which would pose less risk to the privacy of persons, for example by submitting a report on the distribution of humanitarian aid without photographing the specific persons or by anonymizing or pseudonymizing photographs so that the humanitarian aid beneficiaries can not be identified, by which the data controller could point out that it is applying the principle under Article 5, paragraph 1, item 3) of LPDP.

Therefore, it follows from the aforementioned that the data controller had, by collecting and publishing the photographs of employees, volunteers and humanitarian aid beneficiaries on its official website and its "Facebook" page, as well as by further forwarding of such photographs to the Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Finance, Ministry of Health as well as the Cabinet of the President of the Republic of Serbia, performed data processing contrary to the principle of legality and for a purpose that is not specifically determined, explicit, justified and lawful, as well as that the data were not limited to what is necessary in regards to the purpose of processing, i.e. that it had violated the provisions of Article 5, paragraph 1, items 1-3 of LPDP by the said data processing.

Due to all the above, the Commissioner had issued a Warning to the Association "Red Cross of Serbia", as a controller of personal data, because it had, by collecting and publishing the photographs of its employees, volunteers and humanitarian aid beneficiaries on its official website and its "Facebook" page, as well as by their further forwarding to the Ministry of Labour, Employment, Veteran and Social Affairs, Ministry of Finance, Ministry of Health, as well as the Cabinet of the President of the Republic of Serbia, violated the provisions of Article 5, paragraph 1, items 1-3 of LPDP.

## **5. Republic Geodetic Authority of the Republic of Serbia - violation of LPDP by disclosing data on the health status of 228 employees**

The Commissioner had, via authorized persons and in accordance with Article 78, paragraph 2, performed supervision over the application of LPDP by the Republic Geodetic Authority of the Republic of Serbia, as a controller of personal data, based on the information he had obtained on the basis of a application in which, *inter alia*, it is stated that the personal data for 228 employees (name and surname, data on the health status of such person, as well as the organizational unit in which such person is deployed) are contained in the Decision of the Director of the Republic Geodetic Authority issued following the Decree of the Government of the Republic of Serbia, forwarded by email on 18 March 2020 at 10:29 a.m. to 226 e-mail addresses of employees of the data controller, and in whose attachment was also the said Decision.

In the supervision procedure, by inspecting the content of the said Decision Number 07 No.: 130-7/2020 of 17 March 2020, it was found that item 1) of the enacting terms of the Decision states the following: “[The employees] shall perform the work related to their workplaces outside the official premises of the employer - from home, while the state of emergency is in effect... especially vulnerable persons with established chronic diseases, named in the list which is an integral part of this Decision...”. Also, by inspecting the list of persons, which is provided in the continuation of the submitted Decision, it was confirmed that it contains personal data of 228 persons, as follows: name and surname, information on the health status of such person, as well as the organizational unit in which such person is deployed.

As regards the statement of the data controller, it was found that “the Instruction of the Government of the Republic of Serbia for state administration bodies and Government's services and employees in state administration bodies and government services during the state of emergency caused by the coronavirus from March 2020” could regulate only certain aspects of personal data processing, i.e. that they cannot represent an authorization for processing, in accordance with the provisions of Article 12 of the Law on Personal Data Protection.

Bearing in mind that the data controller has repeatedly stated "*that all employees have given their consent*", it has been pointed out to the data controller that consent to data processing is only one of the six possible legal bases for personal data processing, but that it must be borne in mind that the provision of Article 4, paragraph 1, item 12) of the LPDP provides the definition thereof - that the "consent" of the person who are data subjects is any voluntary, specific, informed and unambiguous expression of willingness of such person by which such person gives his/her consent to processing of personal data related to him/her.

The provisions of Article 15 of LPDP prescribe certain conditions which must be met in order for the processing, which is performed on the basis of data subject's consent, to be considered lawful, which also stipulate that, *inter alia*,: the data controller must be able to indicate that the person has provided its consent to the processing of his/her personal data; if the consent is given in the context of a written statement relating to other matters, the request for consent must be presented in such a way that sets it apart from those other matters, in an understandable and easily accessible form, and using clear and simple words; that prior to giving consent, the data subject must be informed about the right of revocation, as well as the effect of revocation, and that the revocation of consent must be just as simple as giving consent, etc. Moreover, when assessing whether the consent to the processing of personal data is voluntarily given, special attention must be paid to whether the performance of the contract,

including the provision of services, is *conditioned* by giving consent which is not necessary for its performance (Article 15, paragraph 4 of LPDP).

On the other hand, pursuant to the provisions of Article 17, paragraph 1 of LPDP, the processing by which the racial or ethnic origin, political opinion, religious or philosophical beliefs or trade union membership are revealed, as well as the processing of DNA data, biometric data for the purpose of unique identification, *data on health status* or data on sexual life or sexual orientation of a natural person, is prohibited. Exceptionally, pursuant to paragraph 2 of the said Article of LPDP, the processing referred to in paragraph 1 is allowed in the following cases: 1) when the data subject has given explicit consent to data processing for one or more processing purposes, unless the law prescribes that the data processing needs not be performed on the basis of consent; 2) when data processing is necessary for the purpose of fulfilling obligations or applying the legally prescribed powers of the data controller or data subject in the field of work, if such processing is prescribed by law or by a collective agreement prescribing the application of appropriate measures for protecting fundamental rights, freedoms and interests of the data subject; 3) when data processing is necessary in order to protect the vital interests of the data subject or another natural person, if the data subject is physically or legally unable to give consent; 4) when data processing is performed within the registered activity and with the application of appropriate protection measures by the endowment, foundation, association or other non-profit organization with political, philosophical, religious or trade union goals, provided that the data processing refers exclusively to the members or former members and organizations or persons who have regular contacts with it in relation to the goals of the organization, as well as that personal data are not disclosed outside that organization without the consent of data subjects; 5) when the personal data, which the data subject has obviously made publicly available, are being processed; 6) when data processing is necessary for the purpose of submitting, realizing or defending a legal claim or in case when the court acts within its jurisdiction; 7) when data processing is necessary in order to achieve a significant public interest determined by law, if such data processing is proportionate to achieving the goal, while respecting the essence of the right to personal data protection and if the application of appropriate and special measures to protect basic rights and interests of data subjects is ensured; 8) when data processing is necessary for the purpose of preventive medicine or occupational medicine, in order to assess the work ability of employees, medical diagnostics, provision of health care or social care services, or management of healthcare or welfare systems, based on law or contract concluded with a healthcare worker, if data processing is performed by or under the supervision of a healthcare professional or other person who has the obligation to maintain professional secrecy prescribed by law or professional rules; 9) when data processing is necessary in order to achieve the public interest in the field of public health, such as protection from serious cross-border threats to public health or ensuring high standards of quality and safety of health care and medicines or medical devices, based on the law providing appropriate and special measures for protection of the rights and freedoms of data subjects, in particular with regard to professional secrecy; 10) when data processing is necessary for the purposes of archiving in the public interest, for the purposes of scientific or historical research and for statistical purposes, in accordance with Article 92, paragraph 1 of this Law, if such processing is proportionate to achieving the intended goals, respecting the essence of the right to personal data protection and if the application of appropriate and special measures for protecting the basic rights and interests of data subjects is ensured.

In accordance with the aforementioned, and bearing in mind that the data controller had provided no evidence that the employees gave their consent in accordance with the provisions

of Article 4, paragraph 1, items 12) and 15) of LPDP, nor to the existence of conditions for applying exceptions under Article 17, paragraph 2 of the said law, it follows that the data processing in question has been performed contrary to the provisions of Article 17 of LPDP.

Article 42, paragraph 1 of LPDP stipulates that, taking into account the level of technological achievements and costs of their application, the nature, scope, circumstances and purpose of data processing, as well as the probability of risk and the level of risk in respect of the rights and freedoms of natural persons stemming from data processing, the data controller is obliged, when determining the method of data processing as well as during the processing, to: 1) apply appropriate technical, organizational and personnel measures, such as pseudonymization, aimed at ensuring the effective application of the principles of personal data protection, such as data minimization; 2) ensure the application of the necessary data protection mechanisms during data processing, in order to meet the conditions for data processing stipulated under this Law, as well as to protect the rights and freedoms of the data subjects. Paragraph 2 of the same Article stipulates that the data controller is obliged to constantly apply the appropriate technical, organizational and personnel measures in order to ensure that only those personal data, which are necessary for the realization of each individual purpose of processing, are always processed, and that this obligation is applied in respect to the number of collected data, the scope of their processing, the period of their storage and their availability. Pursuant to paragraph 3 of this Article, the LPDP, by measures referred to in paragraph 2 of this Article, must always ensure that personal data cannot be made available to an unlimited number of natural persons without the participation of a natural person.

Moreover, Article 50, paragraphs 1 and 2 of LPDP stipulate that, in accordance with the level of technological achievements and the costs of their application, their nature, scope, circumstances and purpose of data processing, as well as the probability of risk and the level of risk in respect to the rights and freedoms of natural persons, the data controller and data processor shall implement appropriate technical, organizational and personnel measures to achieve an appropriate level of security as regards the risk, and that, where appropriate, the measures in question shall include in particular: 1) pseudonymization and cryptosecurity of personal data; 2) ability to ensure lasting confidentiality, integrity, availability and resilience of processing systems and services; 3) ensuring the re-availability and access to personal data in the event of physical or technical incidents as soon as possible; 4) the procedure of regular testing, evaluation and assessment of the effectiveness of technical, organizational and personnel security measures in regards to data processing.

Pursuant to the provisions of Article 91 of LPDP, the provisions of the law governing labour, employment and collective agreements shall apply to the processing of data in the field of labour and employment, along with applying the provisions of this law. If the law governing labour and employment or the collective agreement contain provisions on the protection of personal data, special measures must be prescribed in order to protect personal dignity, legitimate interests and fundamental rights of the data subject, especially in relation to transparency of data processing, exchange of personal data within a multinational company or within a group of economic entities, as well as a system of supervision in the work environment.

Therefore, the provisions of the law governing the field of labour and employment provide the data controller, as an employer, the legal authority to process personal data of its employees, within the records kept in the field of labour, including records on employees containing data on their health status, i.e. on the health of an employee, for the purpose determined by law, as well as for the purpose in the instant case - the delivery of a decision to employees which regulates their employment status during a state of emergency.

However, taking into account the cited principles of personal data processing, as well as the provisions of Article 42 of LPDP, the data controller was obliged to apply the appropriate



technical, organizational and personnel measures aimed at ensuring the effective application of personal data protection principles, such as data minimization, as well as to ensure that only those personal data which are necessary for the realization of each individual purpose of processing are always processed, given that the subject processing in the form of disclosure by transfer, i.e. by submitting the data on the health status of employees by e-mail, has made such data available to third parties, in this case to all persons to whom a decision was delivered by e-mail, the integral part of which was the list of employees with the relevant personal data.

In this regard, the data controller was instructed that the purpose of data processing, in the instant case, could have been achieved in another way which would pose a lower risk to the privacy of persons, i.e. by protection of medical data/data on health status of employees (by anonymization), since by providing other data (name, surname and job-work unit to which the employee is assigned) it could be unambiguously established to which person the decision in question should be delivered by e-mail, and that the data controller could point out that he applies the principles of Article 5 of LPDP by undertaking such action, in particular the principles of data minimization and restrictions in regards to the purpose of data processing.

Special attention, when it comes to security and protection of personal data of potentially vulnerable categories as regards health status (pregnant women, persons with chronic illnesses, persons with special needs, etc.), is imposed by the fact that Data Controller, in the then current situation, had processed a large number of personal data, of which certain personal data, in accordance with the provisions of Article 17 of LPDP, fall into the category of special types of data, which are data relating to the health status of persons which, due to their nature, require a higher level of protection and safety in relation to the risk. In assessing the appropriate level of security, special account shall be taken of the risks of data processing, in particular the risks of accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access to personal data transmitted, stored or otherwise processed (Article 50 of LPDP).

Therefore, bearing in mind that the data controller is obliged to undertake appropriate measures to protect the personal data it processes, which includes, *inter alia*, preventive action, adoption of internal acts and procedures, acquainting employees with such acts, as well as undertaking all the necessary technical and organizational measures for the protection of data from unauthorized disclosure or access to transmitted personal data, one of the key elements for establishing an appropriate level of security of data processing is exactly the training of employees in regards to their obligations, both in terms of security and in terms of personal data protection.

Due to all the aforementioned, the Commissioner had issued a Warning to the Seismological Survey of Serbia, as the controller of personal data, because it had disclosed the data on health/health status of 228 persons employed by the data controller, contained in the list which is an integral part of the Decision, by sending it via e-mail to 226 e-mail addresses of employees, thereby making them available to these persons, in which way it had violated: 1. the provisions of Article 42, paragraphs 1-3 of LPDP, as well as 2. the provisions of Article 17 of LPDP.

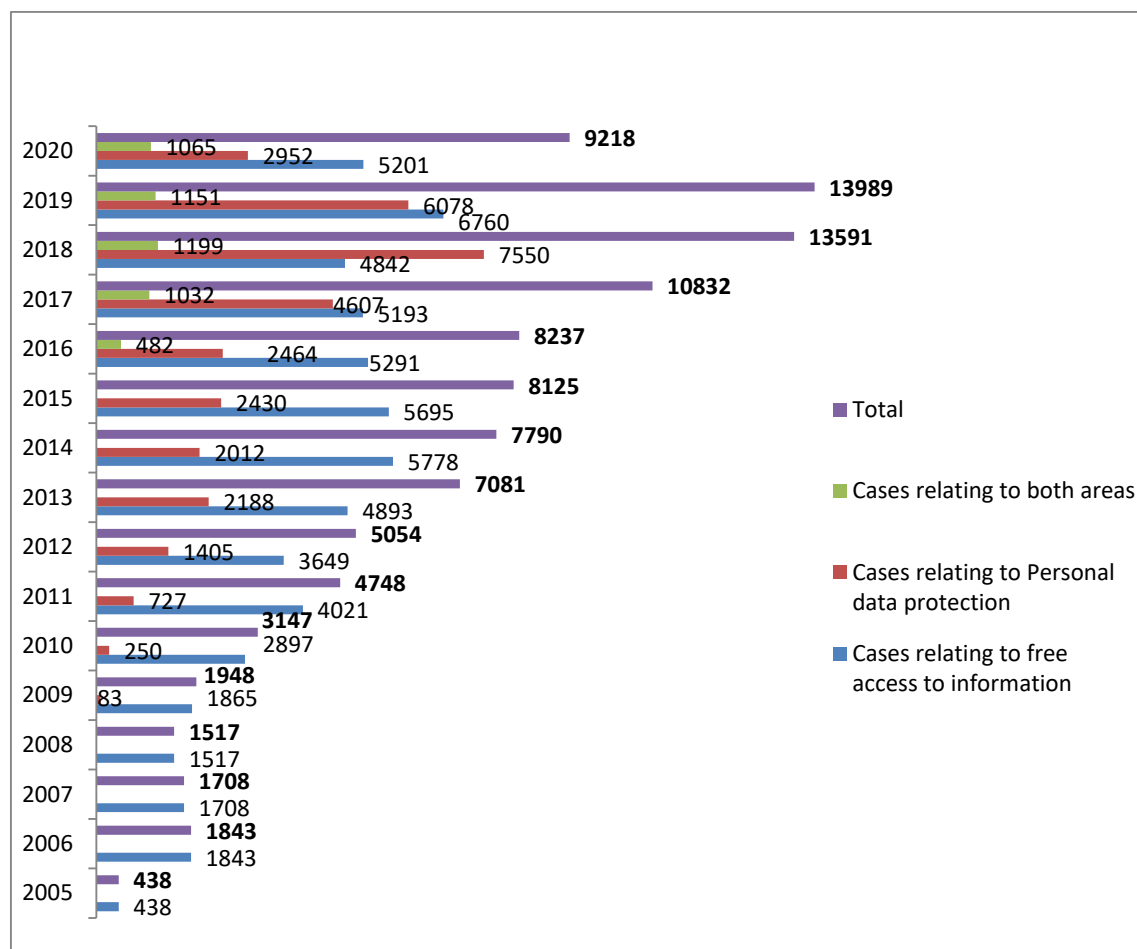
### 3. ACTIVITIES OF THE COMMISSIONER

#### 3.1. OVERVIEW OF OVERALL ACTIVITIES

In 2020, the Commissioner received a total of 9,218 cases, of which 5,201 related to free access to information, 2,952 to personal data protection, and 1,065 to both areas of the Commissioner's activities.

In 2020, the Commissioner had a total of 12,531 cases pending, given that 3,313 unresolved cases have been carried over from the previous period. Of that number, about 73.6%, or more precisely 9,218 cases, have been received by the Commissioner in 2020 (5,201 - freedom of access to information, 2,952 - personal data protection, and 1,065 - both areas of activity of the Commissioner).

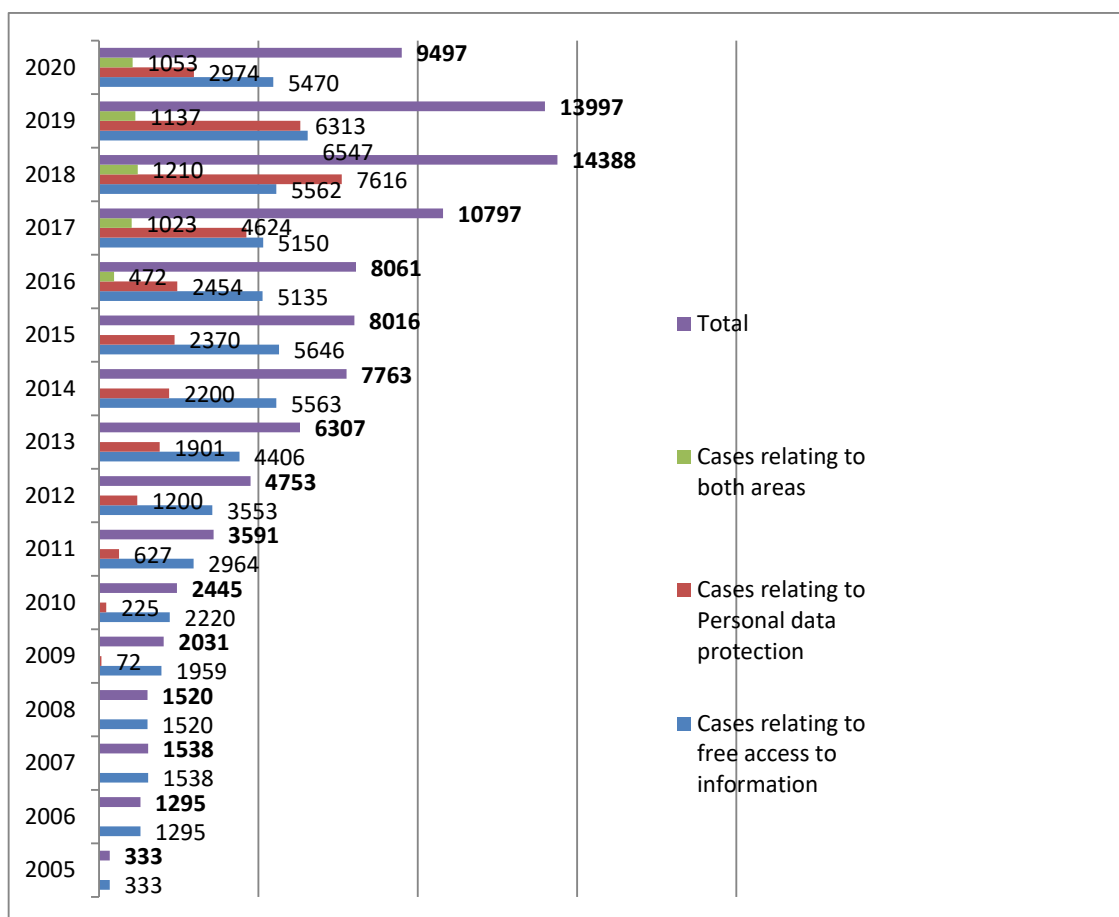
*Graph No. 1 - Number of received cases by years*



During 2020, the Commissioner completed the procedure in 9,497 cases, of which 5,470 in the area of access to information, 2,974 in the area of personal data protection, and

1,053 cases related to both areas. A total of 3,034 cases, for which the procedure has not been completed, have been carried over to 2021. (2,828 - freedom of access to information, 159 - personal data protection, and 47 - both areas of activity).

**Graph No. 2 - Number of resolved cases by years**



**Table 1 - Activities of the Commissioner in 2020**

<i>Most of the activities of the Commissioner in 2020 were related to:</i>		
1.	resolving cases on complaints/petitions due to violation of the right to free access to information and the right to personal data protection.	A total of <b>3.742</b> complaints/petitions were resolved (3.584 complaints - freedom of access to information, as well as 149 petitions - personal data protection, and 9 complaints - personal data protection).
2.	Initiation of supervision procedure over the implementation and execution of LPDP	The Commissioner had initiated <b>223</b> procedures for supervision over the implementation and execution of LPDP, as follows: 151 upon applications, 7 after notifying the Commissioner of the data breach, and 19 on other grounds. Of the 222 inspections initiated, 46 were regular and 177 were extraordinary

3.	End of supervision	<p>The Commissioner had completed a total of <b>205</b> inspections, of which 200 inspections have been initiated under the new LPDP, while the remaining 5 have been initiated under the old LPDP.</p> <p>Supervision procedures were completed as follows:</p> <ul style="list-style-type: none"> <li>- 6 cases have been completed with a motion for initiating misdemeanour proceedings,</li> <li>ses have been completed with filing criminal charges,</li> <li>1 case has been forwarded to the Ministry of Interior for further action</li> </ul> <p>165 cases have been completed by finding that the measures reached by the Commissioner have been implemented following the supervision,</p> <p>in 30 cases, it has been found that there was no violation of LPDP, hence they have been completed by providing an official note</p>
4.	Opinions on drafts and proposals of laws and other regulations	The Commissioner gave <b>22</b> opinions on drafts and proposals of laws and other regulations that were sent to state bodies, at the request of the bodies or on the initiative of the Commissioner, of which 3 opinions were provided from the point of view of the Commissioner's general competence.
5.	Providing assistance to natural and legal persons and authorities, i.e. data controllers in exercising their rights or in the correct application of LFAIPI and LPDP, by clarifying unclear issues and procedures	The Commissioner gave <b>825</b> opinions and responses on the proper application of both laws, of which 574 on the application of LPDP, 1 opinion on the Code of Conduct for more efficient application of LPDP (Article 59 of LPDP), 12 preliminary opinions of the Commissioner (Article 55 of LPDP), and 238 on application of LFAIPI. The Commissioner had published 2 analyses on his website that refer to the most frequently asked questions regarding the Data Protection Officer and regarding the legitimate interest as a legal basis for data processing.
6.	Providing assistance to citizens regarding their requests for free access to information or protection of personal data which were given to the Commissioner by bodies that do not possess the requested information, so that their requests are addressed to those from whom they can obtain the necessary information	<b>614</b> cases
7.	Other communications of advisory and instructive nature with the authorities regarding the application of LFAIPI, regarding the application of regulations on improving the publicity of work, on submitting the annual report to the Commissioner and drafting and publishing an Information booklet on work, which contribute to the continuous improvement of proactive publication of	<b>729</b> cases

	information, the increase in the scope of published information on work on the websites of the body, and a more active role of the body in enabling the exercise of rights	
8.	Activities related to the process of Serbia's accession to the European Union	The Commissioner had submitted <b>26</b> annexes and reports to: <ul style="list-style-type: none"> <li>- The Ministry of Justice,</li> <li>- The Ministry of Public Administration and Local Self-Government,</li> <li>- The Ministry of European Integration,</li> <li>- The Council for Implementation of the Action Plan for Chapter 23.</li> </ul>
9.	Public announcements by which the Commissioner addressed the public	<b>56</b> times
10.	Activities related to the provision information on the Data Protection Officer	<b>A total of 947</b> data controllers have submitted records on the Data Protection Officer, of which 506 were authorities.
11.	Checklist referral	A checklist was sent to the addresses of <b>484</b> data controllers, of which a risk assessment was performed in 387 cases, with 368 data controllers submitting a completed checklist to the Commissioner on the basis of which the Commissioner had assessed the level of risk concerning personal data processing, while 19 data controllers submitted a completed checklist to the Commissioner on their own initiative, on the basis of which the Commissioner had also the level of risk concerning personal data processing.
12.	Acting on requests for free access to information of public importance	<b>173</b> cases related to the handling of requests for free access to information of public importance related to the work of the Commissioner.
13.	Activities related to the implementation of the procedure of enforcement of the Commissioner's decisions	A total of <b>120</b> cases have been completed and a total of <b>223</b> acts have been passed.
14.	Responses to the Administrative Court regarding the lawsuits in administrative disputes against the decisions of the Commissioner and failure to resolve the appeals within the legal deadline, the so-called "silence of administration".	<b>132</b> responses
15.	Responses to citizens' applications related to issues concerning the exercise of rights in the field of personal data protection and free access to information, as well as those that are not within the competence of the Commissioner	<b>604</b> responses
16.	Submission of the case files to the Administrative Inspection on the need to	<b>369</b> cases

	perform supervision in situations in which the authorities have not acted upon the decisions reached by the Commissioner	
17.	Invitations from citizens, journalists and other media representatives, as well as employees of government bodies, to consult on the issues related to the exercise of rights within the competence of the Commissioner.	The Commissioner had received a total of <b>17,054</b> invitations

**Table 2 - Structure of resolved cases**

<b>No.</b>	<b>Free access to information - a total of 5,470 resolved cases</b>	<b>No. of resolved cases</b>
1.	Complaints	3,584
2.	Motions for administrative enforcement	120
3.	Motions for retrial	2
4.	Motions for postponing enforcement	2
5.	Supervision <i>ex officio</i> in accordance with LGAP	1
6.	Opinions	238
7.	Measures for improving the transparency of work	729
8.	Applications	47
9.	Responses to lawsuits	109
10.	Requests for reviewing the decision of the Administrative Court	20
11.	Initiatives for filing Requests for reviewing the decision of the Administrative Court	4
12.	Referred requests	435
13.	Requests for information on the work of other bodies	179

**Tabena 3- Structure of resolved cases**

<b>No</b>	<b>Personal data protection - a total of 2,974 resolved cases</b>	<b>No. of resolved cases</b>
1.	Inspection supervision	205
2.	Petitions	149
3.	Complaints	9
4.	Responses to lawsuits	23
5.	Notices on breaches regarding personal data	30
6.	Applications	371
7.	Requests for data transfer	3
8.	Request for approval of binding corporate rules	1
9.	Opinions	574
10.	Opinion to Code of Conduct (Article 59)	1
11.	Preliminary opinions (Article 55)	12
12.	Analyses	3
13.	Records on the requests for access to retained data	143
14.	Checklists	503
15.	Records on Data Protection Officers.	947

**Table 4 - Structure of resolved cases**

<b>No.</b>	<b>Both areas - a total of 1,053 resolved cases</b>	<b>No. of resolved cases</b>
1.	Public statements	56
2.	Requests for information provided by the Commissioner	173

3.	Requests related to information on the case	134
4.	Application for certificate - official records	1
5.	Request for reimbursement of expenses	1
6.	Cases related to European integration	26
7.	Cooperation at the domestic level	246
8.	Cooperation at the international level	70
9.	Opinions to draft laws and other bylaws	22
10.	Initiatives and proposals	16
11.	Reports	66
12.	Applications	186
13.	Other communications with authorities, data controllers and the public	56

### **3.1.1. Acts, opinions, initiatives and proposals of the Commissioner**

#### ***3.1.1.1. Acts of the Commissioner***

In accordance with the obligations arising from LPDP, the Commissioner had adopted the following bylaws:

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li><b>1. Decision on Determining Standard Contractual Clauses</b></li> <li><b>2. Decision on Amendments to the Decision on the List of Types of Personal Data Processing Operations for Which an Assessment of the Impact on the Personal Data Protection Must be Performed and the Opinion of the Commissioner for Information of Public Importance and Personal Data Protection Must be Sought</b></li> </ol> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



### ***3.1.1.2. Opinions of the Commissioner***

#### **1) Opinions on laws**

During 2020, the Commissioner gave **8 opinions on the draft laws**, all at the request of the authorities. Three opinions were given from the aspect of the general competence of the Commissioner, one opinion was given from the aspect of LFAIPI, three opinions were given from the aspect of LPDP and one opinion from the aspect of both laws.

1. The Ministry of Mining and Energy has been provided with an opinion on the Draft Law on Efficient Use of Energy from the aspect of LPDP and LFAIPI;
2. The Ministry of Environmental Protection has been provided with an opinion on the Draft Law on Climate Change from the aspect of LFAIPI;
3. The Ministry of Finance has been provided with an opinion on
  - the Draft Law on Games of Chance, from the aspect of LPDP;
  - Draft Law on the Budget of the Republic of Serbia for 2020, from the aspect of the Commissioner's competence;
  - Draft Law on Amendments to the Budget Law of the Republic of Serbia for 2020, from the aspect of the Commissioner's competence;
  - Draft Law on Amendments to the Law on Prevention of Money Laundering and the Financing of Terrorism, from the aspect of LPDP;
4. The Ministry of Labour, Employment, Veteran and Social Affairs has been provided with an opinion on the Draft Law on Social Cards, from the aspect of LPDP;
5. The Public Policy Secretariat of the Republic of Serbia had been provided with an opinion on the Draft Law on the Register of Administrative Procedures, from the aspect of the Commissioner's competence.

#### **2) Opinions on other general acts**

During 2020, the Commissioner gave **14 opinions on other general acts**, of which 1 opinion on his own initiative, and 13 at the request of the authorities.

1. The Government has been provided with an opinion on the Draft Conclusion on the Establishment of a Temporary Project – Convenience card “For our heroes”;
2. The Ministry of Education, Science and Technological Development has been provided with an opinion on the Draft Strategy for the Development of Artificial Intelligence in the Republic of Serbia;
3. The Ministry of Trade, Tourism and Telecommunications has been provided with an opinion on:
  - Draft Regulation on the safety and protection of children when using Information and Communication Technologies,
  - Draft Regulation on amendments to the Regulation closely regulating the conditions that must be met by electronic identification schemes for certain levels of reliability,

4. The Ministry of Public Administration and Local Self-Government has been provided with an opinion on:
  - Draft Decree on office operations of public administration bodies,
  - Draft Public Administration Reform Strategy for the period 2021-2030,
  - Agreement on cooperation between the Ministry of Public Administration and Local Self-Government and the Citizens' Association CRTA, Methodology for verification of the Single Electoral Roll and Impact Assessment of personal data processing within the verification of the electoral roll on personal data protection, in order to obtain the Commissioner's opinions on their compliance with the provisions of LPDP,
  - Draft Public Administration Reform Strategy for the period 2021-2030, with the Action Plan for the period 2021-2025 (on two occasions).
5. The Ministry of Health has been provided with an opinion on the Draft Conclusion of the Government on the consent that the PE "Post of Serbia" conducts invitation of participants for the needs of organized screening of malignant diseases;
6. The Ministry of Justice has been provided with an opinion on the Draft Revised Action Plan for the Negotiating Chapter 23: Judiciary and Fundamental Rights;
7. The Ministry of Interior has been provided an opinion on the Draft Rulebook on the manner of recording in a public place and the manner of announcing the intention to record
8. The Office for Information Technologies and eGovernment has been provided with an opinion on the Draft Government's Conclusion regarding the establishment of a software solution for mobile devices - *CovSignal* application;
9. The Republic Geodetic Authority was provided with an opinion on the Proposal of the Decree on the implementation rules for metadata of the National Spatial Data Infrastructure;
10. The Statistical Office of the Republic of Serbia had been provided with an opinion on the Draft Decision on the Programme of Official Statistics for the period 2021 to 2025.

### **3) Opinions in regards to application of LFAIPI**

During 2020, the Commissioner provided a total of 574 reasoned opinions regarding the application of LPDP, of which: 300 opinions to the citizens, attorneys and media, 13 to NGOs and other associations, political parties and trade unions, 99 to legal entities, 142 to state bodies, local self-governments, healthcare and social welfare institutions, educational institutions and public enterprises, and 20 to others (mostly managers of housing communities).

In 2020, in accordance with Article 59 of the LPDP, the Commissioner also provided 1 opinion to the Association of Serbian Banks on the submitted Draft Code on Personal Data Protection.

During 2020, the Commissioner had also given 12 preliminary opinions pursuant to Article 55 of LPDP regarding the Impact Assessment on personal data protection. Opinions have been provided to the authorities (6), public enterprises (1), healthcare institutions (2), and private companies (3).

#### ***3.1.1.3 Initiatives and proposals***

The Commissioner's initiatives and proposals in 2020 include the following:

1. The following was submitted to the Government:

- Proposal to harmonise the existing Strategy on Personal Data Protection from 2010 with the LPDP and the current situation, to adopt a new Action Plan for the implementation of this Strategy, and to form a Special Working Body which would monitor the implementation of the said Strategy and Action Plan. In the same letter, the Commissioner expressed his disagreement with the provision of item 4 of the Proposal of the Government's Decision on the formation of the Council for Monitoring the Implementation of LPDP, according to which the representative of the Commissioner's Office should be one of the members of this Council, due to numerous listed tasks of the said Council which were already defined in LPDP as tasks performed by the Commissioner.
  - The initiative to amend the Decision on the List of States, Parts of Their Territories or One or More Sectors of Certain Activities in Those States and International Organizations Considered to Provide an Appropriate Level of Personal Data Protection, on the occasion of the judgment of the European Court of Justice which declared the decision of the European Commission 2016/1250 of 12 July 2016 on the adequacy of protection under the EU-U.S. Privacy Shield mechanism as invalid. As a result, all transfers of personal data from the European Union to the United States, which were based on the Privacy Shield mechanism, are considered illegal following the court decision in question.
2. On the occasion of unequal treatment and case-law of the Administrative Court as regards the cases deciding on the costs of proceedings on appeals by appellants-information seekers, the Commissioner had submitted an initiative to convene a session of the Case-Law Department and sessions including all the judges of the Administrative Court, in order to harmonise the case-law of the Court, which would prevent the Court from acting differently in the same legal and factual situation.
  3. On this same issue, the Commissioner had, on four occasions, sent an initiative to the Republic Public Prosecutor's Office to submit a request for review of a decision of the Administrative Court in Belgrade to the Supreme Court of Cassation. The initiatives were not adopted because the Public Prosecutor's Office considers that the conditions prescribed by law have not been met.
  4. The Commissioner had sent a letter of support to the EU Delegation to the Republic of Serbia in respect of the Share Foundation's Project "Privacy Training Centre: Putting Personal Data Protection into Practice".

### **3.1.2. Reporting**

As part of fulfilling his legal obligations, the Commissioner receives reports, i.e. documentation for preparing reports from the authorities, but also submits his reports, i.e. attachments with the reports submitted to the authorities.

Regarding the reports, i.e. documents for preparing reports received by the Commissioner from the authorities, it should be noted that, in accordance with Article 130a) of the Law on Electronic Communications<sup>69</sup>, the Commissioner receives reports, i.e. records on access to retained data from electronic communications operators. The subject records for

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<sup>69</sup> "Official Gazette of the RS", No. 44/2010, 60/2013 - Decision of the CC, and 62/2014 and 95/2018 - other law

the previous year were submitted by 21 electronic communications operators to the Commissioner.

In accordance with the provision of Article 43 of LFAIPI, state bodies are obliged to submit to the Commissioner the annual reports on the actions undertaken by these bodies, undertaken for the purpose of implementing LPDP. Of 3,800 of these bodies, 1,498 have submitted the subject reports for the previous year to the Commissioner.

The Commissioner submits the Annual report on his work to the National Assembly of the Republic of Serbia and publishes it on his website. Other reports, i.e. Annexes to the reports that the Commissioner submits to the authorities, primarily refer to the realization of Serbia's European Integration processes, and these were the following reports submitted during 2020:

- **To the Ministry of Justice:** Comments on the Draft Minutes from the 6th Meeting of the Sub-committee on Justice, Freedom and Security; Report for the fourth quarter of 2019 on the implementation of the National Programme for the Adoption of the Acquis Communautaire (NPAA); the second part of the Annex to the Annual Progress Report of Serbia for 2019; completed Tables of Transitional Criteria for Chapter 23 for the period July-December 2019; additional Annexes for the second part of the Annual Progress Report of Serbia for 2019 within the Commissioner's competence; Tables of Transitional Criteria for the first and second quarter of 2020 within the Commissioner's competence; Report for the first and second quarter of 2020 on the implementation of the NPAA within the Commissioner's competence; Conclusion on the adoption of the revised text of the Action Plan for Chapter 23 for the Commissioner's competence; Answer to the Questionnaire for the purposes of planning and creating trainings related to the process of Serbia's accession to the EU; approval of the Draft Agenda of the 7th Meeting of the Sub-committee on Justice, Freedom and Security; the contribution of the Commissioner for the regular quarterly report on the implementation of the National Programme for the Adoption of the Acquis Communautaire (NPAA); Report on the implementation of the UN Convention against Corruption within the Commissioner's competence; compliance with the text of the Minutes from the meeting of the Sub-committee "Justice, Freedom and Security".
- **To the Ministry of Public Administration and Local Self-Government:** the second part of the Annex for the Annual Progress Report of Serbia for 2019; Comments on the Draft Minutes from the meeting of the Working Group for Public Administration Reform; supplement to the Annex for the second part of the Annual Progress Report for 2019; the second, additional Annex to the second part of the Annual Progress Report of Serbia for 2019 within the Commissioner's competence; Annex to the Final Report, self-assessment of integration of the previous Action Plan for the implementation of the Open Government Partnership Initiative in the Republic of Serbia for the period 2018-2020; contribution of the Commissioner for the 7th Meeting of the Special Group for Public Administration Reform (PAR Special Group); compliance with the texts of the Draft Minutes and Operational Conclusions from the 7th Meeting of the Special Group for Public Administration Reform;
- **To the Ministry of European Integration:** the second part of the Annex for the Annual Progress Report of Serbia for 2019; supplement to the Annex for the second part of the Annual Progress Report for 2019; the second, additional Annex to the second part of the Annual Progress Report of Serbia for 2019 within the

Commissioner's competence; compliance with the text of the Note from the Meeting of the Stabilization and Association Committee held on 17 November 2020;

- **To the Council for Implementation of the Action Plan for Chapter 23.** Report for the 4th quarter of 2019 on the implementation of activities within the Commissioner's competence; Report for the 1st and 2nd quarter of 2020 within the Commissioner's competence;
- **To the Anti-Corruption Agency:** the data of the appointed person authorized to coordinate, monitor the implementation, and report on the implementation of activities under the revised Action Plan for Chapter 23.

A representative of the Commissioner has attended the online 7th meeting of the Stabilization and Association Committee organized by the Ministry of European Integration; online 7th meeting of the Special Group for Public Administration Reform, and the online 7th meeting of the Sub-committee on Justice, Freedom and Security.

### **3.2. ACTIVITIES OF THE COMMISSIONER REGARDING THE PROTECTION AND PROMOTION OF THE RIGHT TO ACCESS INFORMATION**

**In 2020, in the area of free access to information, the Commissioner processed a total of 8.298 cases related to protection and promotion of this right. Of the said amount, 3.097 cases were carried over from 2019, while 5.201 cases were received in 2020. In 2020, the Commissioner resolved a total of 5.470 cases. A total of 2.828 cases remained pending for which the procedure was not completed, so they were carried over to 2021.**

The most common part of the Commissioner's activities in this area was resolving complaints filed by the citizens, journalists and other seekers of information of public importance, due to failure of the authorities to comply with requests for access to information or failure to obtain information.

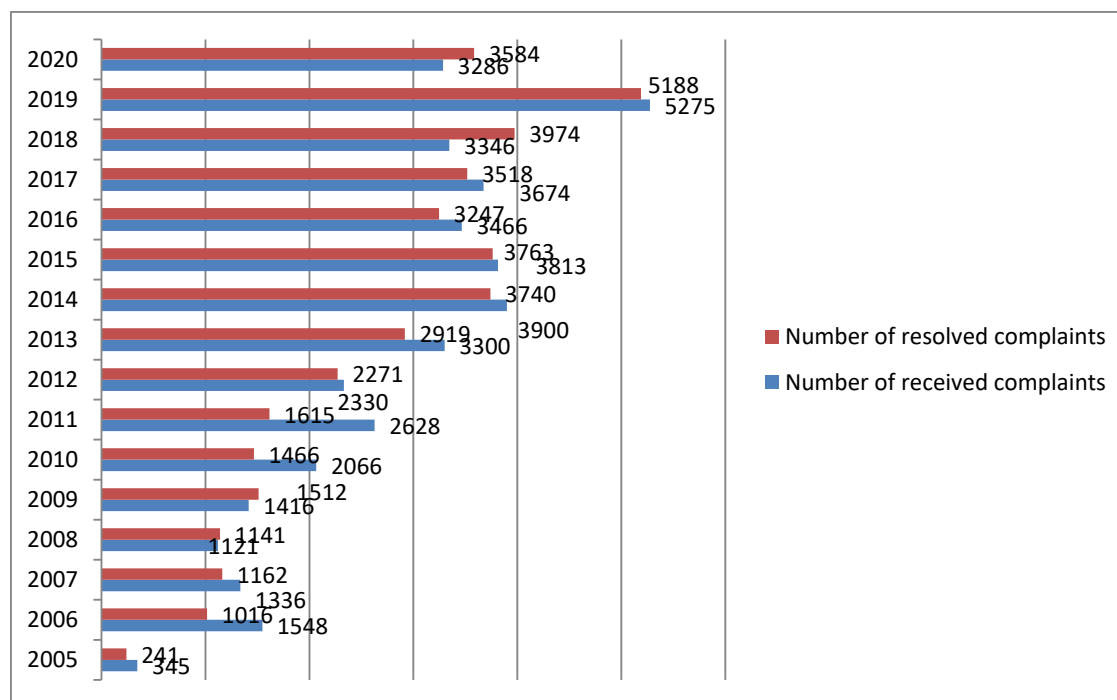
Other activities of the Commissioner in the field of freedom of access to information were related to: providing assistance to citizens in exercising this right via written opinions and clarifications for actions, as well as assisting the authorities in the application of the law, in particular through providing opinions and training; monitoring the implementation of the legal obligation of the authority in terms of proactive publication of information or information booklet on work and undertaking measures in this regard; providing opinions in regards to the adoption of regulations and other legal initiatives; measures related to the administrative execution of decisions; preparation of publications and other ways of publishing views from the Commissioner's practice; participation in conferences and other professional gatherings; communication regarding the requests of information seekers submitted or forwarded to the Commissioner etc. The Commissioner also acted on requests for access to information by which citizens and media representatives requested information of public importance created as result of the Commissioner's work. He had also responded to applications concerning the actions of other bodies and issues that are largely not within the Commissioner's competence.

### 3.2.1. Protection of the right to free access to information by the Commissioner

#### 3.2.1.1. Resolving complaints

The number of complaints which have been formally filed to the Commissioner due to violation of the right to access information of public importance is constantly high, and generally shows a growth tendency year after year, which is shown in the *graph* below this text. **In 2020, a total of 3,286 complaints were received, while 2,783 complaints for which the procedure was not completed were carried over from the previous year.**

**Graph No. 3 - Number of received and resolved complaints by years, for the period 2005-2020**



**In 2020, the Commissioner resolved a total of 3,584 complaints.** The largest number of complaints, **1,908 or 53.23%** of them, were filed due to complete ignoring of the requests filed by information seekers or due to submission of a negative answer, without reaching a decision with reasons for rejecting such requests and instruction on legal remedy, as required by the Law. Merely 787 complaints, or 21.96% of the total number of resolved complaints, were filed against the decisions of authorities rejecting the applicant's request as unfounded with a provided rationale. In 889 cases, i.e. in 24.8% of the total number of resolved complaints in 2020, the authorities did not fully respond to the requests by information seekers.

Complaints were **well founded** in a large number of cases, more precisely in respect of 2,996 complaints or **83.59%** of the total number of resolved complaints (3,584).

In 2020, as was the case in previous years, there was a continuous trend that, in a large number of well-founded complaints, the Commissioner's appeal procedure ended with the **suspension of the procedure, amounting to 1,357 cases (37.86%)** after the authorities have

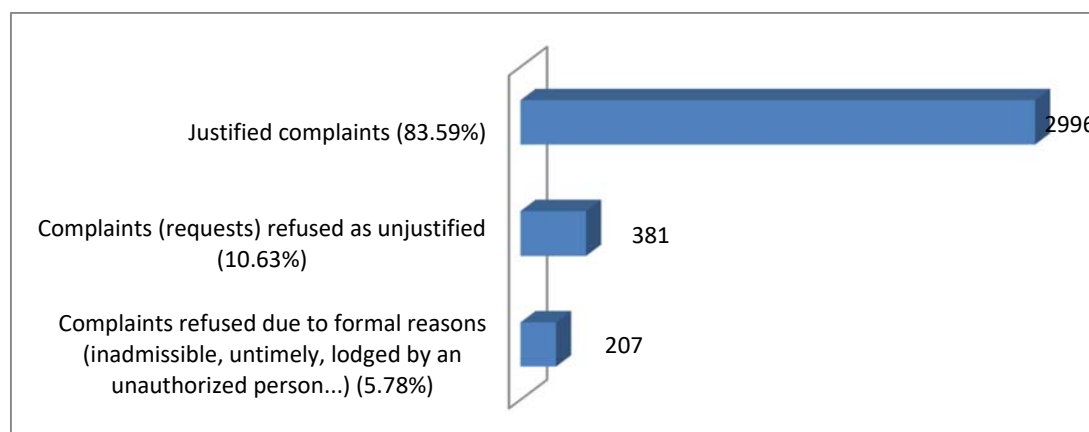
acted upon the request of the seeker in the meantime, upon gaining knowledge of the complaint and the required statement by the Commissioner, but before reaching a decision on the complaint, where in 655 cases the parties formally withdrew their complaint. This still confirms the bad attitude and lack of responsibility of the authorities towards the citizens, non-compliance with the law and irrational or unnecessary engagement of employees and spending of public money, given that there was actually no real reason for the initial denial of information before the complaint was filed.

According to the data of those bodies which have submitted the report to the Commissioner, it can be established that in 2020, a total of 19,387 requests for exercising the right to free access to information of public importance have been submitted to those bodies.

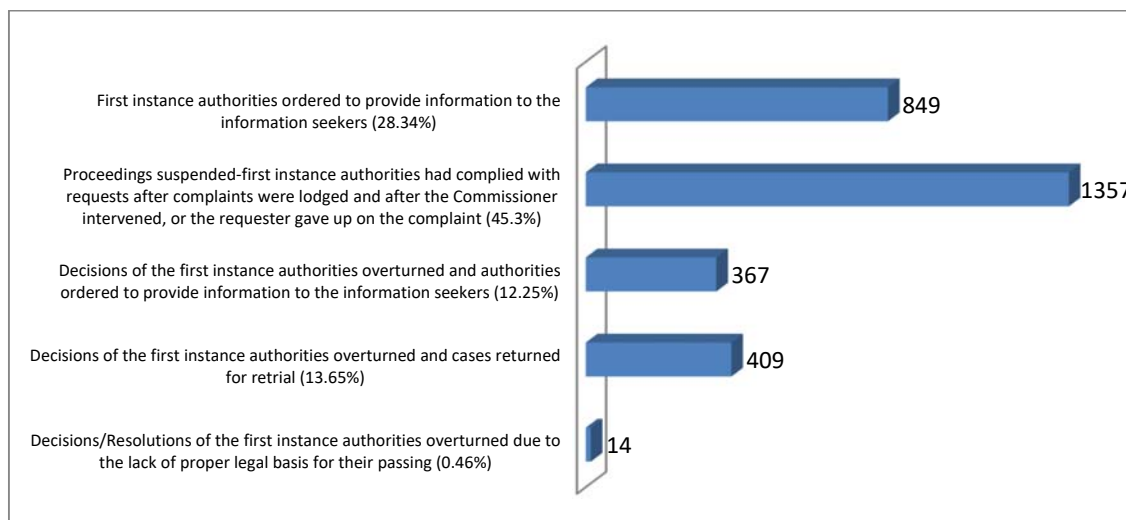
The annual report provided to the Commissioner for 2020 has been submitted by slightly more than one third of the bodies to which this legal obligation applies, i.e. 1,498 of them out of a total of 3,801 bodies who have an obligation to submit a report, with the number of authorities obliged to act upon the requests for access to information being much higher - 11,079.

The data on which information have been the subject of the request in the proceedings in which the complaints of information seekers were filed in 2020, who are the information seekers, against which bodies have the complaints been filed, what reasons have been invoked by the authorities when making decisions to reject the request of information seekers, on the decisions made by the Commissioner deciding on complaints, how the bodies have acted on the decisions reached by the Commissioner, is shown in the graphs below.

***Graph No. 4 - Decisions reached by the Commissioner on complaints***



**Graph No. 5 - Decisions reached by the Commissioner on grounded complaints<sup>70</sup>**



Complainants, i.e. the information seekers in 2020, have mostly been (as was the case in 2019) individual citizens and citizens' associations.

Journalists and media representatives have filed 278 complaints to the Commissioner in 2020 (or 8.46% of the total number of complaints filed in 2020). The largest number of these complaints, more precisely 159 of them, have been filed due to the so-called “silence of administration”. **In 2020, a total of 400 complaints filed by the journalists and media representatives have been resolved (complaints that were carried over from 2019 as unresolved have also been resolved).**

Although the percentage of complaints filed by the journalists, in relation to the total number of all complaints filed in 2020, is 8.46%, when it comes to information about the SARS-CoV-2 virus and COVID-19 disease, the percentage of complaints filed by the journalists in the total number of these complaints is significantly higher. Out of a total of 214 complaints received regarding this information, 59 complaints were made by journalists, which amounts to 27.6%.

The fact that the number of complaints filed by journalists in regards to the topic of COVID-19 and the pandemic is significantly higher (27.6%), as opposed to the share of complaints filed by journalists in the total number of complaints (8.46%), shows how important and of general interest was this topic for the public. Consequently, the Commissioner had, acting with special care and urgency on these complaints, resolved 52 complaints out of 59 complaints received in 2020 without any delay (38.5% of all complaints related to the topic of COVID-19 and the pandemic), while the remaining seven complaints have been resolved during the preparation of this Report.

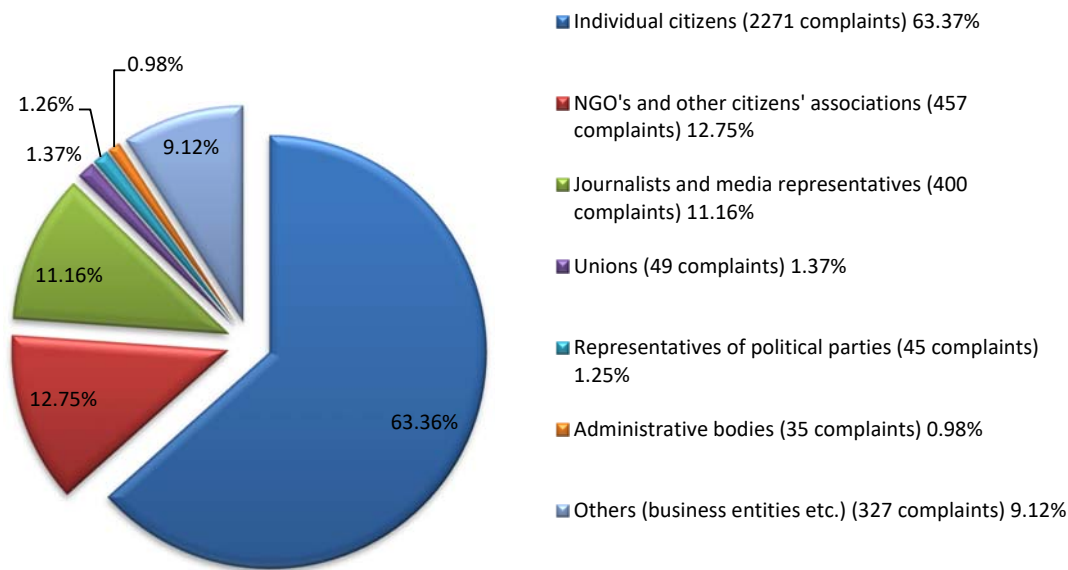
A high percentage of orders from the Commissioner's decisions, issued on complaints by journalists and media representatives to make information available, remain unenforced. Of the 400 resolved complaints filed by journalists and media representatives, 178 have been completed with an order to provide information to the information seeker, upon which the

<sup>70</sup> In a total of 1,216 cases, the Commissioner had ordered the first-instance authorities to submit information to the information seeker, with 1,086 decisions reached in those cases, while 130 have been merged during the resolution.



authorities failed to act in 62 cases, i.e. 34.83%, which is a particularly worrying fact, given the content of information that was the subject of their requests.

**Graph No. 6 - Complainants filing complaints to the Commissioner (resolved complaints)**

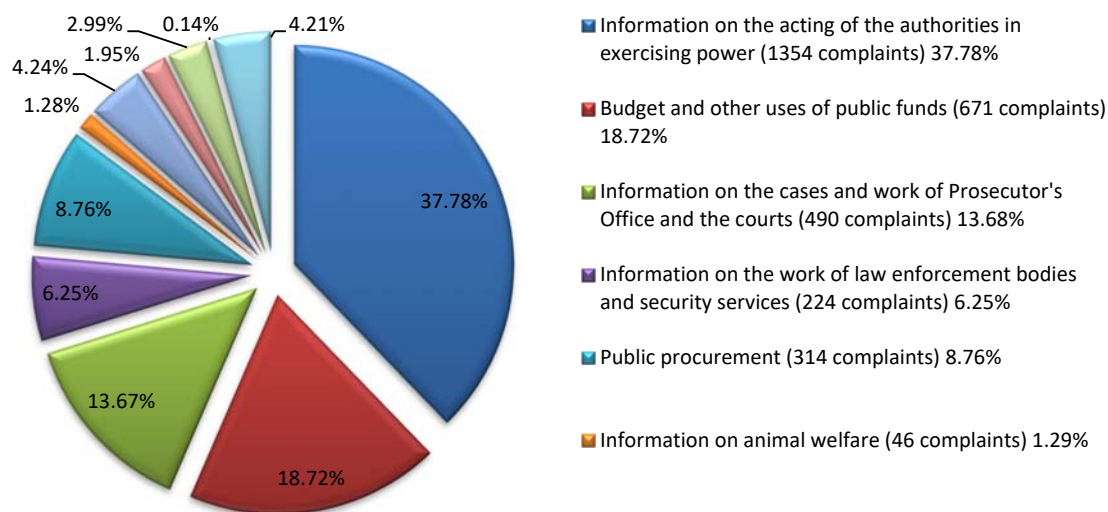


In 2020, the Commissioner had acted with special care and urgency on complaints regarding information about the SARS-CoV-2 virus and COVID-19 disease, having in mind the pandemic situation and the importance of such information. During 2020, The Commissioner had received 214 such complaints, while the largest number of these complaints was filed due to the so-called "silence of administration", as many as 149.

In 2020, a total of 135 such complaints have been resolved, and in as many as 75 cases, the Commissioner had to order the authorities to submit the information they have denied previously. In 43 cases, the procedure has been suspended because the authorities have subsequently acted upon the request after the Commissioner's intervention (of which in 15 cases the complainants have formally withdrew their complaint). In three cases, the decision of the first-instance authority was annulled and the case was returned for retrial, five complaints were rejected for formal reasons, and nine complaints were rejected as unfounded.

The requested information, in most cases (177), referred to jeopardizing and protection of public health, followed by spending of budget funds (23), actions of authorities (9), as well as to public procurements and donations during the coronavirus pandemic (5).

**Graph No. 7 - Types of requested information in resolved complaints**



In the structure of complaints resolved in 2020, the largest number, i.e. more precisely 1,354 complaints or 37.78%, are complaints against national state and other bodies and organizations, of which 723 (53.4%) are complaints against ministries and their bodies.

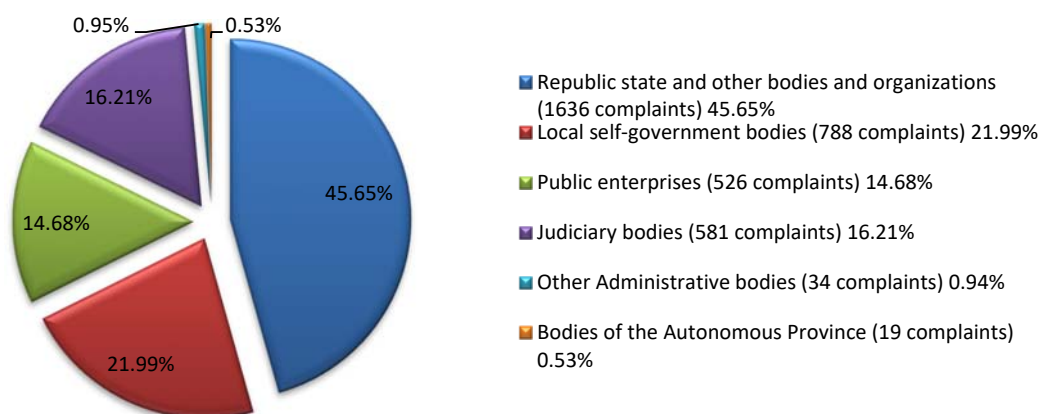
The number of complaints against public enterprises had increased by 11.6%, while a slight increase in the number of complaints, compared to the 2019, had also been recorded in regards to judicial bodies. The decrease in the number of complaints had been recorded in regards to local self-government bodies, national bodies and organizations, as well as in regards to provincial bodies.

There is an illustrative fact that about five and a half thousand requests<sup>71</sup> were submitted to the judiciary in 2020, while, due to the violation of rights against these bodies, the Commissioner resolved a total of 581 complaints (*Graph No. 8*), i.e. one complaint for every tenth request, which speaks of a significantly better treatment when compared to the general trend of acting on the requests of information seekers.<sup>72</sup>

<sup>71</sup> The data of those judicial bodies which have submitted the report.

<sup>72</sup> In 2020, a total of 19,387 requests have been submitted to the authorities, while the number of complaints filed with the Commissioner was 3,286.

**Graph No. 8 - Number of resolved complaints by types of authorities**



**Table 5 - Overview of requests and complaints filed to the Commissioner in 2020 against the ministries with bodies subordinate to them, as of 1 February 2021**

No.	Name of the ministry	No. of requests	No. of complaints
1.	Ministry of Interior <sup>73</sup>	1301	382
2.	Ministry of Finance	447	84
3.	Ministry of Agriculture, Forestry, and Water Management	175	11
4.	Ministry of Justice <sup>74</sup>	112	58
5.	Ministry of Construction, Transport, and Infrastructure	271	15
6.	Ministry of Education, Science, and Technological Development	179	12
7.	Ministry of Defence <sup>75</sup>	129	101
8.	Ministry of Health	180	41
9.	Ministry of Economy <sup>76</sup>	124	5
10.	Ministry of Public Administration and Local Self-Government	116	7

<sup>73</sup> National Health Care Institute for Ministry of Interior employees did not submit a report

<sup>74</sup> The Directorate for the Administration of Seized Assets and the Department for Execution of Criminal Sanctions did not submit a report

<sup>75</sup> The Defence Inspectorate, the University of Defence, and the Military Intelligence Agency did not submit a report

<sup>76</sup> The Directorate for Rapid Response did not submit a report

11.	Ministry of Labour, Employment, Veteran and Social Affairs <sup>77</sup>	190	25
12.	Ministry of Trade, Tourism and Telecommunications	72	6
13.	Ministry of Culture and Information	54	/
14.	Ministry of Youth and Sport	32	3
15.	Ministry of Mining and Energy	60	6
16.	Ministry of Foreign Affairs	23	10
17.	Ministry of Environmental Protection	301	19
18.	Ministry of European Integration	8	/
19.	Ministry of Human and Minority Rights and Social Dialogue	1	/
20.	Ministry of Family Welfare and Demography	/	/
21.	Ministry of Rural Welfare	/	/
TOTAL		3775	785

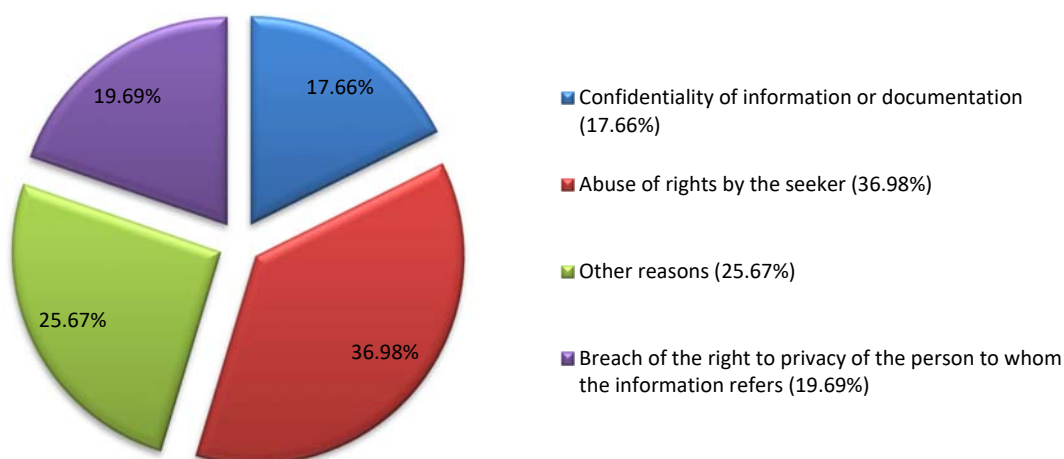
The data from the given table show that, in 2020, for every 4.8 requests submitted to the ministries, the information seeker filed a complaint to the Commissioner due to having been denied information, which is almost the same as in 2019, when this ratio was 4.9. That ratio has been improving in previous years. For example, in 2016, one complaint was filed for every 9.5 requests, in 2017, one complaint was filed for every 7.7 requests, and in 2018, one complaint was filed for every 5.35 requests.

In the structure of republic authorities and organizations, the largest number of requests for access to information was submitted to the Ministry of Interior (1,301) and the Republic Geodetic Authority of the Republic of Serbia (411), as well as the number of complaints filed in 2020 - 382 against MoI and 143 against RGA.

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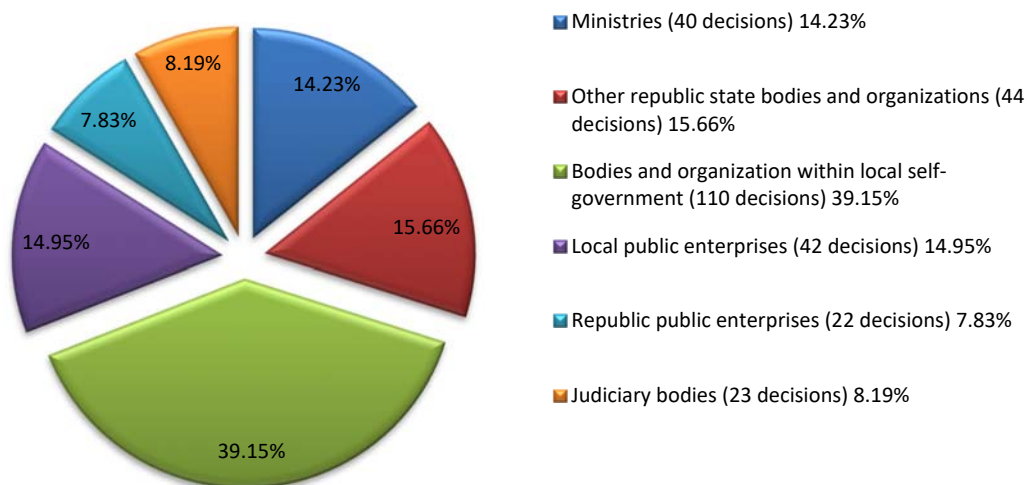
<sup>77</sup> The Occupational Safety and Health Directorate did not submit a report

**Graph No. 9 - Reasons for rejecting requests of information seekers in resolved complaints**



In 2020, in cases in which the requests of information seekers were rejected as unfounded by a decision, the authorities have referred more often to the violation of the right to privacy of the persons to whom the information relates (privacy of data subjects) than in 2019 (by 6.85%).

**Graph No. 10 - Number of unenforced Commissioner's decisions issued in 2020 (281 out of 1,086 decisions reached, with an order to provide access to information) <sup>78</sup>**



<sup>78</sup> An integral part of the Report is the Overview of unenforced Commissioner's decisions reached in 2020, as of 25 February 2021.

Out of 1,086 decisions made by the Commissioner on the complaints by information seekers, ordering the authorities to make information available to them, the authorities failed to act in 281 cases, i.e. in 25.87%, which means that the level of enforcement of the Commissioner's decisions is 74.13% on average. These data are worrying, as they show that more than a quarter of the Commissioner's decision have remained unenforced.

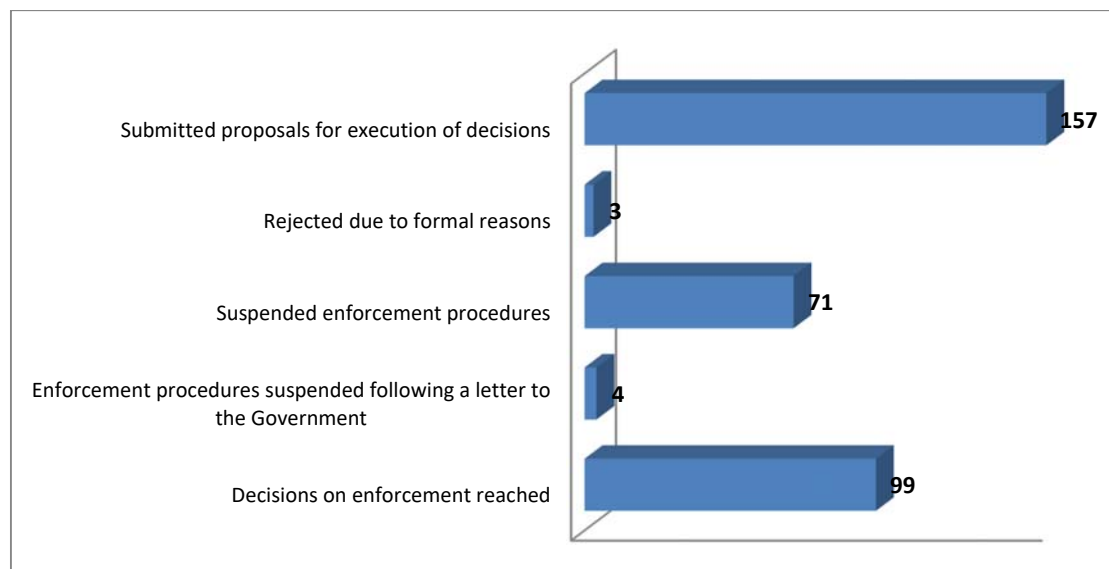
The degree of enforcement of the Commissioner's decisions made on the complaints filed by journalists and media representatives, by which the authorities were ordered to submit the requested information, remains unsatisfactory. Thus, of the 400 resolved complaints filed by journalists and media representatives, 178 have been completed with an order to provide information to the information seeker, upon which the authorities failed to act in 62 cases, i.e. 34.83%, which is a particularly worrying fact, given the content of information that was the subject of their requests. In addition, the number of unenforced Commissioner's decisions on complaints filed by journalists and media representatives is significantly higher compared to the general trend as regards other complainants, which is not acceptable since journalism is a profession that seeks information to write and report about to the public on topics of general public interest.

### ***3.2.1.2. Enforcement of the Commissioner's decisions***

In 2020, at the motion of the parties-information seekers, the Commissioner had initiated proceedings for enforcement of his decisions, but could not enforce them by imposing fines for the reasons explained in the part of this Report that deals with the situation and obstacles in regards to exercising rights. Based on the reports of the authorities and the information received from the parties, it has been recorded that only in four cases, and after addressing the Government, have the decisions of the Commissioner been enforced.

An overview of the undertaken measures is shown in the Graph below.

***Graph No. 11 - Motions for enforcement of the Commissioner's decisions, submitted in 2020, and undertaken measures***



### 3.2.2. Protection of the rights before the Administrative Court and other courts

Judicial protection of the right to freedom of access to information **before the Administrative Court** in administrative disputes is ensured with regard to the legality of the Commissioner's decisions and decisions of six bodies against which no filing of complaint to the Commissioner is allowed and which are exempted from protection before the Commissioner (National Assembly, President of the Republic of Serbia, Government of the Republic of Serbia, The Supreme Court of Cassation of the Republic of Serbia, the Constitutional Court and the Public Prosecutor's Office).

The right to file a lawsuit with the Administrative Court is provided to the party who is dissatisfied with the decision, as well as to the Republic Public Prosecutor, when the public interest is violated by the decision.

Against the final decision of the Administrative Court, the party and the competent Public Prosecutor may submit **a motion for reviewing the court decision to the Supreme Court of Cassation**. In 2020, a total of 26 motions for review of Administrative Court's decisions have been submitted to the Supreme Court of Cassation, of which 7 have been resolved by rejecting 2 motions, while five motions have been dismissed.

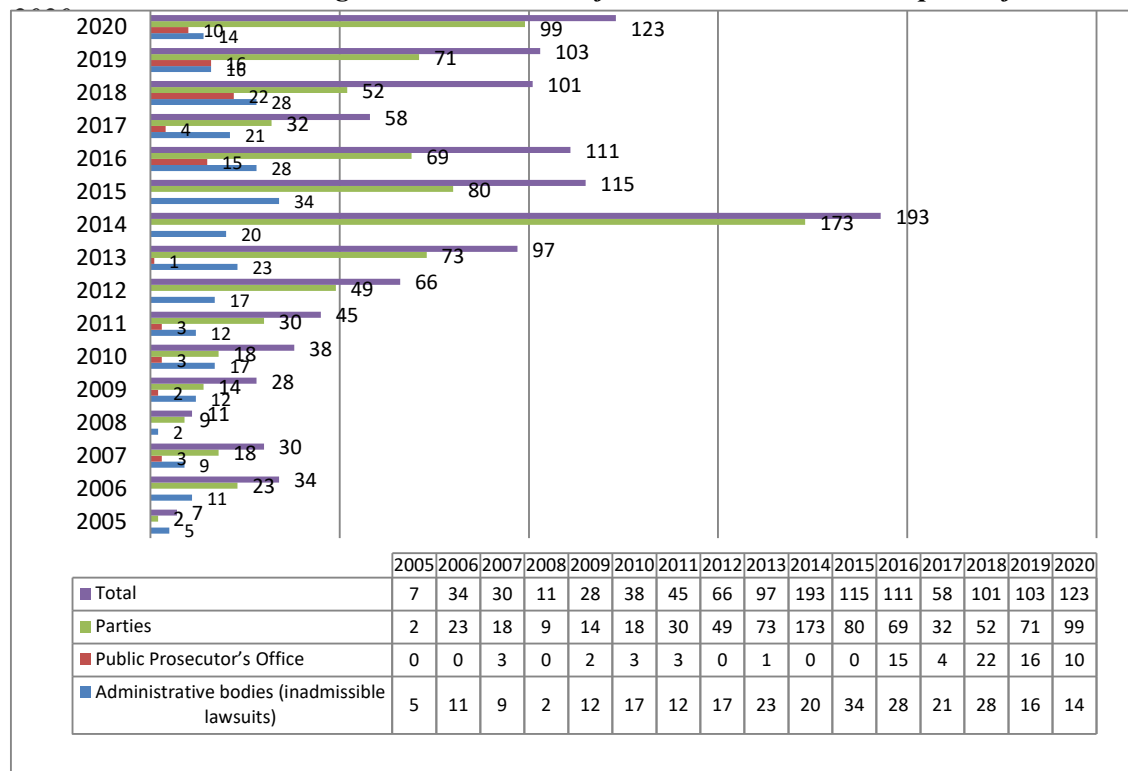
Out of 26 motions for review of the Administrative Court's decisions, the Commissioner had forwarded eight<sup>79</sup> to the Supreme Court of Cassation, none of which have been resolved.

In 2020, eight constitutional appeals have been submitted to the **Constitutional Court** against the decisions of the Commissioner, on which the Court has not yet reached a decision.

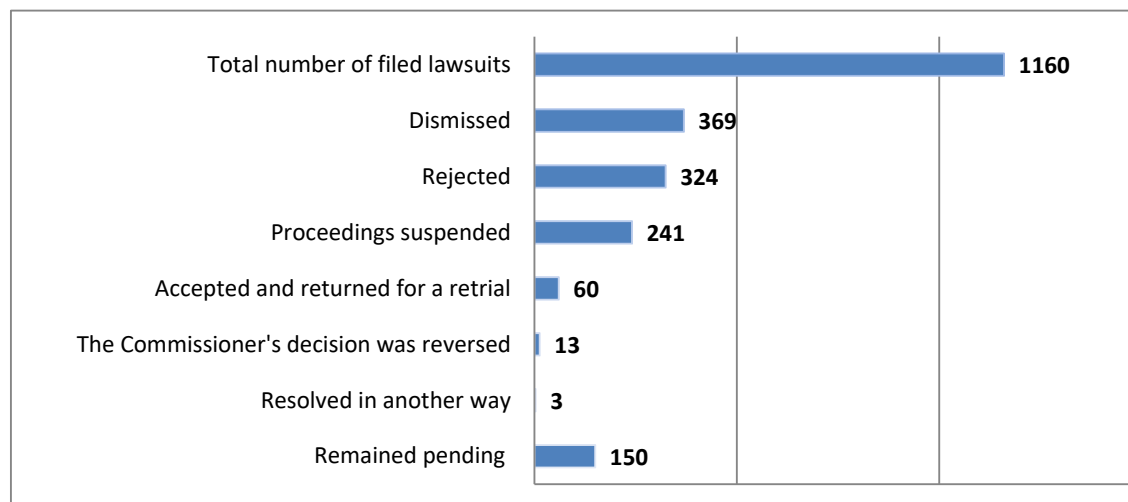
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<sup>79</sup> The Commissioner, as the defendant in an administrative dispute, is authorized to file a request for extraordinary review of a court decision in situations where the Administrative Court had acted in the dispute of full jurisdiction.

**Graph No. 12 - Overview of lawsuits filed by plaintiffs to the Supreme Court of Serbia, i.e. the Administrative Court against the decisions of the Commissioner in the period from 2005-**



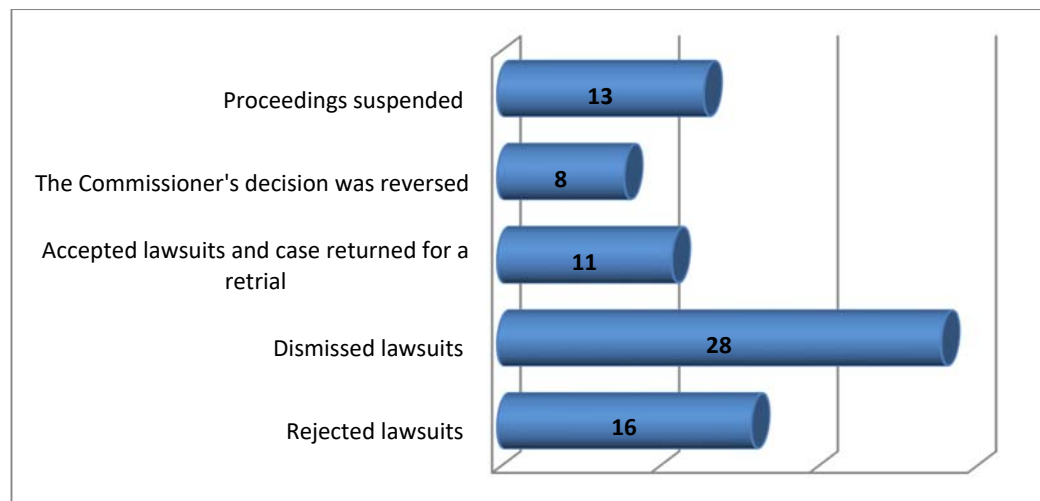
**Graph No. 13 - Lawsuits in the area of free access to information against the Commissioner in the period from 2005-2020**



The listed data show that, since the beginning of the Commissioner's work, in court proceedings for reviewing the legality of his decisions, in 1016 resolved cases out of a total of 1,160 filed lawsuits, **92.82% or 943 decisions of the Commissioner have been upheld by the court.**



**Graph No. 14 - Overview of decisions of the Administrative Court made in 2020 on lawsuits against the decisions of the Commissioner**



In 2020, 123 lawsuits have been filed with the Administrative Court against the Commissioner<sup>80</sup>. Out of that number, 116 lawsuits have been filed against the decisions of the Commissioner, while 7 lawsuits have been filed due to the fact that the Commissioner did not reach a decision on his complaint within the legal deadline.

The plaintiffs who have filed lawsuits against the Commissioner in 2020 are: parties i.e. information seekers (99), the Republic Public Prosecutor (10) and first instance bodies<sup>81</sup> (14).

During 2020, the Administrative Court had resolved a total of 11 lawsuits filed by the Republic Public Prosecutor's Office (all of these lawsuits have been filed in the period prior to the reporting period) as follows: 8 decisions of the Commissioner have been reversed, 2 lawsuits have been upheld and the case returned for retrial, and 1 lawsuit has been rejected.

The graph shows an overview of the decisions reached by the Administrative Court in 2020 on lawsuits filed in that year and in previous years. As in 2019, the reversed decisions of the Commissioner, which have been annulled, are mostly decisions against which the Republic Public Prosecutor's Office filed lawsuits, and they relate to cases in which the complainant is the Humanitarian Law Center (HLC) against the Ministry of Defence, in which they have mostly requested the information on the professional engagement of certain members of the Ministry of Defence in the Yugoslav National Army during the conflict in Kosovo in 1999, as well as on their status today, i.e. their engagement in terms of service in the Serbian Army (if they are still active). More details on the arguments of the decisions of the Commissioner, i.e. of the Administrative Court, are presented in the Annual Report of the Commissioner for 2018.

In these cases, the Commissioner had submitted motions for reviewing the decisions of the Administrative Court to the Supreme Court of Cassation, and, depending on the outcome of these proceedings, he will act in the pending cases.

During 2020, inconsistencies have been observed as regards the unequal acting and case-law of the Administrative Court of the Republic of Serbia in cases in which decisions were reached on the costs of proceedings on complaints filed by complainants-information seekers in connection with the exercise of the right to access information of public importance. Namely, in its case-law thus far, the Administrative Court of the Republic of Serbia had,

<sup>80</sup> Letter by the Administrative Court III-20 26/20 of 8 January 2021.

<sup>81</sup> A total of 11 lawsuits filed by the first instance bodies have been rejected as inadmissible, while three have not yet been resolved.

without any exceptions, rejected the plaintiffs' lawsuits filed for annulment of the Commissioner's decision by which, as a second instance body and when deciding on the administrative matter itself, it also reached a decision on the costs of the proceedings, namely the costs of representing the party, and rejected their requests for reimbursement of the costs of the proceedings as unfounded. Namely, the Administrative Court of the Republic of Serbia, in providing rationale behind such decisions, had stated the reasons why it considers that the Commissioner had acted correctly when he rejected the request of the plaintiffs (complainants-information seekers) for reimbursement of the costs of the proceedings upon complaints as unfounded, as follows: that the procedure of exercising the right to access information of public importance is a one-party procedure and that it is not initiated *ex officio*, but at the request of a party, and that the costs of representation before the Commissioner are not necessary nor justified.

However, as of February 2020 until the end of 2020, the Commissioner had received five decisions of the Administrative Court of the Republic of Serbia, in which the lawsuit filed by plaintiffs (complainants-information seekers) was adopted and a completely different position was taken as opposed to the one previously stated, i.e. the Commissioner's decision was annulled in the part where the Commissioner rejected their requests for reimbursement of the costs of proceedings upon the complaint as unfounded. In the aforementioned decisions, the Administrative Court had not provided any reason why the position on the mentioned issue had changed. Simultaneously with those decisions, decisions were also made on rejecting the lawsuits for annulment of the Commissioner's decisions on the rejection of the request for reimbursement of the costs of proceedings.

The Commissioner had pointed out this issue to the Administrative Court of the Republic of Serbia<sup>82</sup>, stating that changing the current position on that issue would significantly hinder the exercise of the right of access to information of public importance and would damage the budget of the Republic of Serbia, so he proposed that, in regards to the aforementioned, the sessions of the Case-Law Department and the sessions including all the judges of the Administrative Court should be convened, in order to harmonise the case-law of the Court, as well as to prevent different acting of the Court in the same legal and factual situation.

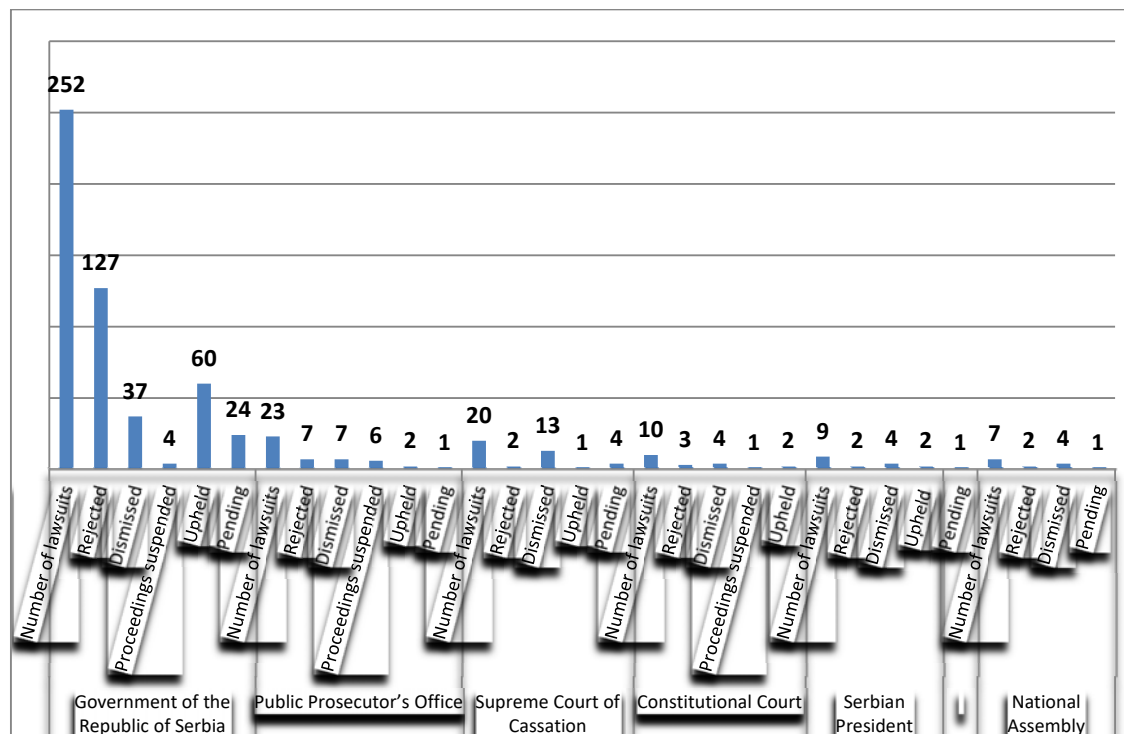
On the occasion of the aforementioned address, the Administrative Court had informed the Commissioner<sup>83</sup> that, according to the statement of the President of the Case-Law Department of the Administrative Court, it has been established that the Commissioner's complaint reasonably indicates that this Court had deviated from its case-law in five of its decisions, according to which the Commissioner correctly rejected the party's requests for reimbursement of the costs of the administrative proceedings pointed out in the complaint, and that the case-law shall raise the disputed legal issue at the Session of all judges for discussion and possible establishing of a legal position. However, up to the day of concluding the work on writing this Report, the Administrative Court had not informed the Commissioner about the possibly changed position regarding the disputed issue concerning the reimbursement of costs in the administrative proceedings.

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<sup>82</sup> Letter by the Commissioner No. 073-09-1683/2020-03 of 29 June 2020, sent to the Administrative Court.

<sup>83</sup> Letter by the Administrative Court of the Republic of Serbia Su II-17 18/20 of 18 September 2020, sent to the Commissioner.

**Graph No. 15 - Overview and outcome of lawsuits filed with the Supreme Court, i.e. with the Administrative Court against the decisions or due to failure to act of the six highest state bodies against which no filing of the complaint with the Commissioner is allowed, for the period 2005-2020**



The data show that, in the period from 2005 to 2020, a total of 321 lawsuits have been filed against the six highest state bodies against whose decisions no complaint is allowed, of which 290 have been resolved by rejecting 143 lawsuits, dismissing 69 lawsuits, upholding 67 lawsuits and suspending 11 proceedings.

The largest number of lawsuits have been filed against the Government of the Republic of Serbia - a total of 252 lawsuits, of which 228 have been resolved by rejecting 127 lawsuits, upholding 60 lawsuits, dismissing 37 lawsuits, and suspending 4 proceedings.

In 2020, a total of 16 lawsuits have been filed with the Administrative Court of the Republic of Serbia against these authorities, of which only 1 has been resolved. Out of the said number, 11 lawsuits have been filed against the Government of the Republic of Serbia (9 on the "silence of administration", of which one lawsuit has been resolved by being upheld as well-founded), 3 against the Supreme Court of Cassation, 1 against the National Assembly of the Republic of Serbia and 1 against the President of the Republic of Serbia.

During 2020, the Administrative Court had resolved 13 lawsuits (one filed in 2020, while the other 12 are from an earlier period) against the highest state bodies, by upholding eight lawsuits (all eight have been filed against the Government of the Republic of Serbia), dismissing three lawsuits (two against the Government and one against the National Assembly of the Republic of Serbia), and rejecting two lawsuits (one against the Government and one against the Supreme Court of Cassation).

### 3.2.3. Fulfilment of legal obligations of government bodies, supervision and liability

In 2020, the level of fulfilment of legal obligation in regards to the implementation of training of employees in relation to the application of LFAIPI of those authorities that have a legal obligation to submit an annual report to the Commissioner has been slightly improved compared to the previous year, as was the level of fulfilment of the obligation to publish Information booklet on work and the level of conducting training of civil servants. The submission of reports by the authorities has been slightly improved, although the Commissioner has facilitated this procedure by creating a special Portal for submitting reports in electronic form; hence, the reasons for failure to fulfil this legal obligation should be sought in the absence of responsibility in terms of ignoring this obligation for many years. The analysis of the data had shown that the number of submitted reports by the bodies from the category of **educational institutions (schools) had increased by slightly more than one third**, which shows that the adherence of these bodies to the stated legal obligations is at a higher level than in the previous period. A decrease in the number of submitted reports by republic bodies and organizations (agencies, directorates, institutes, funds, chambers, etc.) by 6% has also been observed, as well as a slight decrease in the number of reports submitted by local self-government bodies (cities and municipalities).

**Table 6 - Data from the report of state authorities in a broader sense (bodies referred to in Article 3, paragraph 1, item 1) of LFAIPI, on the fulfilment of legal obligations of government bodies<sup>84</sup> (cut-off on 1 February 2021)**

Public authority	Number of public authorities	Number and % of reports submitted	Number and % of Information booklet published	Number and % of Information booklets which were prepared but not published	Number and % of training carried out	Number and % of maintenance of information medium
Authorities referred to in Article 22 of the Law (the National Assembly, the President, the Supreme Court of Cassation, the Constitutional Court, the Government, and the Republic Public Prosecutor)	6	6 (100%)	6 (100%)	/	4 (66.6%)	6 (100%)
Ministries (without bodies subordinate to them)	21	21 (100%)	18 (85.7%)	/	16 (76.2%)	19 (90.5%)
Other public authorities and organisations (agencies, directorates, institutes, funds, chambers...)	302	154 (50.1%)	107 (35.4%)	37 (12.2%)	105 (34.7%)	147 (48.7%)

<sup>84</sup> The percentages in the table are expressed in relation to the number of state bodies that are under obligation to submit annual reports to the Commissioner.

Courts	158	134 (84.8%)	104 (65.8%)	25 (15.8%)	103 (65.2%)	130 (82.3%)
Prosecutors' Offices	89	54 (60.7%)	42 (47.2%)	12 (13.5%)	39 (43.8%)	52 (58.4%)
Authorities and organisations of the Autonomous Province of Vojvodina	42	24 (57.1%)	23 (54.8%)	1 (2.4%)	20 (47.6%)	24 (57.1%)
Local self-governments (cities/towns and municipalities with their local self-government bodies and organisations)	1028	393 (38.2%)	377 (36.7%)	11 (1.1%)	297 (28.9%)	382 (37.2%)
Public enterprises (at Republic and Provincial level) required to submit reports	31	21 (67.8%)	19 (61.3%)	/	18 (58.1%)	20 (64.5%)
Other public authorities (educational institutions)	2124	691 (32.5%)	210 (9.9%)	276 (13%)	482 (22.7%)	638 (30.1%)
Total	3801	1498 (39.4%)	906 (23.8%)	362 (9.5%)	1084 (28.5%)	1418 (37.3%)

**Table 7 - Data from the report of the public administration authorities on the implementation of obligations**

Public authority	Number of public authorities	Number and % of reports submitted	Number and % of Information booklet published	Number and % of Information booklets which were prepared but not published	Number and % of training carried out	Number and % of maintenance of information medium
Ministries (without bodies subordinate to them)	21	21 (100%)	18 (85.7%)	/	16 (76.2%)	19 (90.5%)
Other public authorities and organisations (agencies, directorates, institutes, funds...)	302	154 (50.1 %)	107 (35.4 %)	37 (12.2 %)	105 (34.7 %)	147 (48.7 %)
Total	323	175 54,2 %	125 38,7%	37 11,5 %	121 37,5 %	166 51,4%

**The Administrative Inspectorate of the Ministry of Public Administration and Local Self-Government**, which is responsible for supervising the implementation of Law on Free Access to Information of Public Importance, had informed<sup>85</sup> the Commissioner that in 182 cases (out of 370 decisions submitted to the Administrative Inspectorate by the Commissioner), it was found that the authority had acted upon the Commissioner's decision and made the requested information available to the information seeker, while in other cases the acting of the Administrative Inspection is ongoing.

Moreover, the report of the Administrative Inspectorate states that “the Annual Work Programme for 2020 did not provide for administrative inspectors to conduct regular inspection supervisions over the application of regulations on free access to information of public importance”. The report also states that “the Annual Work Programme of the Administrative Inspection for 2021 has the regular inspection supervisions over the application of regulations on free access to information of public importance planned, within which the development, publication and up-to-dateness of Information booklet on work, the persons authorized to act upon the request for free access to information of public importance, acting upon requests, submission of an annual report to the Commissioner, etc. shall be particularly supervised”.

**The Report of the Administrative Inspectorate does not contain any data on initiating misdemeanour proceedings due to violation of rights or non-fulfilment of prescribed obligations by authorities regarding the application of the Law on Free Access to Information of Public Importance in 2020**, from which it can be concluded that non-compliance with these legal obligations remains without responsibility.

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<sup>85</sup> Report of the Administrative Inspectorate No. 021-02-20/2020-01 of 19 January 2021

**Table 8 - Overview of requests for initiating misdemeanour proceedings for misdemeanours under the Law on Free Access to Information of Public Importance and the outcome before the first instance courts for misdemeanours from 2020**

	Information seeker	Legal qualification	No. of submitted requests	Conviction	Warning	Suspension	Dismissal	Acquittal	Suspension due to statute of limitations	Resolved in another way
Belgrade <sup>86</sup>	Aggrieved party	Article 46	902	397 <sup>87</sup>	5	43	147	217	202	992
		Article 47								
		Article 48	8	2			2		2	2
Požega	Aggrieved party	Article 46	74 <sup>88</sup>	5 <sup>89</sup>						10 <sup>90</sup>
Prokuplje	Aggrieved party	Article 46	105 <sup>91</sup>	1 <sup>92</sup>	72			5		
Užice	Aggrieved party	Article 46	120	4 <sup>93</sup>					4	71 <sup>94</sup>

<sup>86</sup> In its report submitted to the Commissioner, the Misdemeanour Court in Belgrade did not state the number of initiated misdemeanour proceedings on the submitted requests, because it does not possess such information. Moreover, the data on the amount of fines imposed refer only to convictions from 2020 passed on requests for initiating misdemeanour proceedings filed in 2020, because the Court does not have the data for convictions passed in 2020 on requests for initiating misdemeanour proceedings which have been filed before 2020. Out of the total number of requests for initiating the misdemeanour proceedings initiated in 2020, 741 have been resolved, while the remaining 1270 decisions have been reached on requests for initiating misdemeanour proceedings initiated before 2020.

<sup>87</sup> 56 of RSD 10,000 (range of fines from 5,000 up to 10,000), 1 of RSD 15,000, 1 of RSD 20,000 and 3 of RSD 30,000 (data only for convictions where fines were imposed on requests for initiating misdemeanour proceedings initiated in 2020 (a total of 61 convictions) .

<sup>88</sup> Of the submitted 74 requests for initiating misdemeanour proceedings, the court had initiated 33 misdemeanour proceedings

<sup>89</sup> RSD 5,000 each

<sup>90</sup> 8 joined during the reaching of a decision and 2 decisions on incompetence

<sup>91</sup> 105 submitted requests for initiating misdemeanour proceedings, 91 initiated

<sup>92</sup> 1 of RSD 5.000

<sup>93</sup> 2 of RSD 5,000, 1 of RSD 6,000 and 1 of RSD 10,000

<sup>94</sup> 9 decisions on incompetence and assignment to the competent court and 62 joined

	Information seeker	Legal qualification	No. of submitted requests	Conviction	Warning	Suspension	Dismissal	Acquittal	Suspension due to statute of limitations	Resolved in another way
Požarevac	Aggrieved party	Article 46	16 <sup>95</sup>	2 <sup>96</sup>		4		1		
Gornji Milanovac	Aggrieved party	Article 46	10							
Jagodina	Aggrieved party	Article 46	71	1 <sup>97</sup>		13	12	6		30
Zaječar	Aggrieved party	Article 46	73	15 <sup>98</sup>	6			10		10 <sup>99</sup>
Sombor	Aggrieved party	Article 46	170	3 <sup>100</sup>						18 <sup>101</sup>
Niš	Aggrieved party	Article 46	137	7 <sup>102</sup>	2		1	5	2	16
Kragujevac	Aggrieved party	Article 46	111	2 <sup>103</sup>					4	63 <sup>104</sup>
Preševo	Aggrieved party	Article 46	3	3 <sup>105</sup>						

<sup>95</sup> Of the submitted 16 requests for initiating misdemeanour proceedings, the court had initiated 15 misdemeanour proceedings

<sup>96</sup> 1 of RSD 10,000 and 1 of RSD 60,000

<sup>97</sup> RSD 20,000

<sup>98</sup> 5 of RSD 5,000, 6 of RSD 30,000, 4 of RSD 20,000

<sup>99</sup> incompetence

<sup>100</sup> 2 of RSD 50,000 (1 final judgment), 1 of RSD 5,000

<sup>101</sup> Joined in reaching a decision

<sup>102</sup> 6 of RSD 5,000 and 1 of RSD 15,000

<sup>103</sup> RSD 10.000 each

<sup>104</sup> Merging of the proceedings

<sup>105</sup> 2 of RSD 5.000 and 1 of RSD 10.000



	Information seeker	Legal qualification	No. of submitted requests	Conviction	Warning	Suspension	Dismissal	Acquittal	Suspension due to statute of limitations	Resolved in another way
Bečej	Aggrieved party	Article 46	93	4 <sup>106</sup>						27 <sup>107</sup>
Pančevo	Aggrieved party	Article 46	127	1 <sup>108</sup>	7		2			1 <sup>109</sup>
Negotin	Aggrieved party	Article 46	49	1 <sup>110</sup>	2			4		41 <sup>111</sup>
Trstenik	Aggrieved party	Article 46	104	1 <sup>112</sup>				1		87 <sup>113</sup>
Šabac	Aggrieved party	Article 46	59	7 <sup>114</sup>	4			1		2
Kraljevo	Aggrieved party	Article 46	76	2 <sup>115</sup>		2				42 <sup>116</sup>
Vršac	Aggrieved party	Article 46	81							

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<sup>106</sup> 1 of RSD 60.000, 1 of RSD 50.000, 1 of RSD 10.000, 1 of RSD 70.000

<sup>107</sup> Merged as resolved

<sup>108</sup> 1 of RSD 10.000

<sup>109</sup> Merged during the proceedings

<sup>110</sup> 1 of RSD 5.000

<sup>111</sup> Merged as resolved

<sup>112</sup> RSD 5,000

<sup>113</sup> Merged as resolved

<sup>114</sup> 2 of RSD 7.000, 4 of RSD 5.000, 1 of RSD 8.000

<sup>115</sup> 1 of RSD 5.000, 1 of RSD 10.000

<sup>116</sup> Merged as resolved

	Information seeker	Legal qualification	No. of submitted requests	Conviction	Warning	Suspension	Dismissal	Acquittal	Suspension due to statute of limitations	Resolved in another way
Subotica	Aggrieved party	Article 46	98 <sup>117</sup>	3 <sup>118</sup>			7			26 <sup>119</sup>
Paraćin	Aggrieved party	Article 46	53 <sup>120</sup>				6	4		
Arandjelovac	Aggrieved party	Article 46	10							9 <sup>121</sup>
Kikinda	Aggrieved party	Article 46	64 <sup>122</sup>	6 <sup>123</sup>						56 <sup>124</sup>
Zrenjanin	Aggrieved party	Article 46	104	2 <sup>125</sup>				1		64 <sup>126</sup>
Senta	Aggrieved party	Article 46	61							
Novi Pazar	Aggrieved party	Article 46	12	1 <sup>127</sup>					1	
Obrenovac	Aggrieved party	Article 46	6					1	2	

<sup>117</sup> Of the submitted 98 requests for initiating misdemeanour proceedings, the court initiated 91 proceedings

<sup>118</sup> 1 of RSD 5,000, 1 of RSD 20,000, 1 of RSD 30,000

<sup>119</sup> Merged as resolved

<sup>120</sup> Of the submitted 53 requests for initiating misdemeanour proceedings, the court initiated 42 proceedings

<sup>121</sup> Merged as resolved

<sup>122</sup> Of the submitted 64 requests for initiating misdemeanour proceedings, the court initiated 62 proceedings

<sup>123</sup> 1 of RSD 40.000, 4 of RSD 30.000, 1 of RSD 25.000

<sup>124</sup> Merged during the proceedings

<sup>125</sup> 1 of RSD 10,000 and 1 of RSD 30,000

<sup>126</sup> Merged during the proceedings

<sup>127</sup> RSD 6.000

	Information seeker	Legal qualification	No. of submitted requests	Conviction	Warning	Suspension	Dismissal	Acquittal	Suspension due to statute of limitations	Resolved in another way
Sjenica	Aggrieved party	Article 46	20			2				18 <sup>128</sup>
Kruševac	Aggrieved party	Article 46	32							
Pirot	Aggrieved party	Article 46	377	1 <sup>129</sup>	28	1		6		217 <sup>130</sup>
Vranje	Aggrieved party	Article 46	762	27 <sup>131</sup>	40	41	361	179	52	
Lazarevac	Aggrieved party	Article 46	3		1					
Smederevo	Aggrieved party	Article 46	76 <sup>132</sup>	5 <sup>133</sup>	1		1			22 <sup>134</sup>
Valjevo	Aggrieved party	Article 46	55	13 <sup>135</sup>	1		2	7	6	
Prijepolje	Aggrieved party	Article 46	16							
Ruma	Aggrieved party	Article 46	179	3 <sup>136</sup>	1			5		33

<sup>128</sup> Merged as resolved

<sup>129</sup> of RSD 5.000

<sup>130</sup> Merged as resolved

<sup>131</sup> 27 of RSD 5.000 each

<sup>132</sup> Of the submitted 76 requests for initiating misdemeanour proceedings, the court initiated 75 misdemeanour proceedings

<sup>133</sup> 1 of RSD 40.000, 1 of RSD 10.000, 3 of RSD 5.000

<sup>134</sup> Merged as resolved

<sup>135</sup> 3 of RSD 10.000, 7 of RSD 5.000, 1 of RSD 7.000, 2 of RSD 8.000

<sup>136</sup> 1 of RSD 10.000, 2 of RSD 5.000

	Information seeker	Legal qualification	No. of submitted requests	Conviction	Warning	Suspension	Dismissal	Acquittal	Suspension due to statute of limitations	Resolved in another way
Leskovac	Aggrieved party	Article 46	225	5 <sup>137</sup>	21	1		9	1	11 <sup>138</sup>
Čačak	Aggrieved party	Article 46	157	10 <sup>139</sup>		4				113 <sup>140</sup>
Sremska Mitrovica	Aggrieved party	Article 46	101	1 <sup>141</sup>						57 <sup>142</sup>
Novi Sad	Aggrieved party	Article 46	268	3 <sup>143</sup>	3		1	9		113 <sup>144</sup>
Mladenovac	Aggrieved party	Article 46	21							9 <sup>145</sup>
Arandjelovac	Aggrieved party	Article 46	10							9 <sup>146</sup>
Raška	Aggrieved party	Article 46	10							
Loznica	Aggrieved party	Article 46	24	1 <sup>147</sup>	1			1		

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<sup>137</sup> 5 of RSD 5.000

<sup>138</sup> Local incompetence

<sup>139</sup> 2 of RSD 5.000, 2 of RSD 10.000, 3 of RSD 15.000, 2 of RSD 20.000, 1 of RSD 25.000

<sup>140</sup> Merged as resolved

<sup>141</sup> RSD 35.000

<sup>142</sup> Merged as resolved

<sup>143</sup> 1 of RSD 12.000, 1 of RSD 40.000, 1 of RSD 30.000

<sup>144</sup> Merging of the proceedings

<sup>145</sup> Merging of the proceedings

<sup>146</sup> Merging of the proceedings

<sup>147</sup> 1 of RSD 10.000

	Information seeker	Legal qualification	No. of submitted requests	Conviction	Warning	Suspension	Dismissal	Acquittal	Suspension due to statute of limitations	Resolved in another way
Bačka Palanka	Aggrieved party	Article 46	73	4 <sup>148</sup>			1		1	25 <sup>149</sup>
<b>Total Aggrieved party</b>		<b>Article 46</b>	<b>5198</b>	<b>542</b>	<b>195</b>	<b>111</b>	<b>541</b>	<b>472</b>	<b>275</b>	<b>2171</b>
		<b>Article 48</b>	<b>8</b>	<b>2</b>			<b>2</b>		<b>2</b>	<b>2</b>

Most of the requests for initiating misdemeanour proceedings, where the applicants were citizens' associations, have been submitted by the Center for the Rule of Law and the Association "*Ekskluzivno otkriće*" from Leskovac

**The data from the table show that the misdemeanour courts have, for misdemeanours under LFAIPI, imposed the largest number of fines in the amount of the legal minimum, i.e. closer to the lower limit of fines under the Law on Free Access to Information of Public Importance, which are prescribed in the range of RSD 5,000 to RSD 50,000.**

<sup>148</sup> 1 of RSD 5.000, 1 of RSD 7.000, 1 of RSD 10.000 and 1 of RSD 15.000

<sup>149</sup> Merging of the proceedings

**Table 9 - Overview of requests for initiating misdemeanour proceedings for misdemeanours under the Law on Free Access to Information of Public Importance and the outcome before the Misdemeanour Appellate Court from 2020**

Information seeker	Legal qualification	No. of appeals filed	Conviction <sup>150</sup>	Warning	Suspension	Dismissal	Acquittal	Suspension due to statute of limitations	Decision revoked and returned for retrial	Resolved in another way
Appellant	Article 46-48	1388	327 <sup>151</sup>	3 <sup>152</sup>	13 <sup>153</sup>	163 <sup>154</sup>	196 <sup>155</sup>	196 <sup>156</sup>	262 <sup>157</sup>	2+18
Total		1388	327	3	13	163	196	196	262	20

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<sup>150</sup> The information on the amount of imposed fines under convictions have not been obtained, nor about whether warnings or fines were imposed

<sup>151</sup> Of this number, 324 first-instance judgments were upheld and 3 were reversed (1 intensified conviction and 2 acquittals reversed to convictions)

<sup>152</sup> 3 first-instance convictions imposing fines were reversed to warnings

<sup>153</sup> Upheld first-instance decision on suspension due to the applicant's withdrawal, i.e. for other reasons

<sup>154</sup> 8 complaints were rejected, while 155 first-instance decisions on rejection were upheld

<sup>155</sup> 175 acquittals were upheld, while 21 first-instance convictions were reversed to acquittals.

<sup>156</sup> 110 first-instance judgments on suspension due to statute of limitations were upheld, 86 first-instance judgments were reversed to suspensions due to statute of limitations (of which 27 first-instance acquittals, 42 first-instance convictions, 5 first-instance suspensions due to other reasons, and 12 first-instance rejections)

<sup>157</sup> The following decisions were quashed: 35 first-instance judgments on rejecting requests for initiating misdemeanour proceedings, 104 acquittals, 90 convictions, 16 decisions on suspension due to statute of limitations, and 17 decisions on suspension due to other reasons.

**In 2020, according to the data of the Misdemeanour Appellate Court in Belgrade, that court had decided in 1180 cases on appeals against decisions of misdemeanour courts in the matter of freedom of access to information, while 208 cases are pending. The court had decided on the appeals as follows: A total of 777 decisions were upheld, as follows: 175 acquittals, 324 first-instance convictions, 155 judgments on rejecting the request, and 123 on suspension of the proceedings, of which 110 were suspensions due to statute of limitations, 8 were suspensions due to other reasons, and 5 were suspensions due to the applicant's withdrawal; a total of 131 decisions were reversed: a total of 85 decisions in the suspension of proceedings due to the statute of limitations (26 acquittals, 42 convictions, 12 on rejection of the request, 5 suspensions due to other reasons, and 1 acquittal of the Misdemeanour Appellate Court), 18 decisions were reversed in another way regarding the legal qualification of the offence, due to the death of a party or due to the withdrawal of the applicant (of which 9 convictions, 5 acquittals and 4 rejections), 27 decisions were reversed so that 21 convictions were reversed to acquittals, 3 convictions on fines were reversed to a milder sentence (warning), 3 decisions were reversed to convictions (1 first-instance conviction - warning and 2 acquittals); 262 decisions on appeals against decisions of misdemeanour courts were quashed (35 rejections, 104 acquittals, 90 convictions and 33 suspensions - of which 16 suspensions due to statute of limitations and 17 suspensions due to other reasons), 8 appeals against first-instance decisions were rejected and 2 cases were resolved in other ways.**

**By analysing the submitted data, it can be concluded that the Misdemeanour Appellate Court had, in 2020, upheld the convictions reached by misdemeanour courts in a larger number of cases than was the case in previous years.**

**The Administrative Inspectorate of the Ministry of Public Administration and Local Self-Government, responsible for supervising the implementation of the Law on Free Access to Information of Public Importance, had informed the<sup>158</sup> Commissioner that their Annual Work Programme for 2020 did not provide for administrative inspectors to conduct regular inspections of the application of regulations concerning free access to information of public importance, and according to the data of misdemeanour courts in Serbia, the Administrative Inspectorate did not submit any request for initiating misdemeanour proceedings due to violation of rights or failure to fulfil the prescribed obligations of the authorities regarding the application of the Law on Free Access to Information of Public Importance in 2020, from which it can be concluded that non-compliance with the aforementioned legal obligations remains unpunished.**

**According to the data which the misdemeanour courts in Serbia have submitted to the Commissioner, these courts had a total of 5,133 requests for initiating misdemeanour proceedings due to violation of the right to access information in 2020<sup>159</sup>, whereby all such requests have been submitted by information seekers as aggrieved parties.**

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<sup>158</sup> Report of the Administrative Inspectorate No. 021-02-20/2020-01 of 19/01/2020

<sup>159</sup> Requests from the previous period which have not been resolved are also included

### **3.2.4. Activities of the Commissioner in regards to the publication of Information booklet on his work**

In accordance with the provisions of LFAIPI and the Instructions for the preparation and publication of information booklet on the work of state bodies<sup>160</sup>, the obligation to proactively publish information implies the preparation and publication on the official website of the information booklet on the work of state bodies. Publishing the information booklet, with the obligation of regular updating of data (at least once a month) aims to make the most important information about the work of the state body, staff and other capacities of the body, its organization, competencies, means of work, disposal of public funds, salaries, state aid, subsidies, donations, international and other projects and their implementation, public procurement, types of services provided by the body and procedures for exercising rights, legal remedies in case of negative outcomes of proceedings before the body, types of information which the body possesses, etc. available to citizens, media, authorities and other users.

In 2020, in the process of monitoring the compliance with the legal obligation to publish information booklet on the work, the Commissioner continued with the analysis of information booklets of courts of general jurisdiction and had found that, out of a total of 70 analysed information booklets on the work, 36 courts have acted upon the warning issued by the Commissioner and have harmonised their information booklets with Article 39 of LFAIPI and the Instructions for the preparation and publication of information booklet on the work of state bodies, while 34 courts have not acted on the Commissioner's warning.

**The shortcomings of the Information booklet of the courts of general jurisdiction** are, to the greatest extent, reflected in the following:

- the data in the information booklet are **not updated regularly, in accordance with the Instructions; hence, they do not meet the condition of reliability;**
- **the overview of data on provided services is most often missing;**
- the **data on revenues and expenditures**, under which the data on the budget are either missing or incomplete;
- **data on conducted public procurements;**
- data on **paid salaries, wages and other incomes** are presented in a very small number of cases;
- **descriptions of actions within competencies, powers and obligations are missing;**
- this is also true for **the services provided by the body to interested persons, as well as in case of the procedure for providing services.**

**The biggest error, however, is the publication of incorrect information regarding the exercise of the right to access information.** The majority of courts have stated that the

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<sup>160</sup> “Official Gazette of the RS”, No. 68/10



applicant has no right to appeal against the conclusion rejecting the applicant's request as "untidy", which is not in accordance with the LFAIPI<sup>161</sup>.

**In 2020, on the occasion of the International Right To Know Day, which is celebrated every year on September 28, the Commissioner had awarded the Award for the best information booklet on the work of a state body to the Higher Court in Kraljevo.** On this occasion, with regard to contributing to the affirmation of the public's right to know, the **Basic Court in Zaječar** received an award in the category of judicial bodies, while the **Supreme Court of Cassation** received an award for its contribution to affirming the public's right to know in the category of highest public authorities.

**Bearing in mind that maintaining the quality of information booklet and proactive disclosure of information requires continuous monitoring and undertaking of measures, given the capacity of the Commissioner and the number of bodies subject to the implementation of this legal obligation, it is necessary to adopt amendments to the Law on Free Access to Information of Public Importance, in accordance with the Commissioner's initiative, and then the Instructions of the Commissioner. These changes would establish the publication of information booklets of state bodies in digital form, on a single electronic platform, which should lead to a greater degree of transparency, comparability and greater usefulness of data, as well as to facilitated monitoring of fulfilment of this legal obligation.**

### **3.3. ACTIVITIES OF THE COMMISSIONER REGARDING THE PERSONAL DATA PROTECTION**

#### **3.3.1. Acting of the Commissioner in performing supervision**

During 2020, the Commissioner had completed a total of 205 supervision procedures<sup>162</sup>, of which 163 have been initiated in 2020, while 42 supervisions are from the previous period. Out of the total number of completed supervision procedures, 5 supervisions have been initiated on the basis of the old LPDP and were completed after it was found that the previous supervision was acted upon, while 200 completed inspections have been initiated under the new LPDP, of which 45 regular and 155 extraordinary supervisions.

Supervision procedures (a total of 205 of them) were completed as follows: 165 cases were concluded by establishing that there was a follow-up to the previously conducted supervision (these also included five cases initiated under the old LPDP), 30 cases were

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<sup>161</sup> According to Article 22, paragraph 1, item 1) of the Law on Free Access to Information of Public Importance, the seeker may file a complaint to the Commissioner if the authority refuses or rejects the applicant's request, while according to item 40, paragraph 3, sub-item 9 of the Instruction, is the obligation of the state body to enter, in the part of the information booklet titled "Information on submitting a request for access to information", that the applicant has the right to appeal, i.e. the right to initiate an administrative dispute, to the conclusion rejecting the seeker's request as "untidy".

<sup>162</sup> The number of completed and initiated supervisions is lower by around 70%. The main reason for the decrease in this number is the reduced activity in the field of supervision, conditioned by the current pandemic. During the state of emergency, as well as in periods of unfavourable epidemiological situation, the Commissioner could not carry out all the planned supervisions due to objective reasons.

concluded by official note because it was established that there were no violations of LPDP nor the elements for conducting the inspection supervision, 6 cases were concluded with the submission of a request for initiating misdemeanour proceedings, 3 cases were concluded with the filing of criminal charges, and 1 case was forwarded to the Ministry of Interior for further proceeding.

In cases where it was found that the provisions of LPDP have been violated (81), the Commissioner had:

- submitted 6 requests for initiating misdemeanour proceedings due to violation of LPDP,
- filed 3 criminal charges.
- issued 71 corrective measures, whereby in 64 cases he issued warnings to data controllers, in 5 cases had temporarily or permanently restricted the data processing operations, including the prohibition of processing, and in 2 cases had ordered the data controller and processor to harmonise data processing operations with the provisions of LPDP.
- issued 1 warning under Article 56 of the old LPDP due to the processing of personal data without legal authorization, which has been acted upon in the meantime. The reason for this is the legal provision of the new LPDP, according to which all proceedings initiated under the old law have to be completed under it.

During 2020, the Commissioner had initiated 223 supervision procedures, of which 46 were regular and 177 extraordinary.

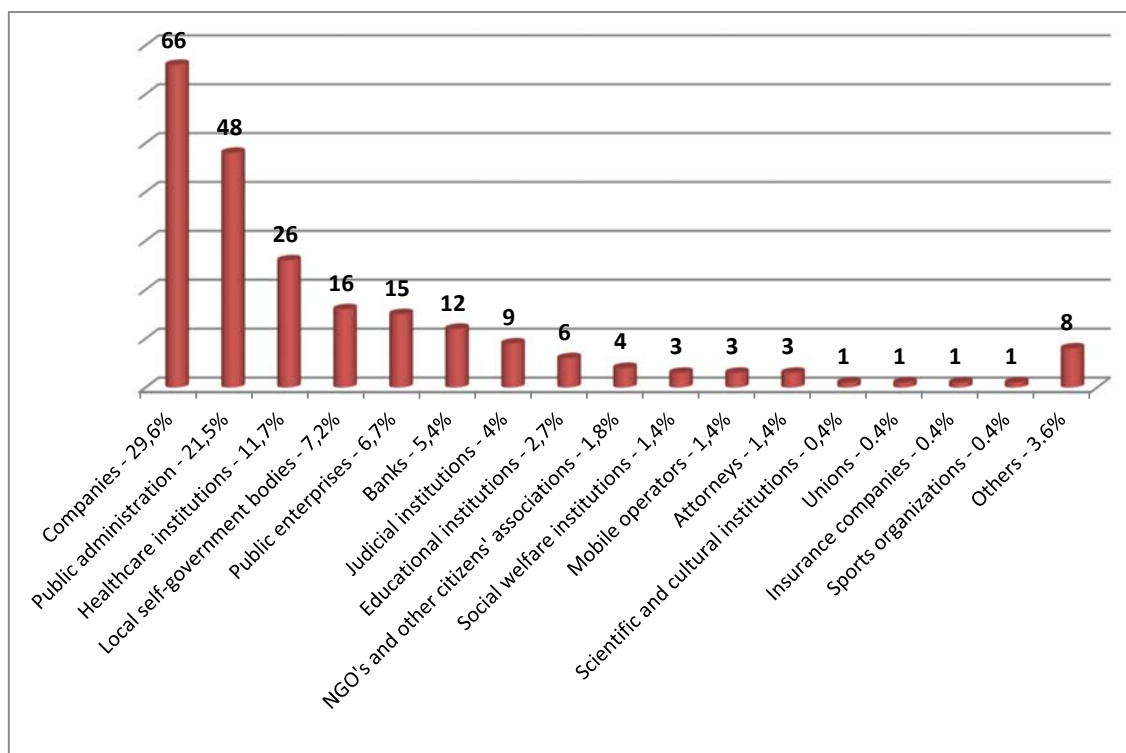
Out of 177 extraordinary supervision procedures, 151 were initiated upon applications, 7 after notifying the Commissioner of the data breach, and 19 on other grounds.

Having in mind the data controllers in regards to whom the Commissioner had initiated the supervision procedure during 2020, the structure of the data managers and the reasons for performing supervision are significantly different compared to previous years. A significant number of supervision procedures have been carried out within state administration bodies, especially due to the changed circumstances and actions of these bodies during the pandemic.

Looking at the reasons for performing supervision, the share of personal data security has increased almost 10 times compared to last year, while the percentage of the share of personal data and personal documents has decreased several times. During 2020, the personal data security has been significantly jeopardized, especially with the establishment of new information systems, through which a large number of delicate data on citizens are processed.

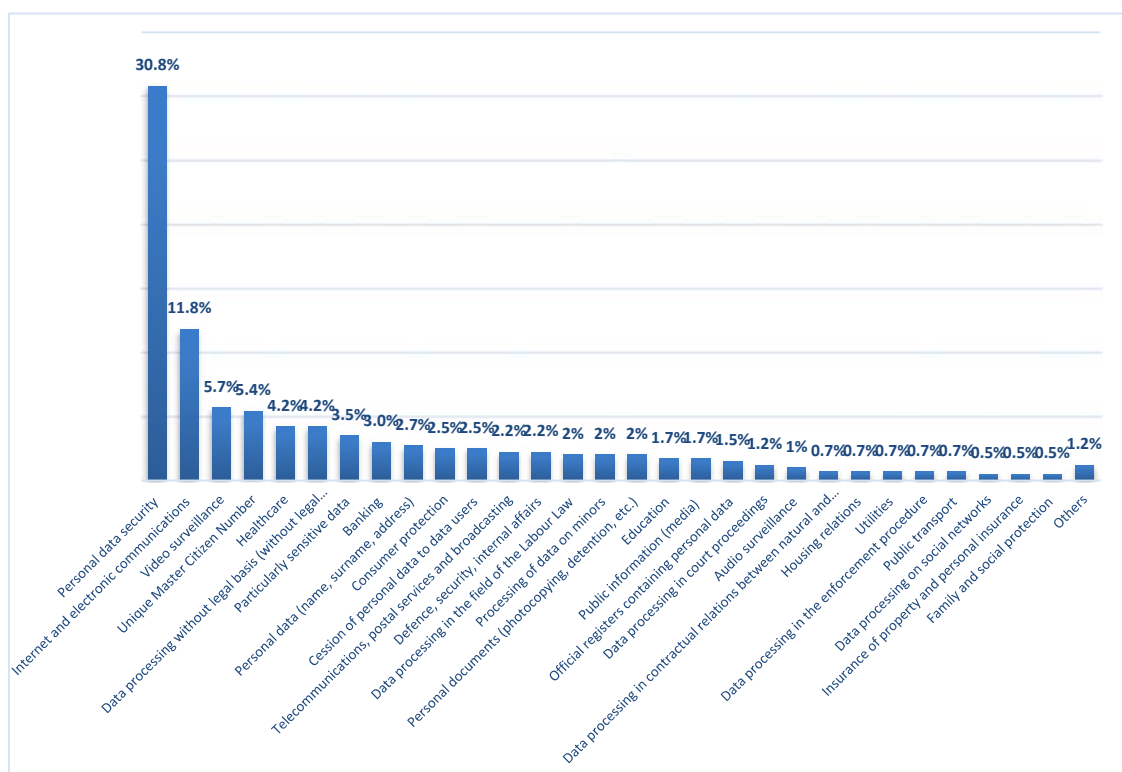
Thus, the data controllers over whom the Commissioner had initiated 223 supervision procedures (which are mostly: companies (private companies and entrepreneurs) - 66 (29.6%), public administration - 48 (21.5%), healthcare institutions - 26 (11.7%), local self-governments 16 (7.2%), public enterprises - 15 (6.7%), banks 12 (5.4%), judicial institutions - 9 (4%), educational institutions - 6 (2.7%), civil society organizations and other citizens' associations - 4 (1.8%), social welfare institutions - 3 (1.3%), mobile network operators - 3 (1.3%), lawyers - 3 (1.3%), institutions in the field of science and culture - 1 (0.4%), trade unions - 1 (0.4%), insurance companies - 1 (0.4%), sports organizations - 1 (0.4%) and others - 8 (3.6%).

**Graph No. 16 - Structure of data controllers over whom the supervision procedure has been initiated**



The most common reasons for initiating supervision procedure are: personal data security (30.8%), Internet and electronic communication (11.8%), video surveillance (5.7%), Unique Master Citizen Number (JMBG) (5.4%), healthcare (4.2%), data processing without legal basis, i.e. without legal authorization and without the consent of the data subject (4.2%), particularly sensitive data (3.5%), banking operations (3%), personal data (name, surname, address) (2.7%), consumer protection (2.5%), transfer of personal data to data users (2.5%), telecommunications, post office, broadcasting (2.2%), defence, security, internal affairs (2.2%), data processing in the field of labour law (2%), processing of data on minors (2%), personal documents (photocopying, retention, etc.) (2%), education (1.7%), public information (media) (1.7%) official registers containing personal data (1.5%), data processing in court proceedings (1.2%), audio surveillance (1%), data processing in contractual relations between natural and legal persons (0.7%), housing relations (0.7%), utilities (0.7%), data processing in the enforcement procedure (0.7%), public transport (0.7%), data processing on social networks (0.5%) property and personal insurance (0.5%), family and social protection (0.5%) and others (1.2%).

**Graph No. 17 - The most common reasons for initiating the supervision procedure in 2020**



The Commissioner had issued 71 corrective measures, i.e. the Commissioner had issued warnings to data controllers in 64 cases, in 5 cases he temporarily or permanently restricted the data processing operations, including the prohibition of processing, and in 2 cases he ordered the data controller and processor to harmonise data processing operations with the provisions of LPDP.

In cases where he issued warnings (64), the Commissioner had found the following irregularities:

- data are not processed legally, fairly and transparently in relation to the data subject – Article 5, paragraph 1, item 1 (34);
- data are not collected for purposes that are specifically defined, explicit, justified and lawful and are further processed in a manner that is not in accordance with those purposes – Article 5, paragraph 1, item 2 (4);
- data are not appropriate, relevant and limited to what is necessary in relation to the purpose of processing – Article 5, paragraph 1, item 3 (17);
- data are not accurate and updated – Article 5, paragraph 1, item 4 (1);
- data are not stored in a form that allows the identification of person/s only within the period necessary to achieve the purpose of processing – Article 5, paragraph 1, item 5 (1);
- data are not processed in a manner that provides adequate personal data protection, including protection against unauthorized or illegal processing, as well as against accidental loss, destruction or damage by applying appropriate technical, organizational and personnel measures – Article 5, paragraph 1, item 6 (7);

- the data controller processes personal data without the consent of the data subject, i.e. is not able to prove that the data subject has given consent to the processing of his/her data – Articles 15 and 16 (1);
- the data controller processes special types of personal data contrary to Articles 17 and 18 (8);
- the data subject is not provided with information in accordance with Article 23 (7);
- the data controller, during the determination of the manner of processing as well as during the processing, does not undertake appropriate technical, organizational and personnel measures – Article 42 (21);
- the relationship between the joint data controllers is not regulated in the manner prescribed by Article 43, paragraphs 2-4 (1);
- the data controller has entrusted the processing of personal data to the data processor contrary to Article 45 (3);
- the data controller or data processor does not keep the prescribed records on data processing – Article 47 (3);
- the data controller or data processor did not undertake the appropriate technical, organizational and personnel measures in order to reach the appropriate level of security in respect to the risk – Article 50 (2);
- the data controller did not inform the Commissioner about the data security breach – Article 52 (3);
- the data controller did not perform an impact assessment on data security protection in the manner provided for under Article 54 (2);
- the data controller or data processor has not performed its obligations to the data subject in regards to personal data protection referred to in Article 57 (1);
- transfer of personal data to other countries and international organizations is done contrary to Articles 63 to 71 (1).

### ***3.3.1.1. Checklists***

During 2020, a checklist was sent to **484** data controllers, of which a risk assessment was performed in 387 cases, with 368 data controllers submitting a completed checklist to the Commissioner on the basis of which the Commissioner had assessed the level of risk concerning personal data processing, while **19** data controllers submitted a completed checklist to the Commissioner on their own initiative, on the basis of which the Commissioner had also the level of risk concerning personal data processing. The completed checklist was not submitted by 116 data controllers.

The structure of data controllers to whom the checklist was sent in 2020 is as follows: institutions in the field of science and culture – libraries (169), of which 32 did not submit a completed checklist to the Commissioner; political parties (115), of which the largest number (74) did not submit a completed checklist to the Commissioner; public enterprises at the national and local level (84), of which 12 did not submit a completed checklist to the Commissioner; private companies (86), of which 17 did not submit a completed checklist; judicial institutions - district prisons, penitentiaries, etc. (28) which submitted a completed

checklist and others (2) who submitted a completed checklist to the Commissioner. Based on all the obtained data, the Commissioner shall adopt the plan of inspection supervision for 2021.

From the beginning of implementation of the new LPDP until the end of the reporting period, the checklist was sent to the addresses of 1532 data controllers, of which a risk assessment was performed in 1375 cases, with 1349 data controllers submitting a completed checklist to the Commissioner on the basis of which the Commissioner had assessed the level of risk concerning personal data processing, while 26 data controllers submitted a completed checklist to the Commissioner on their own initiative, on the basis of which the Commissioner had also the level of risk concerning personal data processing. A total of 183 data controllers did not submit a completed checklist.

### ***3.3.1.2. Records on Data Protection Officers***

In 2020, a total of 947 data controllers have submitted records on Data Protection Officer.

Since the beginning of application of the LPDP, a total of 3,059 data controllers have submitted records on the Data Protection Officers, of which 1,837 authorities, although just over 11,000 of them have a legal obligation to do so.

***Table 10 - Structure of data controllers who have submitted records on Data Protection Officers***

private companies, banks and insurance companies	984
educational institutions	844
authorities at the national, provincial and local levels	275
healthcare institutions	257
judicial bodies and institutions	191
social welfare institutions	131
public enterprises	125
institutions in the field of science and culture	120
civil society organizations and other citizens' associations, political parties and trade unions	97
internet providers and mobile network operators	19
sports organizations and institutions in the field of youth and sports	6
media	6
institutions in the field of agriculture	1
lawyers	1
others	2

### 3.3.1.3. Notifying the Commissioner of data breaches

In 2020, a total of 32 data controllers (3 authorities, 7 healthcare institutions, 1 social welfare institution, 3 public enterprises, 3 banks, 12 private companies, 1 mobile network operator, 1 preschool institution, 1 other), have informed the Commissioner about personal data breaches.

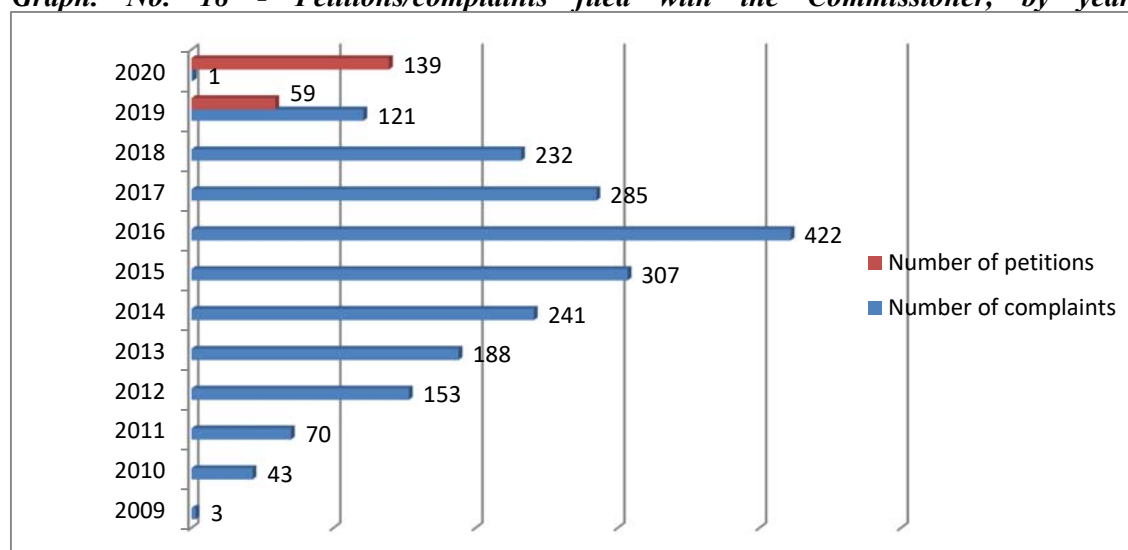
All cases were forwarded to the Supervision Sector for further action, while 7 inspections were initiated in connection with them.

### 3.3.2. Acting of the Commissioner on petitions/complaints

During 2020, the Commissioner received **139 petitions and one complaint**<sup>163</sup>.

During 2020, the Commissioner acted on 191 petitions and 9 complaints, of which 139 petitions and one complaint were received during 2020, while 52 petitions and 8 complaints were carried over from 2019.

**Graph. No. 18 - Petitions/complaints filed with the Commissioner, by years**



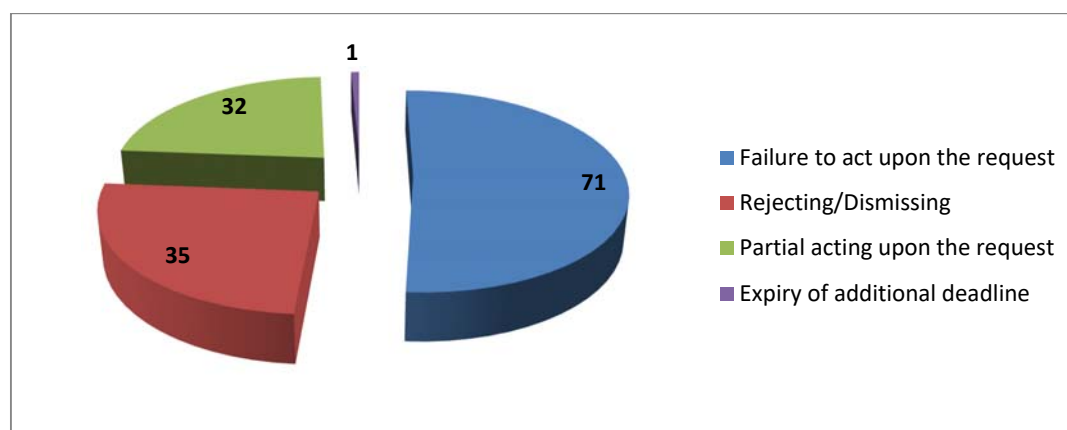
Petitions submitted to the Commissioner refer to data processed by the Ministry of Interior, banks, pension and disability insurance funds, prosecutor's offices and courts, centers for social work, healthcare institutions, as well as data processed by Internet search engines and electronic media, etc.

<sup>163</sup> No new complaints were formally filed, since the Commissioner's preliminary decision would be annulled by judgment of the Administrative Court and the case returned for retrial.

### 3.3.2.1. Reasons for filing a petition with the Commissioner

The most common reasons for filing a petition with the Commissioner are the failure of the data controller to act upon the request (71), the rejection/dismissal of the request by the data controller (35), the controller's partial acting upon the request (32) and the expiration of the subsequent deadline (1).

**Graph No. 19 - Reasons for filing petitions in 2020**



#### 1) Failure to act upon request

The most common reason for filing a petition with the Commissioner is that the data controllers did not act upon the request within the legally prescribed period of 30 days (71). Compared to 2019, when the percentage of petitions filed due to this reason was 27.9%, the negative trend of inaction of handlers continues to grow in 2020 and it amounts to 51.1% of the total number of petitions filed with the Commissioner, which is an unacceptably high percentage of ignoring the requests from persons by data controllers who are processing data. This cannot be justified by the fact that the law has been in force since 22 August 2019, because, according to the previously valid law, there was a legal obligation of the data controller to act on the requests of persons for exercising their rights in regards to the processing of personal data.

#### 2) Rejection/dismissal of requests

The next most common reason for filing a petition with the Commissioner is the rejection or dismissal of the request by the data controller (35). Compared to 2019, when 31.1% of petitions were filed for this reason, that percentage is 25.2% in 2020.

The largest number of petitions were filed against the Ministry of Interior due to the rejection of requests for deletion of personal data that are processed in the records kept by that ministry. Also, there is a growing trend in terms of petitions filed against banks, as data controllers, due to the rejection of requests for providing copies of data, i.e. copies of loan agreements.



### 3) Partial acting upon applicants' requests

In 2020, a total of 32 petitions have been submitted to the Commissioner due to the partial acting by data controllers upon the requests filed by the applicants. Compared to 2019, when 34.4% of the total number of petitions submitted to the Commissioner were filed for this reason, 23% of the total number of petitions in 2020 were filed for this reason, which is also a continuation of the negative trend of data controllers' actions.

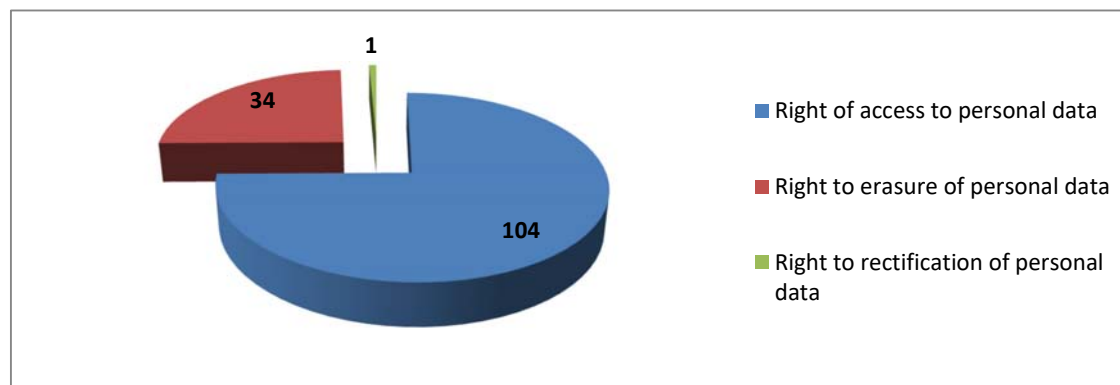
### 4) Expiration of the additional deadline

The fewest number of petitions were filed due to the expiration of the additional deadline (1), i.e. 0.7%, compared to 2019, when the percentage of petitions filed due to this reason was 6.6%.

#### 3.3.2.2. *Violated rights due to which petitions were filed with the Commissioner*

The requests in regards to which, due to the appropriate failure to act by data controllers, petitions were filed with the Commissioner refer to the realization of: rights to access data (104), rights to erasure of personal data (34), right to rectification of personal data (1).

**Graph No. 20 – Requests in respect to which petitions were filed with the Commissioner**



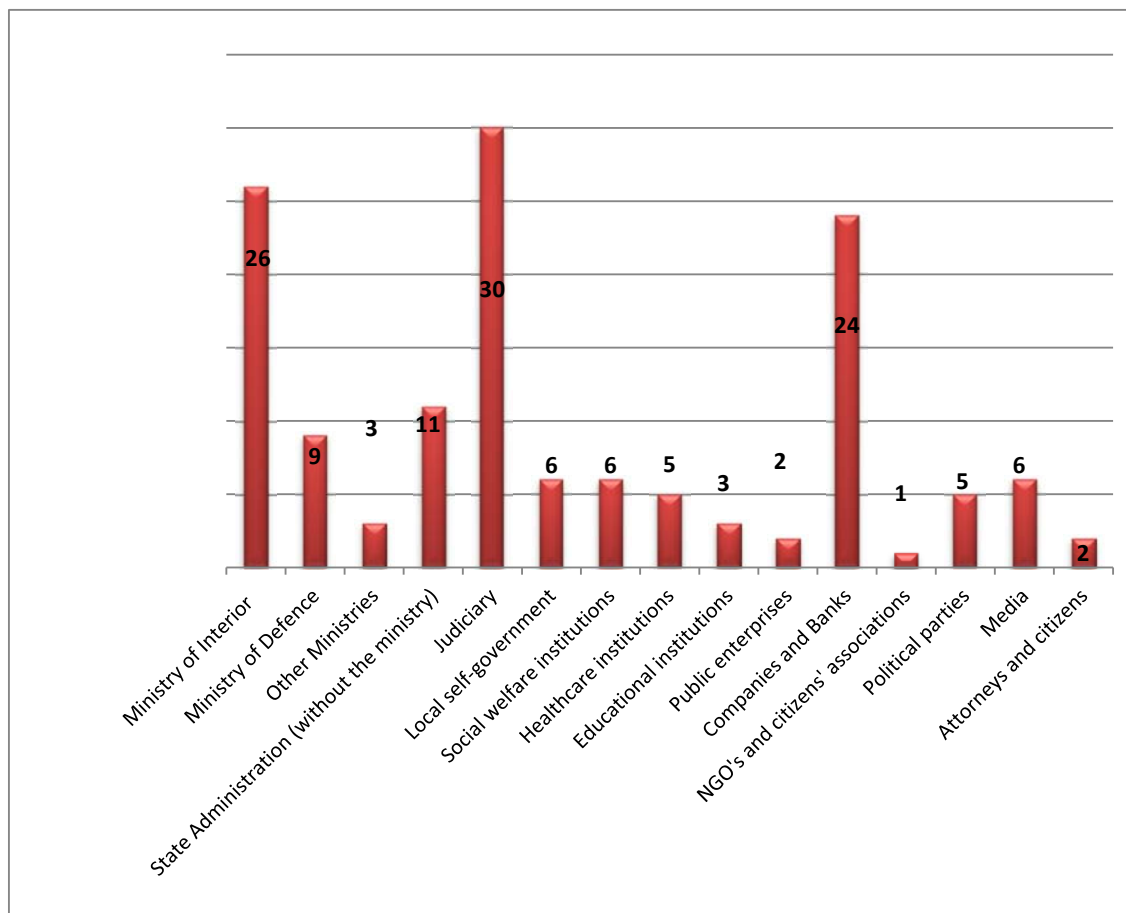
The new LPDP also prescribes the *right to be forgotten*, which means that a person can request the erasure of his/her data in the online environment. However, the right to erasure of data is not absolute, but in each case it is necessary to test the balance between the right to data protection and the right to freedom of the media and the right to information, which are also constitutionally and legally guaranteed rights. In the case of a petition filed by a person due to violation of the right to erase his/her data upon his/her request to remove links from the indexing search system of the Internet search engine “Google”, which lead to the texts of a certain media registered in the territory of the Republic of Serbia, the Commissioner found that the petition was ill-founded.

### ***3.3.2.3. The structure of data controllers against whom petitions have been lodged with the Commissioner***

The largest number of petitions, as many as 101, were filed against authorities at all levels, i.e. against bodies and organizations entrusted with public powers and public enterprises. The largest number of petitions (49) was filed against state administration bodies and judicial bodies (30), as data controllers. A total of 38 petitions were filed against the ministries, of which 26 petitions only against the Ministry of Interior and 9 against the Ministry of Defence, and 3 petitions against all other ministries together.

In regards to the authorities, the largest number of petitions was filed against the Ministry of Interior precisely because of the numerous records it keeps. The greatest interest of citizens is related to the deletion of data on recorded criminal charges, which the ministry keeps permanently, regardless of the passage of time and the outcome of the proceedings, which, according to the Commissioner's position expressed in some of his decisions, is contrary to LPDP and international standards.

***Graph No. 21 - Structure of data controllers whose (failure to act) actions have been the subject of petitions***

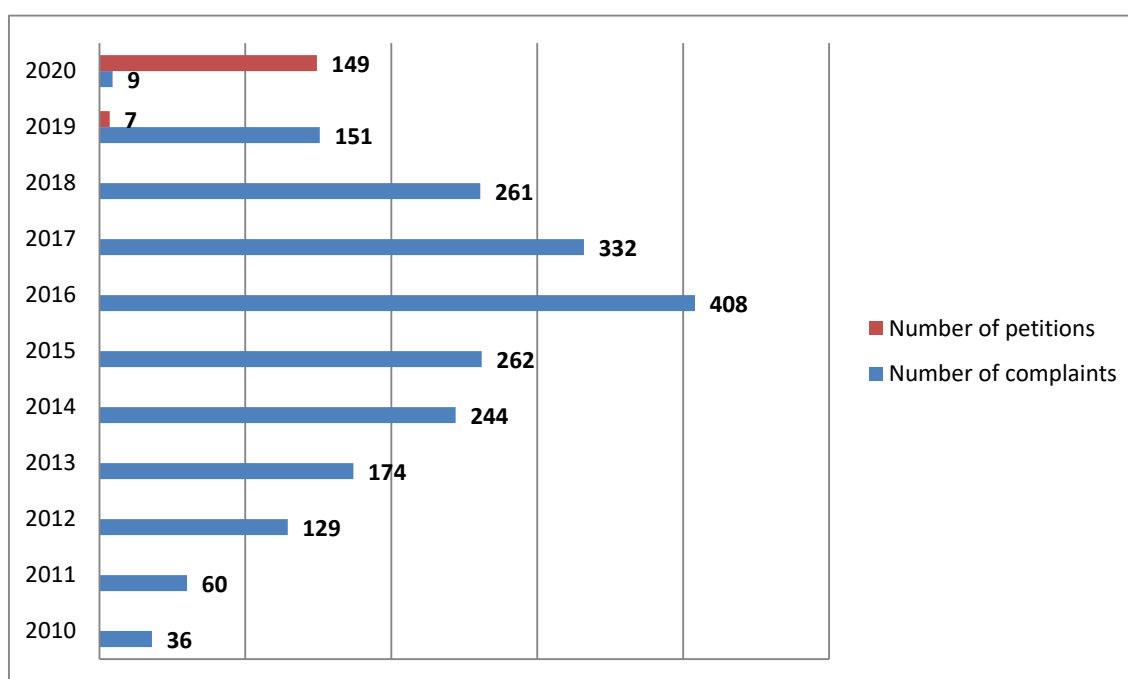


### 3.3.2.4. Resolved petitions/complaints of the Commissioner

Out of **191 petitions**, the Commissioner had **resolved 149** petitions in 2020 (98 from 2020 and 51 which have been carried over from the previous year), while the remaining 42 have been carried over to 2021.

During 2020, the Commissioner had completed the proceedings on **9 complaints** (1 from 2020 and all 8 from 2019).

**Graph No. 22 - Petitions/complaints resolved by the Commissioner, by years**



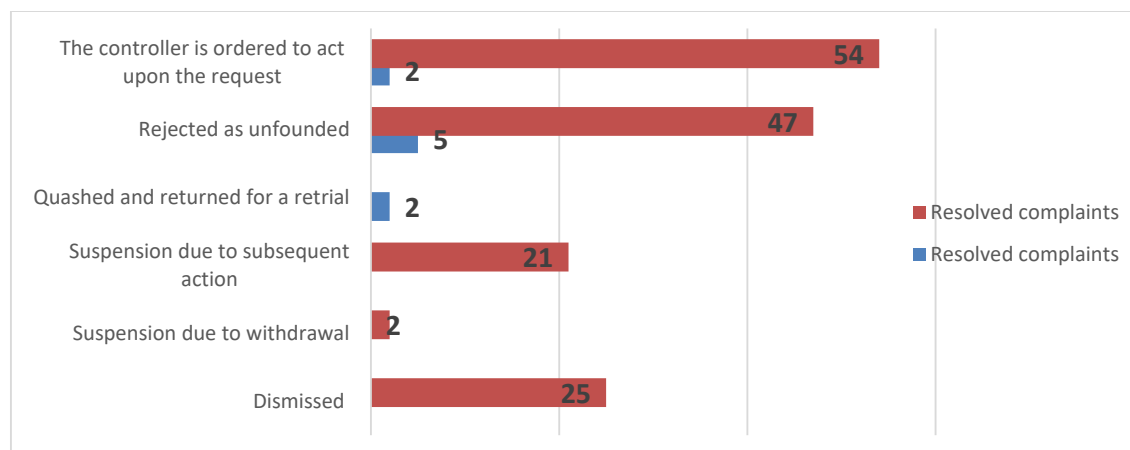
In the decisions made on the filed complaints (9), the Commissioner had found that the complain was well-founded in 4 cases, of which in 2 cases a decision was made with an order to the data controller to act upon the request. The Commissioner had annulled the data controller's decision and returned the case to the data controller for retrial in 2 cases. Other complaints were resolved by the Commissioner by rejecting them as unfounded (5 cases).

In the decisions made on the submitted petitions (149), the Commissioner had found that the petition was well-founded in 54 cases, i.e. 36.24%, whereby in all 54 cases a decision was made with an order to the data controller to act upon the request. The Commissioner had suspended the proceedings in 23 cases (15,44%), because the data controller had, prior to the Commissioner reaching a decision on the petition, acted upon the request (21 cases), i.e. the petitioner withdrew his petition (2 cases). The Commissioner had rejected 25 petitions (16,78%) due to formal reasons, while he found that 47 petitions (31,54%) were unfounded.

By analysing the petitions which the Commissioner found to be ill-founded, it can be concluded, *inter alia*, that citizens still do not have enough knowledge about the contents of the rights they are entitled to under LPDP, because they request information about other persons, the issuance of certificates, data on deceased persons etc. Often, the institution of the Commissioner is recognized as a body for the protection of rights in general, and not only of the rights related to personal data processing.

Moreover, according to LPDP, the Commissioner is not competent to conduct supervision over the data processing by courts in the exercise of their judicial powers, which is a novelty when compared to the previous law; hence, persons still submit requests for access to data processed in case files to the courts, due to which the petitions get rejected for incompetence.

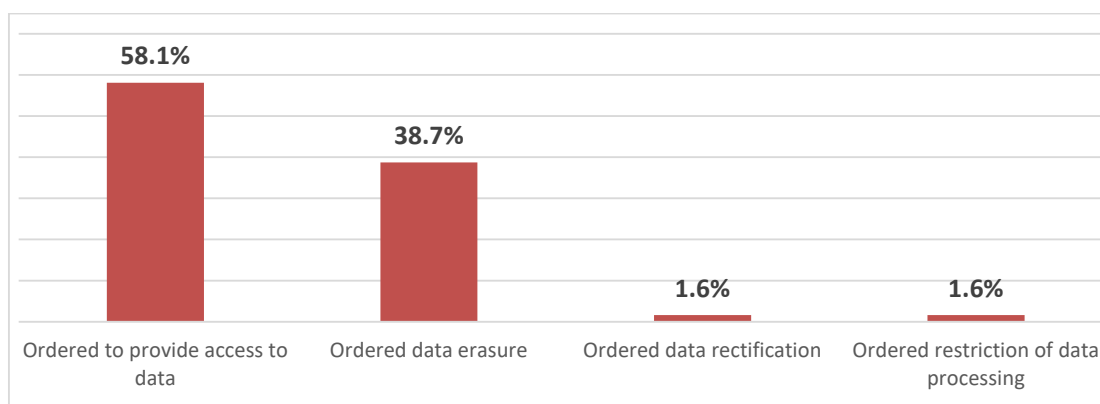
**Graph No. 23 - Decisions of the Commissioner made on petitions/complaints in 2020**



**During the reporting period, the Commissioner had reached a total of 56 binding and final decisions (54 on filed petitions and 2 on filed complaints) ordering the data controller to act on the request or to provide the requested information to the applicant, as well as to inform the data controller about the execution of the decision. A total of 46 data controllers, i.e. 82.14%, have acted in full upon the Commissioner's decision, whom have also informed the Commissioner about such action, while 5 data controllers, i.e. 8.93%, have failed to act on the Commissioner's order. Other data controllers have not informed the Commissioner about their actions or the actions are pending.**

Within the orders (54) of the Commissioner issued in 2020 on the basis of the filed petitions, the Commissioner had ordered **the providing of access to data (58.1%), the erasure of data (38.7%), the rectification of data (1.6%) and the cessation of data processing (1.6%).**

**Graph No. 24 - Measures imposed by decisions of the Commissioner in 2020**



### **3.3.3. Data transfer to other countries or international organizations**

Pursuant to LPDP, the Commissioner approves binding corporate rules and provisions of contracts or agreements when data are transferred on the basis of these mechanisms from the Republic of Serbia to another country, part of its territory, or to one or more sectors of certain activities in that country or to an international organization for which the list of the Government of the Republic of Serbia cites no existence of an adequate level of protection.

In 2020, a request for approval of binding corporate rules has been submitted to the Commissioner. The procedure has been completed with the suspension of the proceedings due to the withdrawal of the applicant.

During 2020, one request for data transfer to the United States was submitted based on contractual provisions. A total of two requests for data transfer have been carried over from the previous period; hence, there were a total of three requests for data transfer in 2020.

During 2020, all three requests for data transfer have been resolved on the basis of contractual provisions (one submitted in 2020 and two requests carried over from the previous period).

The requests were resolved as follows: in one case, the proceedings have been suspended due to the applicant's withdrawal, while two requests for data transfer to Saudi Arabia have been rejected as unfounded.

In 2020, the Decision of the European Court of Justice C-311/18 declared the decision of the European Commission 2016/1250 on the adequacy of protection under the EU-US "Privacy Shield" mechanism to be invalid; consequently, the United States, on the basis of "Privacy Shield framework", do not provide an adequate level of protection any more, not even from the point of view of LPDP.

In this regard, the Commissioner had sent an initiative to the Government in order to harmonise the Government's Decision on the List of States, Parts of Their Territories or One or More Sectors of Certain Activities in Those States and International Organizations Considered to Provide an Appropriate Level of Personal Data Protection with LPDP and European practice, which has not yet been amended.

### **3.3.4. Acting of the Administrative Court upon lawsuits against decisions of the Commissioner related to personal data protection**

According to the information available to the Commissioner, a total of 34 lawsuits were filed with the Administrative Court against the Commissioner's decisions in 2020, of which 24 were submitted to the Commissioner for comments.

Out of the total number of filed lawsuits (34), 15 were filed by data controllers, most of which were filed by the Ministry of Interior, due to the Commissioner's order to erase the data related to the applicant, i.e. the petitioner from the records kept by MoI.

The remaining 19 lawsuits were filed by the petitioners/complainants dissatisfied with the Commissioner's decision, of which 9 lawsuits against the decision rejecting the petition as ill-founded in whole or partially, 5 lawsuits against the decision to suspend the proceedings due to subsequent action of data controller upon the request, 3 lawsuits against the Commissioner's decision in the part rejecting the petition for reimbursement of the costs of proceedings, 1 lawsuit filed by the complainant against the decision of the Commissioner, and 1 lawsuit filed due to rejection of the complaint.

Also, 1 lawsuit was lodged by the applicant initiating an inspection supervision over the Clinical Center of Vojvodina, dissatisfied with the Commissioner's conduct in this case.

**During 2020, the Administrative Court had resolved 9 lawsuits** (3 lawsuits on which a decision was made was filed in 2019, 1 lawsuit in 2018 and 1 lawsuit in 2017, while the other 4 were filed in 2020) **by rejecting the lawsuit as ill-founded in 7 cases, dismissing 1 lawsuit and upholding 1 lawsuit.**

**The Administrative Court upheld one objection to its decision.** The objection was filed by the Republic Public Prosecutor's Office regarding the supervision carried out by the Commissioner at the Anti-Corruption Agency.

### **3.3.5. Actions of state bodies in connection with the acts of the Commissioner in the field of personal data protection**

#### ***3.3.5.1. Acting of Prosecutor's Offices upon criminal charges filed by the Commissioner***

During 2020, the Commissioner had filed **three criminal charges**, two of which were for the criminal offence under Article 146 of the Criminal Code (Unauthorized Collection of Personal Data) and one for the criminal offences under Articles 144 (Unauthorised Photography) and 145 of the Criminal Code (Unauthorised Publication and Presentation of another's Texts, Portraits and Recordings).

During 2020, the Higher Public Prosecutor's Office in Belgrade had informed the Commissioner that the criminal charge filed for the criminal offence unauthorized collection of personal data under Article 146, paragraph 3 of the Criminal Code was rejected due to statute of limitations.

In the period so far, from 2010 until the end of the reporting period, the Commissioner has filed a total of 45 criminal charges, for criminal offences under Article 143 (Unauthorised Electronic Surveillance and Recording), 144 (Unauthorised Photography), 145 (Unauthorised Publication and Presentation of another's Texts, Portraits and Recordings), 146 (Unauthorised Collection of Personal Data), 299 (Computer Sabotage), 302 (Unauthorised Access to Protected Computers, Computer Networks and Electronic Data Processing), 329 (Impersonation), 355 (Counterfeiting Documents) and 359 (Abuse of Office) of the Criminal Code.

**According to the data available to the Commissioner, based on the criminal charges which the Commissioner has filed so far, only 2 indictments have been filed. In regards to the indictments, one final conviction (the person was sentenced to 6 months probation) and 1 acquittal have been passed. A total of 21 criminal charges have been rejected due to the statute of limitations as regards prosecution, 14 have been postponed due to principle of opportunity, and 3 investigations have been suspended due to statute of limitations. Proceedings on other criminal charges are still pending.**

The Commissioner has expressed his belief that, in the criminal charges he submitted to the Public Prosecutor's Offices, he gave enough elements for their further processing, in order for the perpetrators of criminal offences to be found and appropriately sanctioned.

#### ***3.3.5.2. Acting of misdemeanour courts upon requests of the Commissioner for initiating misdemeanour proceedings***

**During 2020, the Commissioner had submitted 6 requests for initiating misdemeanour proceedings due to violations of the provisions of LPDP**, of which 4 because the data controller processes personal data contrary to the principles from the provision of Article 5, paragraph 1 of LPDP, 1 because the data controller processes personal data for other purposes contrary to Articles 6 and 7 of LPDP, and 1 because the data controller, during the determination of the manner of processing as well as during the processing, had not undertaken appropriate technical, organizational and personnel measures in accordance with Article 42 of LPDP.

In the period so far, from 2010 until the end of the reporting period, the Commissioner has filed a total of 223 requests for initiating misdemeanour proceedings, of which:

- 216 for violating the provisions of the old LPDP due to:
  - Transfer of data from the Republic of Serbia contrary to Article 53 of the old LPDP.
  - The decision of the Commissioner reached on a complaint has not been enforced - Article 41, paragraph 1 of the old LPDP.
  - Records have not been established nor updated
  - No action has been undertaken on the Commissioner's orders - Article 56, paragraph 2 of the old LPDP.
  - The data from the data collection have not been erased in accordance with Article 36 of the old LPDP.
  - Processing of particularly sensitive data contrary to Articles 16-18 of the old LPDP

- Data processing without consent contrary to the conditions under Article 12 of the old LPDP.
- Data processing contrary to the conditions under Article 13 of the old LPDP.
- The authorized person of the Commissioner was not enabled to perform supervision without hindrance, nor was the necessary documentation made available to him - Article 55 of the old LPDP.
- Acting contrary to the obligation to undertake measures under Article 47, paragraph 2 of the old LPDP.
- The Commissioner was not informed about the intention to establish a data collection within the prescribed period – Article 49, paragraph 1 of the old LPDP.
- The Commissioner was not provided with records, i.e. changes in the data collection within the prescribed period – Article 51, paragraph 1 of the old LPDP.
- Collection of personal data from another person contrary to Article 14 of the old LPDP.
- Prior to the collection of data, the data subject, i.e. another person is not familiar with the conditions referred to in Article 15, paragraph 1 of the old LPDP.
- Offences referred to in Article 57, paragraph 1, item 14 in conjunction with paragraph 3 of the old LPDP.

and

- 7 for violating the provisions of the new LPDP due to:

- Processing of personal data contrary to the principles of data processing under Article 5, paragraph 1 of the new LPDP.
- Processing of personal data for other purposes contrary to Articles 6 and 7 of the new LPDP.
- During the determination of the manner of processing, as well as during the processing, the appropriate technical, organizational and personnel measures have not been undertaken in accordance with Article 42 of the new LPDP.

**During 2020**, in respect of all misdemeanour requests that he had submitted so far, the Commissioner had received 44 decisions of misdemeanour courts (34 decisions of first instance courts and 10 decisions of second instance court). The first instance courts have decided as follows: 15 convictions, 3 acquittals, 15 proceedings were suspended (of which 14 due to the statute of limitations and 1 suspension of execution of the imposed fine) and 1 request for initiating misdemeanour proceedings was rejected.

Under convictions (15), the misdemeanour courts have issued warnings to the defendants in 4 cases, two of which received a finality clause, while fines have been imposed in the other 11 in the amount of RSD 672,000. Fines for responsible legal entities range from RSD 50,000 to RSD 100,000 (3 fines of RSD 100,000 and 6 of RSD 50,000) while for responsible individuals they range from RSD 5,000 to RSD 15,000, with the largest number, i.e. 6 fines imposed in the amount of RSD 5,000, 1 fine of RSD 7,000, 2 fines of RSD 10,000, and 1 of RSD 15,000, while in 1 case the procedure was suspended due to the sentence being already imposed for the same offence in a specially conducted criminal proceedings.

The second instance courts have decided as follows: 5 appeals were rejected (one of which by the Commissioner for Information of Public Importance and Personal Data



Protection), while the conviction was upheld in 4 cases, and one acquittal was upheld on the Commissioner's appeal; 2 appeals were upheld and the case was returned to the first instance court for retrial, while 3 convictions were reversed due to the occurrence of absolute statute of limitations.

The Commissioner has repeatedly, including in the process of drafting and adopting the Law on Misdemeanours, unsuccessfully pointed out that the two-year deadline for the onset of absolute statute of limitations is too short.

### **3.3.6. Activities of the Commissioner on the affirmation of the right to personal data protection**

During 2020, the Commissioner had organized and implemented a large number of trainings in the field of personal data protection. In addition to trainings organized and implemented by the Commissioner, either independently or in co-organization with other institutions, trainings in the field of personal data protection are conducted continuously and are organized by the National Academy of Public Administration, for the needs of civil servants. The representatives of the Commissioner also participate in these trainings in the role of lecturers, in addition to other lecturers.

On 21 January 2020, the accredited lecturers of the National Academy of Public Administration held a training for the employees of the Commissioner's Office in the field of inspection supervision and misdemeanour proceedings.

The trainings held by the Commissioner were:

1. Based on the Agreement between the Commissioner and the Faculty of Security Studies of the University of Belgrade on long-term educational, scientific, technical and business cooperation in the field of education of personnel in charge of personal data processing and protection, the Commissioner had conducted a short study programme in 2020 titled "*Training of managers for personal data protection*", with the aim of providing professional training and education to persons for performing tasks related to personal data protection.
2. On 17 January 2020, the representative of the Commissioner held a training on the application of LPDP intended for representatives of local self-governments and public enterprises and institutions in the City of Novi Sad, organized by the local Ombudsman of the City of Novi Sad;
3. Representatives of the Commissioner have held a training on the implementation of LPDP intended for representatives of government bodies, local self-government units and other public services, organized with the support of the USAID Government Accountability Initiative, in Sombor, on 22 January 2020, in Šabac, on 31 January 2020, in Vranje, on 4 February 2020, in Belgrade, on 12 February 2020, in Sjenica, on 20 February 2020, in Novi Pazar, on 21 February 2020, and in Kragujevac, on 28 February 2020;
4. On 30 January 2020, the representative of the Commissioner held a training in Belgrade on the application of LPDP intended for media representatives, organized with the support of the Journalists' Association of Serbia;

5. On 3 March 2020, the representative of the Commissioner held a training in Belgrade on the implementation of LPDP intended for representatives of government bodies, local self-government units and other public services, organized by Public Aktiv;
6. On 4 March 2020, the representative of the Commissioner held a training in Belgrade on the implementation of LPDP intended for representatives of government bodies, local self-government units and other public services, in cooperation with NHIF;
7. On 6 March 2020, the representative of the Commissioner held a training in Belgrade on the application of LPDP intended for representatives of non-governmental organizations and certain lawyers, organized by the Belgrade Centre for Human Rights;
8. On 29 May 2020, the representative of the Commissioner held an online training on the application of LPDP intended for employees in healthcare institutions, organized by the Institute for Standardization of Serbia and the Center for Risk Analysis and Crisis Management;
9. On 29 July 2020, the representative of the Commissioner, with the support of the USAID Government Accountability Initiative, held an online training on the implementation of LPDP intended for employees at local self-governments in Pirot, Vrnjačka Banja, Sremska Mitrovica, Dimitrovgrad and Niš, as well as for representatives of the Ministry of Culture of the Republic of Serbia;
10. On 9, 11 and 21 September 2020, the representative of the Commissioner held three trainings in Belgrade on the topic of application of LPDP, organized by the Chamber of Commerce of Serbia;
11. On 2 October 2020, the representative of the Commissioner held a training in Belgrade titled "*The first year of implementation of the new LPDP*" at the premises of the Association of Serbian Banks;
12. On 5 November 2020, the representative of the Commissioner held an online training organized by the National Academy of Public Administration on the topic of application of LPDP;
13. On 16 and 17 November 2020, the representatives of the Commissioner held a two-day online training on the topic: "*Application of LPDP*", organized by the Commissioner for Information of Public Importance and Personal Data Protection. The training was attended by representatives of various state bodies and institutions, judges, lawyers, as well as by representatives of the business sector. There were a total of 27 registered participants. The training was customized for Data Protection Officers.
14. The representative of the Commissioner held an online training on the topic "*Artificial Intelligence and Human Rights*", organized by ELSA Novi Sad (European Law Students' Association) and upon their invitation; The training was attended by students of the Faculty of Law from Novi Sad, on 1 November 2020;
15. The representative of the Commissioner held an online training on the application of LPDP intended for the representatives of local self-governments, organized by the Standing Conference of Towns and Municipalities;
16. On 28 and 29 December 2020, the representative of the Commissioner held a two-day online training on the topic "*Law on Personal Data Protection with a focus on social networks*", organized by the Faculty of Law Student Club from Belgrade; The training was attended by students of the Faculty of Law from Belgrade.

## **4 COOPERATION ACTIVITIES OF THE COMMISSIONER**

### **4.1. COOPERATION WITH STATE BODIES, CIVIL SOCIETY ORGANIZATIONS AND BUSINESS ASSOCIATIONS**

#### **4.1.1. Conferences**

- The Commissioner participated in the work of the Conference "Data Protection Day 2020: Facing New Challenges", in Zagreb, Croatia, held on 16 January 2020;
- On 28 January 2020, the Commissioner organized a conference on the occasion of marking the "International Data Protection Day" at the MP's Club in Belgrade. At the conference, in addition to the Commissioner Milan Marinović, the following persons have also made their address: H.E Sem Fabrizi, Head of the EU Delegation to Serbia; H.E. Andrea Orizio, Head of the OSCE Mission to Serbia; Tobias Flessenkemper, Head of the Council of Europe Office in Belgrade; Mr. Mike de la Rosa, USAID Mission Director to Serbia, and Igor Vulje, Croatian Personal Data Protection Agency, Head of the Supervision and Central Registry.
- The Commissioner participated in a video conference at which Transparency Serbia presented the results of a new cycle of local self-government transparency research - LTI 2020, held on 29 May 2020, with the support of the United States Agency for International Development (USAID);
- On 28 September 2020, the Commissioner organized a conference on the occasion of marking the "International Right To Know Day" at the MP's Club in Belgrade. At the conference, in addition to the Commissioner Milan Marinović, the following persons have also made their address: H.E Sem Fabrizi, Head of the EU Delegation to Serbia; H.E. Andrea Orizio, Head of the OSCE Mission to Serbia; Tobias Flessenkemper, Head of the Council of Europe Office in Belgrade, and Mr. Mike de la Rosa, USAID Mission Director to Serbia. This year, due to the situation caused by COVID-19 pandemic, the International Right To Know Day was marked in accordance with the measures prescribed by the competent authorities. Only the award winners and speakers have attended the ceremonial hall of the MP's Club in compliance with the prescribed preventive measures, while all other interested parties had the option to follow the event via live stream. The publication "IX - Attitudes and Opinions of the Commissioner - Free Access to Information" was presented at this gathering, and awards were given to the authorities for the best Information booklet on work, as well as for their contribution to affirming the public's right to free access to information of public importance;
- On 7 October 2020, the Commissioner participated in the online conference of the Foreign Investors Council, which was dedicated to the implementation of the Law on Personal Data Protection in the past year. The aim of the conference was to assess the progress made through a joint dialogue, as well as to consider the challenges that business representatives face in the implementation of the Law;
- On 10 December 2020, a conference was held on the occasion of marking the International Human Rights Day, organized by the Ministry for Human and Minority Rights, at which the Commissioner made his address via a video recorded statement;
- On 28 February 2020, the representative of the Commissioner participated in the World Bank Conference on "Transparency and Accountability Initiative in Serbia";

- On 6 March 2020, the representative of the Commissioner attended the conference "Data and eGovernance: the spark for the future" at the Palace of Serbia, New Belgrade;

#### 4.1.2. Meetings

- On 29 January 2020, the Commissioner and his associates received the OSCE representatives. The topic of the meeting was the implementation of the Project "Consolidating the Democratization Process in the Security Sector in Serbia", in the part related to personal data protection;
- On 30 January 2020, the Commissioner received the Adviser to the Commissioner for Human Rights of the Council of Europe, Ms. Anne Weber, on the occasion of the presentation of the publication "Unboxing Artificial Intelligence: 10 Steps to Protect Human Rights";
- On 6 February 2020, the Commissioner and his associates received the representatives of the World Bank. The purpose of the meeting was to, at the initiative of the World Bank, gather institutions and organizations interested in issues of transparency and accountability in governance in the forthcoming year;
- On 5 March 2020, the Commissioner and his associates received the representatives of the Serbian Business Registers Agency. The topic of the meeting was the provision of data on requests for free access to information;
- On 11 March 2020, the Commissioner and his associates received the representatives of UNDP.
- On 21 August 2020, the Commissioner received the director of the Belgrade branch of the National Employment Service, in order to establish closer cooperation and exchange the experiences so far;
- The Commissioner received representatives of ASSECO, which is the first to be certified for the ISO 27701 Standard that is important from the aspect of personal data protection. On 31 August 2020, the topic of the meeting was, *inter alia*, the Serbian standard SRPS ISO/IEC 27701:2019 and the process and procedures for obtaining this certificate;
- On 22 October 2020, the Commissioner had received the Ambassador of the Kingdom of Belgium to Serbia, whom he informed about the need for amendments or the adoption of a new Law on Free Access to Information of Public Importance, in order to strengthen the role of the Commissioner in regards to the protection of this right;
- On 9 January 2020, the Assistant Secretary General received the representatives of USAID in order to reach an agreement on the implementation of training on personal data protection in local self-governments in the forthcoming period;
- The representatives of the Commissioner received Partners Serbia who are commencing with their work on the two-year project "*Reclaiming Privacy: A Tool to Fight Oppression*". The project was supported by the EU Delegation to the Republic of Serbia and the Office for Cooperation with Civil Society of the Government of the Republic of Serbia;
- On 1 October 2020, the Commissioner participated with the representatives of the Commissioner in the meeting of the Standing Conference of Towns and Municipalities (SCTM), at which the main topic was the establishment of future cooperation and training for state administration and local self-government bodies;
- On 12 March 2020, the Commissioner talked with his associates about cooperation with the representatives of the Chamber of Commerce of Serbia;

- The Commissioner spoke with representatives of the SHARE Foundation, regarding the documentary they are shooting on the topic of smart video surveillance. The aim of the documentary is to explain how smart video surveillance system works, as well as to show the benefits and risks of introducing such a system; the meeting was held on 28 May 2020;
- The Commissioner attended a meeting at the OSCE. The topic of the meeting was related to the issue of conflict of the provisions of the Law on Personal Data Protection with the provisions of the Law on the Single Electoral Roll, which refer to the presentation of the electoral roll, as well as with international standards in this field. The discussion was also held on other issues within the competence of the Commissioner, which have to do with the election process. The meeting was held on 15 June 2020;
- A meeting between the Commissioner and the Director of the USAID Government Accountability Initiative (USAID GAI) was held on 29 October 2020. At the meeting, the activities that this project will support in the coming years have been defined;
- On 2 November 2020, a meeting between the Commissioner and the representatives of the USAID Office in Serbia has been held on the topic of planning future cooperation and technical support in the field of personal data protection in digital era, as well as on the access to information of public importance;
- On 17 November 2020, the Commissioner met with the Minister of Human and Minority Rights and Social Dialogue. It was agreed that, in regards to issues in the field of human rights, which are within the competences of the Commissioner, it is necessary to conduct a dialogue with all relevant bodies and institutions as soon as possible, in order to improve personal data protection and free access to information of public importance in the Republic of Serbia;
- On 22 December 2020, the Commissioner had an online meeting with the representatives of US embassy on the topic of electoral roll verification project in order to provide an independent, nonpartisan analysis of the voter registration and electoral roll process and increase public confidence in the electoral system;
- On 24 December 2020, the Commissioner had attended a meeting with the World Bank team through the “Webex” platform, the topic of the meeting being the World Bank Initiative for Improving Transparency and Accountability in terms of Governance in Serbia.
- On 24 December 2020, the Commissioner had a meeting with the Minister of Public Administration and Local Self-Government on the topic of amendments to LFAIPI;
- On 22 January 2020, the representative of the Commissioner attended the 4th Meeting of the Special Working Group for Public Administration Reform at the Hotel "M" in Belgrade;
- On 7 May 2020, the representatives of the Commissioner participated in an online meeting with representatives of the USAID Government Accountability Initiative (GAI). The topic of the meeting was the establishing of guidelines for writing a publication/guide for the implementation of the Law on Free Access to Information of Public Importance;
- Representatives of the Commissioner held an online meeting with the UNDP Team in Serbia, with the aim of identifying the biggest challenges in the implementation of LPDP. The meeting was held on 12 June 2020;

- On 18, 23 and 24 June 2020, the representative of the Commissioner participated in the online meetings of the Working Group for Public Administration Reform, where they discussed the amendments to LFAIPI.
- Representatives of the Commissioner held two online meetings with the UNDP Team in Serbia, with the aim of identifying the biggest challenges in the implementation of LPDP. Meetings were held on 8 and 9 July 2020;
- On 15 July 2020, the representatives of the Commissioner participated in an online meeting with the representatives of OSCE. The topic of the meeting was the analysis of the regulations governing the security sector, with special reference to personal data protection;
- Two online meetings were held with USAID representatives regarding the development of project support in activities for promoting the right to free access to information of public importance. Meetings were held on 6 and 30 July 2020;
- On 22 September 2020, a meeting was held between the Commissioner and representatives of the Council of Europe in Belgrade. At the said meeting, opinions were exchanged on the current situation regarding access to information of public importance and personal data protection in the Republic of Serbia. Representatives of the Council of Europe have expressed their readiness to support and assist the development of personal data protection in the Republic of Serbia, especially in the context of the implementation of the Protocol on Amendments to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (Convention 108+) which was ratified by the Republic of Serbia on 26 May 2020;
- On 23 September 2020, a meeting was held between the Commissioner and the representatives of the Share Foundation and Partners for Democratic Change Serbia on the topic of future cooperation on improving the privacy base, which is one of the activities of the project "*Reclaiming Privacy: A Tool to Fight Oppression*" and records characteristic violations of the right to privacy in terms of personal data protection in the Republic of Serbia. The project is implemented, with support of the EU, by the following civil society organizations: Share Foundation, Partners for Democratic Change Serbia, Let It Be Known, Atina, A11\* Initiative for Economic and Social Rights and Belgrade Open School;
- On 21 October 2020, within the USAID Government Accountability Initiative, a training of representatives of the Commissioner's Office was held on editing the YouTube channel and managing live performances, as well as a short meeting on further steps in the implementation of project cooperation between USAID and the Commissioner;
- On 28 October 2020, the representative of the Commissioner had participated in the online 7th meeting of the Sub-committee on Justice, Freedom and Security.
- On 29 October 2020, the representatives of the Commissioner's Office participated in a meeting with the representatives of OSCE Mission to Serbia and representatives of the Agency for Public Opinion Polling "Kantar". The topic of the meeting was the concept of public opinion polling in regards to citizens' attitudes on privacy, which is part of the project activities of the OSCE Mission's Support to the Implementation of Regulations in the Field of Personal Data Protection, with special reference to the security sector.
- On 10 November 2020, the representative of the Commissioner had participated in the online 7th meeting of the Public Administration Reform Special Group.

- On 17 November 2020, the representative of the Commissioner had participated in the online 7th meeting of the Stabilization and Association Committee, organized by the Ministry of European Integration.
- The representative of the Commissioner had attended the fourth session of the Committee on the Judiciary, Public Administration and Local Self-Government, held on 16 December 2020, at which the reports of independent state bodies have been considered.

#### **4.1.3. Events**

- On 2 March 2020, the Commissioner and his associates have attended the session of the Committee on Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly of Serbia;
- On 30 April 2019, the Commissioner and the Assistant Secretary General have participated as guest speakers at the online event "*Personal Data Protection in the Age of COVID-19*", organized by the American Chamber of Commerce in Serbia (AmCham Serbia);
- On 27 May 2020, the Commissioner had attended a ceremonial gathering dedicated to the 10th anniversary of the establishment of the institution of the Commissioner for the Protection of Equality, with participation of a large number of representatives of the authorities, the diplomatic corps, civil society, as well as public figures;
- On 18 September 2020, the Commissioner had attended a reception at the Dutch Embassy on the occasion of the organization of the Pride Parade;
- On 4 November 2020, the Commissioner attended a ceremony held on the occasion of the "70th anniversary of the European Convention on Human Rights" at the Rectorate of the University of Belgrade, at the invitation of the Head of the Council of Europe Office in Belgrade.
- On 23 December 2020, the Commissioner had attended an online meeting organized by the *OSCE* on the occasion of the presentation of the analysis of regulations governing the security sector, from the aspect of personal data protection.
- On 26 December 2020, the Commissioner had attended the Second Special Session of the National Assembly of the Republic of Serbia in the twelfth convocation, on whose agenda was also the Report on the Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2019.
- On 27 January 2020, the Secretary General of the Commissioner's Office had attended the solemn academy on the occasion of marking the St. Sava's Day at the Faculty of Law in Belgrade;
- On 27 January 2020, the representative of the Commissioner had attended the Saint Sava's Academy at the Theatre in Belgrade;
- On 3 February 2020, the representative of the Commissioner had attended the meeting organized by eGovernment on the topic "Digital cooperation: government transformation" at the Palace of Serbia;
- On 13 February 2020, the representative of the Commissioner had attended the Round Table "The right of children and youth to culture", at the Children's Cultural Center;
- On 27 February 2020, the representative of the Commissioner had attended the presentation of the annual report "Human Rights in Serbia 2019", as well as the annual report "Right to Asylum in the Republic of Serbia 2019", at the Media Center Belgrade;
- On 24 September 2020, the USAID and the Commissioner have organized the Forum on Free Access to Information of Public Importance - Access to Information during the

COVID-19 Pandemic, on the occasion of the International Right To Know Day, which is celebrated worldwide on 28 September. The Forum was opened by the Commissioner and Director of the USAID Government Accountability Initiative. Challenges and experiences regarding the application of the right to access information of public importance in the Republic of Serbia have been presented by the Assistant Secretary General of the Commissioner's Office and a member of the Crisis Response Team for the Suppression of Infectious Disease COVID-19. Experiences from the region have been provided by an international expert on freedom of information and a former Information Commissioner of the Republic of Croatia, while the experiences of citizens and the media have been presented by a BIRN representative. The Forum was also attended by representatives of state bodies, civil society organizations and the media who have contributed to the discussion;

- On 12 November 2020, the representative of the Commissioner had attended the online scientific counselling, organized by Transparency Serbia, on the topic "Financing the parliamentary elections campaign".
- On 17 November 2020, the representative of the Commissioner had attended the online presentation of the results organized by the *Coalition prEUgovor* on the topic "ALARM – an independent semi-annual report on Serbia's progress".
- On 10 December 2020, the representative of the Commissioner had attended an online conference organized by the Roma Center for Women and Children on the topic "Rights of Roma Women in Serbia".

#### 4.1.4. Appointment of representatives of foreign companies

During 2020, the Commissioner had received written decisions on the appointment of representatives in accordance with the LPDP from the following companies:

**Table 11 - Representatives of data controllers/data processors who are not based in the Republic of Serbia**

<p><b>Google, <a href="#">based in USA</a></b></p>	<p>The representatives of this company for the Republic of Serbia are <i>BDK Advokati</i>, with address: Bulevar kralja Aleksandra 28, Belgrade. In accordance with the law, the Commissioner or another person may address this representative, along with the company <b>Google</b>, i.e. in its stead, in regards to all the issues related to the processing of personal data, in order to ensure compliance with the provisions of this law.</p> <p>21 May 2020</p>
<p><b>Viber Media S.a.r.l., based in Luxembourg</b></p>	<p>The representatives of this company for the Republic of Serbia are the lawyers of the <i>Joint Law Firm Marković Vukotić Jovković</i>, with address Vojkovićeve 12, Belgrade. In accordance with the law, the Commissioner or another person may address this representative, along with the company <b>Viber Media S.a.r.l.</b>, i.e. in its stead, in regards to all the issues related to the processing of personal data, in order to ensure compliance with the provisions of this law.</p> <p>1 October 2020</p>



<p><b>Netflix International B.V. and Booking.com B.V., based in Amsterdam, The Netherlands</b></p>	<p>The representative of these company for the Republic of Serbia is the <i>Law Firm Mikijelj Janković and Bogdanović</i>, with address Vlakovićeveva 28, Belgrade. In accordance with the law, the Commissioner or another person may address this representative, along with the companies <b>Netflix International B.V.</b> and <b>Booking.com B.V.</b>, i.e. in their stead, in regards to all the issues related to the processing of personal data, in order to ensure compliance with the provisions of this law.</p> <p>30 October 2020</p>
<p><b>Snap Inc., based in the U.S.A</b></p>	<p>The representative of this company for the Republic of Serbia is the Law Office <i>Živković Samardžić</i>, with address Makedonska 30, Belgrade. In accordance with the law, the Commissioner or another person may address this representative, along with the company <b>Snap Inc.</b>, i.e. in its stead, in regards to all the issues related to the processing of personal data, in order to ensure compliance with the provisions of this law.</p> <p>18 November 2020</p>
<p><b>Yandex LLC, based in Moscow</b></p>	<p>The representative of this company for the Republic of Serbia is the Law Office <i>Živković Samardžić</i>, with address Makedonska 30, Belgrade. In accordance with the law, the Commissioner or another person may address this representative, along with the company <b>Yandex LLC</b>, i.e. in its stead, in regards to all the issues related to the processing of personal data, in order to ensure compliance with the provisions of this law.</p> <p>26 November 2020</p>
<p><b>Alibaba.com Singapore E-Commerce Private Limited, based in Singapore</b></p>	<p>The representative of this company for the Republic of Serbia is the Law Office <i>Karanović &amp; Partners</i>, with address Resavska 23, Belgrade. In accordance with the law, the Commissioner or another person may address this representative, along with the company <i>Alibaba</i>, i.e. in its stead, in regards to all the issues related to the processing of personal data, in order to ensure compliance with the provisions of this law.</p> <p>07 December 2020</p>
<p><b>AiCure LLC and TOPTAL LLC, based in the U.S.A</b></p>	<p>The representative of AiCure LLC for the Republic of Serbia is the Law Office <i>SOG / Samardžić Oreški Grbović a.o.d.</i>, with address Kondina 13, Belgrade. The representative of TOPTAL LLC for the Republic of Serbia is Snežana Marković, with e-mail address <a href="mailto:serbianprivacyteam@toptal.com">serbianprivacyteam@toptal.com</a>. In accordance with the law, the Commissioner or another person may address these representatives, along with the companies <b>AiCure LLC</b> and <b>TOPTAL LLC</b>, i.e. in their stead, in regards to all the issues related to the processing of personal data, in order to ensure compliance with the provisions of this law.</p> <p>10 December 2020</p>

## 4.2. INTERNATIONAL AND REGIONAL COOPERATION

In 2020, the Commissioner continued to achieve successful cooperation with international organizations and forums (Council of Europe, International Conference of Information Commissioners (ICIC)<sup>164</sup> and the Global Privacy Assembly (GPA)<sup>165</sup>, as well as with branches of international or transnational organizations in Serbia (UNDP, OSCE, EU Delegation to the Republic of Serbia, Council of Europe Office in Belgrade, USAID Government Accountability Initiative).

In 2020, within the framework of international cooperation, the Commissioner had submitted the GPA's response to the Questionnaire on exercising the right to personal data protection during the COVID-19 pandemic in the Republic of Serbia; answers to the Questionnaire on resources of the Data Protection Officers prepared in accordance with the agreement of the members of the Consultative Committee of Convention 108 at the 40th Plenary Session, and comments to the Ministry of Trade, Tourism and Telecommunications regarding the application of the Law on Personal Data Protection in order to draft a new OECD Competitiveness Outlook in South East Europe for 2021.

The Commissioner particularly cooperated with the competent institutions from the region and the former Yugoslavia, in the field of personal data protection and in the field of free access to information of public importance.

Representatives of the Commissioner have participated in the following international and regional gatherings, as well as in meetings dedicated to free access to information and personal data protection:

- In the period from 13-15 October 2020, the Commissioner and the Assistant Secretary General have participated in the online **Global Privacy Assembly 2020 Closed Session – At your desk**. The main topic of the three-day conference, which took place online, was the progress achieved in terms of the GPA's strategic direction. The following five resolutions have been adopted at the conference: Resolution on the Role of Personal Data Protection in International Development Aid, International Humanitarian Aid and Crisis Management; Resolution on Facial Recognition Technology; Resolution on Joint Statements on Emerging Issues; Resolution on the Privacy and Data Protection Challenges arising from the COVID-19 Pandemic; and Resolution on Accountability in the Development and Use of Artificial Intelligence;
- The Commissioner had participated in the first online **regional conference “2020 Initiative”**, which was held at the initiative of the Information Commissioner of the Republic of Slovenia on 20 October 2020. This initiative brings together institutions from the countries of the region, which deal with the protection of the right to access information of public importance. Each country presented its work so far in the field of the right to access information of public importance, legal regulations, issues which the bodies face in proceedings for resolving complaints and other problems they face in their line of work, and exchanged examples of good practice in regards to promotion and protection of the right to access information of public importance. The Joint Declaration of the 2020 Initiative was adopted as a basis for good cooperation and exchange of experiences between the participants in the future;

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<sup>164</sup> International Conference of Information Commissioners

<sup>165</sup> Global Privacy Assembly

- On 18 November 2020, the Assistant Secretary General had participated in the online **24th meeting of the ICIC Steering Working Group**<sup>166</sup>, at which the following six priorities were discussed: capacity building of ICIC in order to continue to implement its mission and vision; membership expansion; considering options for developing financial stability; establishing communication between the members and publishing information related to access to public information rights; undertaking a comparative assessment of the needs of different geographical regions in regards to the protection and improvement of access to information of public importance;
- The Assistant Secretary General had participated in the online **40th plenary session of the Consultative Committee of the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (Council of Europe Convention 108)**, which was held from 18 to 20 November 2020. At the session, *inter alia*, three requests for observer status have been considered, the Bureau of the Consultative Committee for the next two years has been elected, cooperation with relevant bodies of the Council of Europe in the forthcoming period has been considered and specified and drafts of prepared documents have been analysed and defined;
- In the period from 16-18 December 2020, the Assistant Secretary General had participated in the online **51st meeting of the Bureau of the Consultative Committee of Convention 108**. At the meeting, *inter alia*, the Draft Declaration by the Committee of Ministers on the need to intensify efforts to respect and protect children's privacy in the digital environment and the Draft Guidelines on Face Recognition have been finalized.

During 2020, as in previous the years, the Commissioner had cooperated intensively with the media and journalists' associations.

Journalists from *Tanjug* and *Beta* news agencies, the daily newspapers *Danas*, *Politika*, *Blic*, *Kurir*, *Večernje novosti*, the weekly newspapers *NIN*, *Vreme*, *List Zrenjanin*, *Novi Magazin*, *Nedeljnik*, *Ekspres*, and other numerous media, such as: *RTS*, *CINS*, *KRIK*, *BIRN*, *Radio Free Europe*, *Insider*, *NI*, *Nova S*, *Adria Media Group*, *Južne vesti*, *Istinomer*, *VOICE*, *TV Studio B*, *AL Jazeera*, *RT Vojvodina*, *TV Prva*, *24 sata* and other media have sought interviews with the Commissioner. The Commissioner had appeared as a guest on the following TV stations with a national frequency: *RTS*, *TV Pink*, *TV Prva*, *TV Happy*, as well as on *RTV* and *Radio Belgrade*.

#### **4.3. COOPERATION WITH THE MEDIA AND PRESENTATION OF THE COMMISSIONER'S ACTIVITIES IN THE MEDIA**

During 2020, as in previous the years, the Commissioner had cooperated intensively with the media and journalists' associations.

Journalists from *Tanjug* and *Beta* news agencies, the daily newspapers *Danas*, *Politika*, *Blic*, *Kurir*, *Večernje novosti*, the weekly newspapers *NIN*, *Vreme*, *List Zrenjanin*, *Novi*

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<sup>166</sup> Governance Working Group

*Magazin, Nedeljnik, Ekspres*, and other numerous media, such as: *RTS, CINS, KRIK, BIRN, Radio Free Europe, Insider, N1, Nova S, Adria Media Group, Južne vesti, Istinomir, VOICE, TV Studio B, AL Jazeera, RT Vojvodina, TV Prva, 24 sata* and other media have sought interviews with the Commissioner. The Commissioner had appeared as a guest on the following TV stations with a national frequency: *RTS, TV Pink, TV Prva, TV Happy*, as well as on *RTV and Radio Belgrade*.

- On 4 April 2020, the Commissioner appeared as a guest on the morning show on TV Pink and spoke about the functioning of the Commissioner's institution during the COVID-19 pandemic, as well as about the protection of personal data during the said pandemic;
- On 6 April 2020, the Commissioner appeared as a guest on the morning show “*Jutro na Prvoj*” (Morning on PRVA) and spoke about the functioning of the Commissioner's institution during the COVID-19 pandemic, as well as about the protection of personal data during the said pandemic;
- On 5 June 2020, the Commissioner appeared as a guest in the morning show on TV Nova S. The discussion concerned the following topics: security of data left by the citizens in order to receive financial aid in the amount of EUR 100; how did the political parties get the info about our mobile phone numbers and residential addresses; whether our privacy is endangered by the fact that cameras are practically set up in public space all around us, as well as on other issues;
- On 25 June 2020, the Commissioner appeared as a guest in the show “*Među nama*” (Among us) on TV Nova S. He spoke on the topic of the Law on Free Access to Information of Public Importance, i.e. on the application of that law during the epidemic, as well as on the number of people infected with the coronavirus;
- On 3 July 2020, the Commissioner appeared as a guest in the morning show on TV Prva. The topic of the discussion was the number of complaints filed with the Commissioner regarding the number of infected with COVID-19;
- On 30 July 2020, the Commissioner appeared as a guest on the show “*Insider*”, the topic of his guest appearance being the number of complaints filed with the Commissioner regarding the number of infected with COVID-19;
- On 11 August 2020, the Commissioner gave a statement to the Tanjug news agency, the topic being the app “*Kovtakt*”, as well as that this application will not use personal data;
- On 14 August 2020, the Commissioner appeared as a guest in the show “*150 minuta*” (150 minutes) on TV Prva. The topic of the discussion was the new app for monitoring the contacts of persons infected with COVID-19;
- On 17 August 2020, the Commissioner appeared as a guest on the show “*Dan uživo*” (Day live) on N1. The topic of the discussion was the new app for monitoring the contacts of persons infected with COVID-19, as well as the reactions and media requests for the submission of information of public importance;
- On 21 August 2020, the Commissioner appeared as a guest in the show “*Svitanje*” (Daybreak) on TV Pink. The topic of the discussion was the new app for monitoring the contacts of persons infected with COVID-19;
- On 25 August 2020, the Commissioner gave a statement to the Tanjug news agency, the topic being the amendment of LFAIPI as well as the proposal to fine the so-called “silence of administration” violation;
- On the occasion of the International Right To Know Day and LFAIPI, the Commissioner made two radio appearances on Radio S in the show “*Buđenje sa Goricom i Draganom*” (Good morning with Gorica and Dragan) and Radio BG1, a live appearance and interview via the web portal Nova S, and also made a guest appearance on the following televisions:

Studio B, N1, Pink, RTS 1, Happy, Nova S and TV Prva in the period from 25-30 September 2020;

- On 2 October 2020, the Commissioner gave a statement to the Tanjug news agency, the topic being an invitation to technology companies, as data controllers, to act in accordance with the law and appoint their representatives in Serbia, following the example of Google, Viber and KupujemProdajem;
- On 3 October 2020, in the column “*Intervju na mreži*” (Online interview) of the newspaper Danas on the topic of respecting the right to access information of public importance, the Commissioner pointed out the need for amending LFAIPI;
- On 19 October 2020, the Commissioner gave an interview for the web portal Mondo, the topic being the increased number of complaints that the citizens filed with the Commissioner's Office due to the COVID-19 epidemic due to not receiving the information regarding the epidemic. In general, the information sought concerned the number of sick and deceased persons, as well as information regarding personal protective equipment and means of treatment;
- On 4 November 2020, the Commissioner gave a short video statement for TV Nova S in the show “*Među nama*” (“Between us”), the main topic being the appointment of a representative of the company Netflix International B.V. and Booking.com B.V. for the Republic of Serbia in accordance with LPDP, as well as on why it is important for a foreign company to appoint its representative in the Republic of Serbia, and how this protects the data of citizens, etc.;
- On 10 November 2020, in an interview for the newspaper “*Danas*”, the Commissioner spoke about the application and adherence to LFAIPI, stressing as one of the most important issues the ignoring of the enforcement of Commissioner's decisions by public authorities, i.e. failure to submit information of public importance;
- On 14 November 2020, the Commissioner had, in the show “*Beogradska hronika*” (Belgrade Chronicle) in the feature “*Etika i korona*” (Ethics and coronavirus) reflected on the need to respect the rights of patients, on the occasion of publishing a photo of a female patient from the temporary COVID-19 hospital in Belgrade's “Stark Arena” on social networks;
- On 10 November 2020, in an interview for newspaper “*Danas*”, the Commissioner had summed up the impact of the new situation caused by the COVID-19 pandemic and stressed that the epidemic had not only caused the restriction of certain rights and freedoms, but had also caused the human rights and freedoms to be in direct conflict, whereby the authorities had to choose which right to give priority as opposed to some other right;
- The Commissioner spoke on Radio Belgrade 1 about the marking of the International Human Rights Day during the pandemic caused by COVID-19. The Commissioner had spoken about his personal view as regards the respect for human rights during the epidemic, as well as how the epidemic affected the rights that the Commissioner protects. The Commissioner had summarized that the right to access information of public importance and the right to protection of personal data have not been suspended, albeit they were partially limited, as well as that the Commissioner's Office was, and still is, operational at all times;
- On 27 July 2020, the representative of the Commissioner was a guest in the show “*150 minuta*” (150 minutes) on TV Prva. The topic of the discussion was the installing of video surveillance cameras with face recognition software;
- On 17 August 2020, the representative of the Commissioner appeared as a guest in the online show “*Dnevnik Glas javnosti*”. The topic of the discussion was the application of

surveillance system and the installing of video surveillance cameras with face recognition software;

- On 19 August 2020, the representative of the Commissioner gave a statement to the Sputnik agency, the topic being the new app for monitoring the contacts of persons infected with COVID-19;
- On 25 September 2020, the representative of the Commissioner made a guest appearance on Radio 021 on the occasion of marking the International Right To Know Day and LFAIPI;
- On 15 October 2020, the representative of the Commissioner gave a statement to the magazine Nedeljnik, in which he appealed to all public authorities to act urgently and without delay on the requests of citizens for information on the protection of public health;
- On 30 October 2020, the representative of the Commissioner gave a short video statement for website Nova ekonomija, in which he answered the question whether the employer is allowed to perform the measuring of body temperature of employees upon their arrival at work, for series #KomeJeTeze.
- On 12 December 2020, the representative of the Commissioner gave a short statement for newspaper Blic, in which he answered the question whether the employer is allowed to perform measuring of body temperature of employees upon their arrival at work, as a preventive measure.
- The representative of the Commissioner gave a short video statement for *TV Nova S* and the TV show "*Među nama*" ("*Among us*"), the main topic being the possibility of introducing the so-called "immunity passports", which would contain information on whether someone had COVID-19, whether and when he/she did the RT-PCR test and whether he/she received the vaccine. On 14 December 2020, the representative of the Commissioner also pointed out that the processing of health-related data is prohibited, that it is allowed in 10 exhaustively listed cases, among which is the explicit consent of the person to whom these data belong, but that it is still too early to talk about this until all aspects of such processing are observed.

A large number of media have reported on the celebration of the Data Protection Day on 28 January 2020 and the International Right To Know Day on 28 September 2020. The cooperation between the Commissioner and journalists' associations is reflected in the fact that the representatives of UNS and NUNS are traditionally members of the Commission for the Award of Recognitions for the Promotion of the Right to Free Access to Information of Public, which are traditionally awarded on 28 on September.

During the year, the Commissioner had published **56** press releases on his website. That by which the Commissioner has contributed to open and transparent work, and which helps the media to obtain information about the work of the Commissioner faster and easier, are the Open Data Portal and the official Twitter account of the Commissioner.

## **5. THE COMMISSIONER'S OFFICE AND FUNDS FOR WORK**

### **5.1. NUMBER OF EMPLOYEES AT THE COMMISSIONER'S OFFICE**

The Commissioner had adopted a new Rulebook on internal organization and systematization of jobs at the Office of the Commissioner for Information of Public Importance and Personal Data Protection, No.: 110-00-3/2019-04 of 31 July 2019 (hereinafter: the Rulebook), to which the Committee on Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly of Serbia gave its consent by Act 21 No. 02-2143/19 of 2 March 2020. The Rulebook organizes and systematizes jobs at the Office of the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: the Office). The Rulebook has entered into force on 11 March 2020, and was adopted due to the commencement with the application of the new LPDP (22 August 2019), which provides for significant new powers of the Commissioner. The Commissioner had established that, for the realization of his new authorizations, it is necessary to strengthen the capacity of the Commissioner by increasing the total number of employees in his service by 35, of which 29 senior advisors, 3 independent advisors, 1 advisor and three clerks. Article 58 of the Rulebook systematizes 100 jobs with a total of 129 employees at the Commissioner's Office, of which: 8 civil servants in positions, 116 civil servants in executive positions, 3 state employees and 2 advisors to the Commissioner. Of these, the positions consist of: one civil servant in the first group of positions and seven civil servants in the second group of positions. For performing the duties of civil servants at the executive positions within the competence of the Commissioner, 57 positions with the title of senior advisor with a total of 78 employees, 15 positions with the title of independent advisor with a total of 17 employees, 9 positions with the title of advisor with a total of 10 employees, 4 positions with the title of junior advisor with a total of 4 employees, and 4 positions with the title of clerk with a total of 7 employees have been established. For the performance of accompanying auxiliary-technical tasks at the Commissioner's Office, 2 jobs for state employees of the fourth type with a total of 3 employees have been established.

By the draft Personnel Plan for 2020 119-01-5/2019-04/4 of 9 March 2020, the Commissioner had established that 3 elected persons and 110 employees are needed for performing the tasks under the Commissioner's competence, and had the said plan to the Ministry of Finance by act No.: 119-00-5/2019-04/5 of 9 March 2020 for the purpose of obtaining its consent.

The Ministry of Finance, by act No. 112-00-00464/2019-03 of 27 May 2020, gave its consent to the Commissioner's Personnel Plan for 2020, which stipulates that the Commissioner's Office has 110 employees in 2020, as follows: 8 civil servants in office, 97 civil servants at executive positions, 3 state employees and 2 advisors to the Commissioner, in addition to 3 elected persons (the Commissioner himself and 2 Deputy Commissioners).

The established dynamics of filling vacancies (form 1d submitted with the Draft Personnel Plan for 2020) should have been carried over by the Commissioner in the period from September to December 2020. The planned policy of dynamics of filling vacancies at the Commissioner's Office in 2020 could not be implemented without providing the necessary financial resources (which were secured in October 2020) and without the prior consent of the Committee on Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly of Serbia (hereinafter: the Committee).

Due to objective circumstances (securing the financial resources and constitution of the National Assembly committee), the Commissioner could not accept the required number of employees in 2020 according to the established dynamics, and according to the consent obtained from the Ministry of Finance on the Commissioner's Draft Personnel Plan for 2020.

Although he had the consent of the Ministry of Finance as well as the secured financial resources, the Commissioner's request for admission of new employees (submitted on 26 October 2020) was not considered by the Committee; hence, no formal conditions were met for announcing a public competition in order to fill the vacancies at the Office. At the end of the year, the Commissioner had only 85 civil servants and state employees with indefinite-term contracts, as well as 6 civil servants with fixed-term contracts.

At the end of 2019, a competition was organized in order to fill all vacant positions at the Commissioner's Office (nine positions); however, the competition did not include the filling of two positions of advisor to the Commissioner and two positions related to the Central Registry, which was abolished by the new law. The competition for filling those two vacancies was unsuccessful, while decisions on hiring were made for 7 positions - 6 indefinite-term contracts and 1 fixed-term contract - as trainees, with the employees commencing with their work in January 2020, so that, at the beginning of 2020 and ending with 31 January 2020, the Commissioner's Office had 85 employees with indefinite-term contracts, 1 person with a fixed-term contract, and 6 contracts on performance of temporary and occasional jobs.

During 2020, 3 (three) persons were hired based on indefinite-term contracts, by transferring them from other bodies. Four employees left the Commissioner's Office, of which 3 (three) civil servants on the basis of an employment termination agreement and one official due to the expiration of the term for which he was elected and his subsequent retirement.

During the year, a total of 7 persons were hired, in different periods, for a certain period of time, of which two people to replace the temporarily absent employees and five persons due to the temporarily increased workload. As of 31 December 2020, 85 employees under indefinite-term contracts and 7 employees under fixed-term contracts were employed at the Commissioner's Office. Moreover, 4 persons were hired on the basis of contracts on performance of temporary and occasional jobs.

## **5.2. DEVELOPMENT OF THE COMMISSIONER'S OFFICE**





Throughout 2020, the Commissioner has organized numerous activities to improve the work of the Office and the knowledge and skills of its employees.

Activities on strengthening the management system for information security were continued, which the Commissioner applies in his work in accordance with the requirements of SRPS ISO/IEC 27001:2013, which is important not only from the aspect of information security available to the Commissioner, but also from the aspect of his supervisory function and inspection supervision in relation to data controllers who are certified for the aforementioned standard.

In September 2017, the Commissioner had received a certificate on the introduction of information security management system according to the requirements of ISO 27001:2013 standard. In September 2018, one year following the introduction of the SRPS ISO/IEC 27001:2013 standard into his operations, the first supervisory audit was conducted by the lead



auditor, CIS - Certification & Information Security Services GmbH / Quality Austria Center d.o.o., Belgrade; on this occasion, it was determined that the Commissioner had successfully met all the requirements of this standard and had thus gained the right to extend the validity of the internationally accredited certificate, in respect of which a formal certificate was given to him on 4 October 2018. The second supervisory review by the said auditor was conducted on 2 October 2019, during which, in addition to giving certain recommendations for further work, it was noted that the Commissioner had successfully met all the requirements of the standard and had thus gained the right to extend the validity of the internationally accredited certificate on the information security management system according to the standard SRPS ISO/IEC 27001:2013, in respect of which a new, second in a row, certificate was issued to him by Quality Austria Center d.o.o., Belgrade on 23 October 2019, under the case number 334/1 (image below).

 <b>qualityaustria</b> Succeed with Quality	 Secure Your Business
<b>Poverenik za informacije od javnog značaja i zaštitu podataka o ličnosti</b> Bulevar kralja Aleksandra 15 11000 Beograd Republika Srbija	Beograd, 23.10.2019. Del.broj: 334/1
<b>P O T V R D A</b>	
<p>Ovim potvrđujemo da je organizacija <b>Poverenik za informacije od javnog značaja i zaštitu podataka o ličnosti</b> dana <b>02.10.2019.</b> godine uspešno sprovedla nadzornu proveru prema zahtevima standarda <b>ISO/IEC 27001:2013.</b></p> <p>Provera je sprovedena od strane vodećih auditora firme <i>CIS Certification &amp; Information Security Services GmbH, Austria/Quality Austria Center d.o.o. Beograd.</i></p> <p>Organizacija je uspešno odgovorila na sve zahteve standarda i time stekla pravo da se nastavi važenje međunarodno akreditovanog sertifikata prema standardu ISO/IEC 27001:2013.</p>	
<div style="text-align: center;"> S poštovanjem,  Igor Panjić, direktor Quality Austria Center d.o.o.</div>	

Unfortunately, due to the current pandemic caused by the SARS-CoV-2 virus, the planned audit by the said auditor, which was scheduled for November 2020 and was supposed to be a recertification of **ISO/IEC 27001:2013 standard** due to the three-year validity of the issued certificate, was postponed to the first quarter of 2021 when the certification for the current **ISO/IEC 27701: 2019 standard** (PIMS) should be performed, which is a logical sequence in the process of raising the information security of the Commissioner to a qualitatively higher level and responding to the requirements of the new LPDP, i.e. the requirements of the EU General Regulation on data protection as an international act from which it originated. The goal of the standard is to improve the existing Information Security Management System (ISMS) with additional requirements in order to establish, implement, maintain and continuously improve the Privacy Information Management System (PIMS).

Having in mind the requirements set before the state authorities by the new regulations concerning electronic business and the process of digitalization of public administration (Law on Electronic Government, Electronic Document, Electronic Identification and Trust Services in Electronic Business, as well as other numerous bylaws), the Commissioner had, during 2020, strengthened the infrastructure of his computer network by both performing the works on arranging, installing and replacing obsolete network devices and by ensuring the redundancy of the entire information system, by providing additional capacities for electronic data storage.

With the official cessation of technical support for Windows 7, the Commissioner had completely unified the operating system of his computer network in 2020 by switching to the current Windows 10 Pro OS, which, from the aspect of information security, enabled the creation of new group policies on Active Directory that were not in use previously.

In the conditions of the pandemic, in the period when a certain number of employees performed their work tasks through the so-called "work from home", the encrypted communication, with clearly given instructions for using VPN (Virtual Private Network) and carefully tuned settings of the said service by the Information Technology Sector, resulted in undiminished performance of employees and the absence of any security incidents.

A great contribution to the affirmation of the right to free access to information of public importance and the right to personal data protection has been achieved through the procurement of new and maintenance of existing software.

During 2020, the Commissioner continued to perform maintenance of the Open Data Portal, at <https://data.poverenik.rs>, through which numerous data derived from his work are made available online to the entire public, in a machine-readable format and through visualizations.

It is important to note a significant decline in interest in open data of the Commissioner compared to 2019, when there was an increase in the use of the portal by 65% compared to the previous year and when the number of unique visitors to the Portal was 4,362. This can be explained by the current pandemic and the focus of the Open Data community on open data of healthcare institutions, primarily of the Institute of Public Health of Serbia "Dr Milan Jovanović Batut".

In 2020, the statistics were as follows:

- total of unique visitors to the Portal: 2,564;
- opened pages: 12,291;
- visits to pages with visualizations: 343 unique visitors;
- percentage of visits from the territory of the Republic of Serbia: 93%
- total download of datasets: 1.577;
- the average retention of visitors per visited page is: 1 minute and 54 seconds

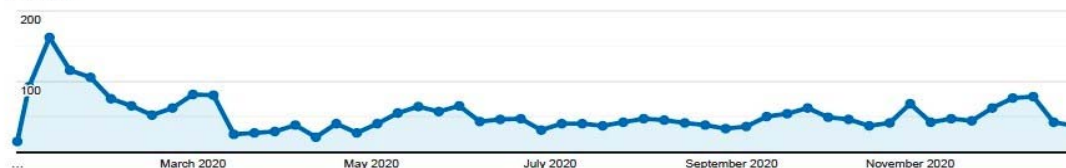
## Audience Overview

All Users  
100.00% Users

Jan 1, 2020 - Dec 31, 2020

### Overview

#### Users



Users  
2,564

New Users  
2,498

Sessions  
3,390

Number of Sessions per User  
1.32

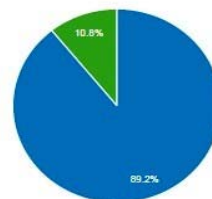
Pageviews  
12,291

Pages / Session  
3.63

Avg. Session Duration  
00:01:54

Bounce Rate  
48.97%

New Visitor Returning Visitor



Country	Users	% Users
1. Serbia	2,378	92.64%
2. United States	34	1.32%
3. China	28	1.09%
4. Canada	14	0.55%
5. Bosnia & Herzegovina	11	0.43%
6. Austria	9	0.35%
7. United Kingdom	9	0.35%
8. United Arab Emirates	8	0.31%
9. Germany	8	0.31%
10. Croatia	7	0.27%

Also, the Commissioner continued to maintain the Portal for submission of annual reports of the authorities in order to facilitate the submission of annual reports of the authorities that were submitted in paper form in the period before the procurement of this software.

In 2020, the licenses were extended for the use of software that aims to adapt the use of the official website of the Commissioner, i.e. to make it accessible by blind and partially sighted persons.

Finally, during 2020, the testing of the web portal "eGovernment of the Commissioner" was completed, which has not yet entered the production phase due to problems caused by the pandemic, but which, following the commencement of its operation in 2021, will be a quality response to the obligation established by Article 53 of the Law on Electronic Government, enabling the receipt of all types of electronic submissions that are, as regards the administrative proceedings, in all respects equated with the traditional paper/physical form. Among several

solutions offered by this Law, the Commissioner decided to enable the receipt of electronic submissions via the web portal, as an electronic single administrative place. In this way, the Commissioner will enable electronic administrative acting in order to exercise the rights in the field of free access to information of public importance and in the field of personal data protection. Guided by the belief that the basic task of all authorities is to act in service of the citizens, in a way which facilitates their access to the exercise of their rights as much as possible, the Commissioner recognized in the implementation of this task the possibilities of applying the information and communication technologies and the existence of legal preconditions for their application, in the form of numerous laws and bylaws passed in the past few years.

The new LPDP also prescribes to the Commissioner the obligation to keep accurate and up-to-date records on Data Protection Officers kept in the scope of work of the Information Technology Sector. On a daily basis, the employees at this Sector enter the submitted data on Data Protection Officer into the module of the Commissioner's Document Management System, which are described in more detail by the Rulebook on the Form and Manner of Keeping Record of the Data Protection Officer.

During 2020, a total of **947** data controllers, i.e. data processors, have submitted forms to the Commissioner with contact details on Data Protection Officers.

Since the beginning of application of LPDP, a total of **3,059** data controllers, i.e. data processors have submitted personal data to the Commissioner for personal data protection, of which 1,837 are authorities, although slightly over 11,000 had a legal obligation to do so.

Curiously, as of the date of this Report, the Government has not yet designated a Data Protection Officer.

The structure of the controllers, ie processors who submitted the form of records on Data Protection Officers is as follows:

- 984 private companies, banks and insurance companies;
- 844 educational institutions;
- 275 authorities at the republican, provincial and local levels;
- 257 healthcare institutions;
- 191 judicial bodies and institutions in the field of justice;
- 131 social welfare institutions;
- 125 public enterprises;
- 120 institutions in the field of science and culture;
- 97 civil society organizations and other citizens' associations, political parties and trade unions;
- 19 internet providers and mobile network operators;
- 6 sports organizations and institutions in the field of youth and sports;
- 6 media;
- 1 institution in the field of agriculture;
- 1 lawyers; and
- 2 others.

Considering the presumed number of subjects to which the obligation to appoint a Data Protection Officer, publishing his contact data, and submitting them to the Commissioner, the number of handlers, ie processors who are until 31.12.2020. years of age - undoubtedly indicates the justification of the Commissioner's efforts to raise the level of awareness of the

payers of ZZPL through specialized trainings, and to regulate the issue of personal data protection in the Republic of Serbia in a strategic way, which has never been done before.

In order to facilitate the fulfilment of this obligation, as the least demanding of all obligations prescribed under the new LPDP, the Commissioner, on his website at [www.poverenik.rs/sr/заштита-података/лице-за-заштиту-података-о-личности.html](http://www.poverenik.rs/sr/заштита-података/лице-за-заштиту-података-о-личности.html) gave a very receptive and simple instruction on how and in which manner can the said obligation be fulfilled without much difficulty. In addition, not only was there no significant trend concerning the increase in the number of submitted notifications on contact details of Data Protection Officers, but in many cases numerous irregularities have been observed in fulfilling this statutory obligation, such as: submission of data not for one, but for several Data Protection Officers; submission of private data of Data Protection Officers (private contact phone numbers, private email addresses, private residential addresses), submission of data for which there is no prescribed obligation (JMBG, etc.); submission of private contact email addresses by the authorities, created on Google's email service, etc.

Since, by the newly established organization of work within the Commissioner's Office, the Information Technology Sector has been entrusted with the task of recording notifications by data controllers on personal data violations which may produce a risk to the rights and freedoms of individuals, given that in the period from the entry into force of the Law until 31 December 2019 only 2 such violations were reported (in the period of significantly increased threats to the security of computer networks by the so-called "crypto lockers" and other types of ransomware), the increase in the number of subject notifications during 2020 by a total of 32 (thirty-two) data controllers, as follows:

- 3 authorities;
- 7 healthcare institutions;
- 1 social welfare institution;
- 3 public enterprises;
- 3 banks;
- 12 private companies;
- 1 mobile network operator;
- 1 preschool institution;
- 1 others.

still leads to a conclusion that many data controllers are not yet aware of the existence of this legal obligation, or, more likely, are refraining from notifying the Commissioner in order not to expose themselves to possible inspection supervision and/or reputation risks that could affect their business and trust of their clients, i.e. the recipients of their products and/or services. This is due to the fact that, according to the available reports on a daily basis, there is a large number of attacks on the ICT infrastructure of many data controllers in the so-called "cyberspace", and the fact that 2020 will be remembered globally for the large number of attacks by various types of ransomware that have left huge material damage worldwide.

The received notifications are forwarded to the Supervision Sector of the Commissioner's Office immediately after their entrance into the electronic database, with the aim of possible further action in the form of inspection supervision.

During 2020, the implementation of employee training had also continued, while seven previously certified auditors underwent training for recertification of existing data security certificates.

In 2020, 22 employees have renewed their certificates, passed the verification procedure, and obtained the prescribed certificates from the Office of the National Security Council for access to classified information in accordance with the Data Secrecy Law, for

access to "strictly confidential" data. The Commissioner's Office currently has a total of 28 employees with a certificate for access to classified information.

### **5.3. FUNDS AND EXPENSES FOR THE WORK OF THE COMMISSIONER'S OFFICE HAVE BEEN SECURED**

According to the Law, the work of the Commissioner and his Office is financed from the budget of the Republic of Serbia.

The Budget Law of the Republic of Serbia for 2020 had **allocated appropriations in regards to the Commissioner's source of financing 01 - budget revenues in the amount of RSD 220,389,000.00, which is 11.89% less than the amount contained in the Draft Financial Plan of the Commissioner.**

The Budget of the Republic of Serbia for 2020 had allocated funds to the Commissioner for payment of salaries which are not sufficient for the Commissioner who has 110 employees with indefinite-term contracts and 3 elected persons (the Commissioner and two Deputy Commissioners), with which the Ministry of Finance agreed by its act No. 112-00-00464/2019-03 of 27 May 2020, commenting on the Personnel Plan of the Commissioner for 2020.

The slow dynamics of filling vacancies at the Commissioner's Office was conditioned by objective reasons: a state of emergency which was declared due to the epidemiological situation in respect of the disease caused by the coronavirus (COVID-19)<sup>167</sup>, securing the necessary financial resources, and constituting a committee of the National Assembly.

The fact that the Government of the Republic of Serbia had passed the Decision on the use of current budget reserve funds in October 2020<sup>168</sup>, which increased the funds for payment of salaries at the Commissioner's Office, as well as the fact that the National Assembly of the Republic of Serbia had, by its budget revision for 2020<sup>169</sup> in November 2020, increased the funds for salaries, which provided salaries for 85 civil servants and state employees with indefinite-term contracts and 6 civil servants with fixed-term contracts which the Commissioner's Office had at the end of 2020, speaks volumes about these funds not being sufficient for the salaries of the employees.

Prior to commencing with the implementation of the new LPDP, the Commissioner had adopted the Rulebook on internal organization and systematization of jobs at the Office of the Commissioner for Information of Public Importance and Personal Data Protection No. 110-00-3/2019-04 of 31 July 2019, on which the Committee on Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly of the Republic of Serbia gave its consent by Act 21 No. 02-2143/19 of 2 March 2020. This Rulebook systematizes jobs at the

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<sup>167</sup> Decree on Amendments to General Revenues and Wages, Expenditures and Expenses of the Budget of the Republic of Serbia for 2020 in order to eliminate the harmful consequences of COVID-19 disease caused by SARS-CoV-2 virus ("Official Gazette of the RS", No. 60/2020), which reduced funds approved to the Commissioner by the Law on the Budget Law of the Republic of Serbia for 2020 in order to prevent and mitigate the effects of the epidemic.

<sup>168</sup> Decision on the use of funds from the current budget reserve 05 No. 401-8089/2020 of 15 October 2020 ("Official Gazette of the RS", No. 124/2020)

<sup>169</sup> Law on Amendments to the Budget Law of the Republic of Serbia for 2020 ("Official Gazette of the RS", No. 135/2020); On the day this Law enters into force, the Decree on Amendments to General Revenues and Wages, Expenditures and Expenses of the Budget of the Republic of Serbia shall cease to be valid.

Commissioner's Office for a total of 129 employees, in addition to 3 elected persons (the Commissioner and two Deputy Commissioners). The Rulebook had entered into force on 11 March 2020.

When planning financial resources for 2020, the Commissioner had in mind the scope of work of the Commissioner, international obligations undertaken by the Republic of Serbia, provisions of the National Assembly's conclusions<sup>170</sup>, certain strategic documents which envisage strengthening the Commissioner's capacity, increased inflow of cases in the field of free access to information and personal data protection, as well as the fact that the new LPDP envisages new competencies of the Commissioner: the scope of work of the Commissioner has been expanded in the area concerning international exchange of personal data, supervision over the application of the Law on Personal Data Protection, and in the part concerning the providing of opinions on regulations of other state bodies.

The Commissioner was given new competencies by the Law on Establishing Facts on the Status of Newborns Suspected to Have Disappeared in Maternity Wards in the Republic of Serbia<sup>171</sup>. Namely, Article 29, paragraph 4 of the said law stipulates that the Commission for Collecting Facts on the Status of Newborns Suspected to have Disappeared from Maternity Wards in the Republic of Serbia may process personal data only with the consent of the Commissioner for Information of Public Importance and Personal Data Protection, which is obliged to decide on the request of the Commission within five days from the date of receipt of such request.

Having in mind the content of the law, an extremely extensive action of the Commissioner can be expected upon the requests of the Government's Commission, with an extremely short deadline for acting of 5 days. The Commissioner has performed the necessary personnel analyses and job descriptions by sectors and these tasks, as additional ones, will be performed by employees in the Harmonisation Sector and in the Sector for Protection of Personal Rights and Data Transfer – Data Protection, with their maximum engagement, until, based on the experience, the specific indicators of the scope of work arising from the provisions of the said Law are obtained. Since this is a very sensitive matter which, due to its complexity and type, will require the engagement of civil servants with the most experience, i.e. of the highest rank, these tasks will be included in the new Rulebook on Internal Organization and Systematization of Jobs at the Commissioner's Office.

The Government had passed the Decision on the formation of a Commission for Collecting Facts on the Status of Newborns Suspected to have Disappeared from Maternity Wards in the Republic of Serbia<sup>172</sup>, with which all the conditions for the application of this law have been met.

In the following period, the adoption of the Law on Amendments to the Law on Free Access to Information of Public Importance is expected, which will lead to a significant additional increase in regards to the competencies of the Commissioner.

As for the financial resources needed to implement the competencies established by the Law on Free Access to Information of Public Importance, the Law on Personal Data Protection, the Law on Establishing Facts on the Status of Newborns Suspected to Have Disappeared in

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<sup>170</sup> Conclusion regarding the review of the Report on the implementation of LFAIPI and LPDP for 2018, RS No. 33 ("Official Gazette of the RS" No. 51/2019)

<sup>171</sup> The Law on Establishing Facts on the Status of Newborns Suspected to Have Disappeared in Maternity Wards in the Republic of Serbia ("Official Gazette of the RS" No. 18/20), entered into force on 11 March 2020, while its application commenced on 12 June 2020.

<sup>172</sup> Decision on the formation of a Commission for Collecting Facts on the Status of Newborns Suspected to have Disappeared from Maternity Wards in the Republic of Serbia 05 No. 02-5587/2020-1 of 10 July 2020 ("Official Gazette of the RS", No. 98/20 and 100/20)

Maternity Wards in the Republic of Serbia, as well as at the international level due to the undertaken international legal obligations, the allocation of additional funds in the Budget of the Republic of Serbia for these purposes shall be necessary in the coming years.

**The budget allocations and current expenditures and expenses of the Commissioner are shown in the following tables:**

**Table 12 - Approved budget for the Commissioner for 2020**

Share	Programme	Function	Program activity/Project	Economic classification	DESCRIPTION	Total funds
11					<b>Commissioner for Information of Public Importance and Personal Data Protection</b>	<b>220,389,000</b>
					Sources of funding for section 11	
				01	Budget revenues	220,389,000
	1001				Promotion and protection of human and minority rights and freedoms	220,389,000
		160			General public services not elsewhere classified	220,389,000
			0011		Availability of information of public importance and personal data protection	220,389,000
				411	Salaries, allowances and compensation of employees (wages)	154,300,000
				412	Social contributions payable by the employer	25,800,000
				413	Compensation in kind	300,000
				414	Social benefits to employees	1,200,000
				415	Reimbursement of expenses for employees	2,000,000
				416	Employee rewards and bonuses and other special expenditures	460,000
				421	Recurrent expenses	5,400,000
				422	Travel expenses	1,500,000
				423	Contracted services	16,126,000
				425	Current repairs and maintenance	2,000,000
				426	Material	3,100,000
				482	Taxes, mandatory fees and penalties	1,203,000
				512	Machinery and equipment	5,500,000
				515	Intangible assets	1,500,000

The Budget Law of the Republic of Serbia for 2020 had allocated appropriations in regards to the Commissioner's source of financing 01 - budget revenues in the amount of RSD 210,244,000.00.

By Decree on Amendments to General Revenues and Wages, Expenditures and Expenses of the Budget of the Republic of Serbia for 2020 in order to eliminate the harmful consequences of COVID-19 disease caused by SARS-CoV-2 virus, the Government of the Republic of Serbia had reduced the funds allocated to the Commissioner, which were



determined by the Budget Law of the Republic of Serbia for 2020 in the total amount of RSD 6,200,000.00, in order to prevent and mitigate the effects of the epidemic.

On 15 October 2020, the Government of the Republic of Serbia had passed the Decision on the use of funds from the current budget reserve 05 No. 401-8089/2020 allocating the funds to the Commissioner for the payment of salaries of his employees, which increased the allocated funds in the total amount of RSD 7,500,000.00.

On 12 November 2020, the National Assembly of the Republic of Serbia had adopted the Law on Amendments to the Budget Law of the Republic of Serbia for 2020 - Budget Rebalance for 2020.

On the day the Law on Amendments to the Budget Law of the Republic of Serbia for 2020 enters into force, the Decree on Amendments to General Revenues and Wages, Expenditures and Expenses of the Budget of the Republic of Serbia for 2020 in order to eliminate the harmful consequences of COVID-19 disease caused by SARS-CoV-2 virus shall cease to be valid.

According to the Budget Rebalance for 2020, the funds allocated to the Commissioner have been increased in the total amount of RSD 8,845,000.00, by increasing the funds for appropriation of the following economic classifications: 411 - Salaries, allowances and compensation of employees (wages) in the amount of RSD 11,907,000.00; 412 - Social contributions paid by the employer in the amount of RSD 1,638,000.00; and 416 - Awards to employees and other special expenses in the amount of RSD 60,000.00, while the funds for appropriation of the following economic classifications have been reduced: 415 - Reimbursement of expenses to employees in the amount of RSD 700,000.00; 422 - Travel expenses in the amount of RSD 750,000.00; and 423 - Contractual services in the amount of RSD 3,310,000.00; therefore, the total budget of the Commissioner for 2020 amounts to RSD 220,389,000.00.

**A total of RSD 212,357,770.96, or 96.36% of the allocated budget funds, have been spent in 2020 in the work of the Commissioner's Office,** guided by the principles of responsible fiscal management, rationality, functionality and efficiency.

**Table 13 - Execution of the Commissioner's budget for 2020**

Function	Source of financing	Programme	Project	Economic classification	Description	Approved funds by the Budget Law of the RS for 2020 ("Official Gazette of the RS" No. 84/2019, 60/2020- Decree and 135/2020)	Implemented	% of the implementation
160	01	1001	0011	411	Salaries and allowances for employees	154,300,000.00	152,629,427.46	98.92
				412	Social contributions payable by the employer	25,800,000.00	25,439,298.61	98.60
				413	Compensation in kind	300,000.00	300,000.00	100.00
				414	Social benefits to employees	1,200,000.00	1,050,845.57	87.57
				415	Reimbursement of expenses to employees	2,000,000.00	1,823,452.41	91.17
				416	Awards and bonuses to employees	460,000.00	444,475.11	96.63
				421	Recurrent expenses	5,400,000.00	3,999,146.73	74.06
				422	Travel expenses	1,500,000.00	262,286.17	17.49
				423	Contracted services	16,126,000.00	14,592,354.61	90.49
				425	Repairs and maintenance	2,000,000.00	1,866,772.00	93.34
				426	Material	3,100,000.00	3,061,514.79	98.76
				482	Taxes, mandatory fees and penalties	1,203,000.00	664,923.00	55.27
				512	Machinery and equipment	5,500,000.00	4,838,956.90	87.98
				515	Intangible assets	1,500,000.00	1,384,317.60	92.29
<b>TOTAL 01 Budget revenues</b>						<b>220,389,000.00</b>	<b>212,357,770.96</b>	<b>96.36</b>
<b>TOTAL FOR FUNCTION 160:</b>						<b>220,389,000.00</b>	<b>212,357,770.96</b>	<b>96.36</b>

The largest part of current expenses and expenditures of the Commissioner in 2020 from the source of financing 01 - revenues from the budget, not counting the personal income of employees, i.e. salaries, contributions and fees based on work, refer to computer services, communication services, administrative services, and professional services, followed by current repairs and maintenance of equipment, gasoline costs, administrative equipment and renewal of licenses which are necessary for upgrading the security of computer networks at the Commissioner's Office according to the ISO/IEC 27001 standard.

**Table 14 - Overview of major expenditures and expenses**

Description	Funds spent - source of fin. 01
<b>Recurrent expenses</b>	
Communication services (Internet costs, mobile and landline phone services, postal services)	3,394,251.01
<b>Contracted services</b>	
Administrative services (translation and interpretation services)	276,592.14
Other administrative services (temporary and occasional jobs)	2,071,861.69
IT services (computer and software maintenance services, software development services)	8,202,960.00
Professional services (service contract - advisor to the Commissioner)	1,694,693.14
Other professional services	590,400.00
Services for hospitality and catering (organisation of conferences, professional gatherings, business meetings, training...)	947,829.00
<b>Current repairs and maintenance</b>	
Current repairs and maintenance of the equipment (equipment for transport and administrative equipment)	1,348,361.40
<b>Material</b>	
Material for transport (petrol and other materials for vehicles)	1,752,886.80
<b>Machinery and equipment</b>	
Administrative equipment (IT equipment, electronic and photography equipment, built-in equipment, phones, furniture)	4,838,956.90
<b>Intangible assets</b>	
Intangible assets (licenses)	1,384,317.60

In order to create optimal conditions for the work of employees as regards the application of both laws within the scope of work of the Commissioner, the Commissioner's Office had in 2020, from the source of funding 01 - budget revenues, procured administrative equipment, consisting mostly of IT equipment in the amount of RSD 3,609,900.00, electronic equipment in the amount of RSD 591,938.42, and office furniture in the amount of RSD 221,684.28, while the remaining portion of the funds were spent on the purchase of photography equipment, built-in equipment and landline phones needed for the work of the Commissioner's Office.

**Table 15 Purchased equipment and intangible assets**

Ec. Class.	Account	Account description	Source of financing	Executed
<b>512</b>	<b>512211</b>	Furniture	01	221,684.28
	<b>512212</b>	Built-in equipment	01	98,000.00
	<b>512221</b>	IT equipment	01	3,609,900.00
	<b>512232</b>	Telephones	01	153,000.00
	<b>512241</b>	Electronic equipment	01	591,938.42
	<b>512242</b>	Photography equipment	01	164,434.20
	<b>Total 512:</b>	<b>Machinery and equipment</b>	01	<b>4,838,956.90</b>
<b>515</b>	<b>515192</b>	Licenses	01	1,384,317.60
	<b>Total 515:</b>	<b>Intangible assets</b>	01	<b>1,384,317.60</b>

**Table 16 - Overview of the purchased equipment**

No.	Item	Source of financing	Quantity	Price per piece + VAT	Total
1	LCD Monitor Philips 21.5`` 223v5lsb	01	8	8,760.00	70,080.00
2	LG External Portable DVD Writer	01	1	3,000.00	3,000.00
3	HDD WD 10TB WD100EFAX	01	6	41,400.00	248,400.00
4	PC Intel i3-8100/8GB/256/W1	01	49	59,040.00	2,892,960.00
5	SSD Samsung M.2 860 Evo 1TB	01	6	19,200.00	115,200.00
6	MIKROTIK CCR1036-8G-2S	01	1	158,400.00	158,400.00
7	UPS APC SMC1500IC 1500VA	01	1	72,000.00	72,000.00
8	TP LINK SG-1008E	01	12	4,080.00	48,960.00
9	Gembird keyboard	01	3	300.00	900.00
10	YEALINK SIP T23G IP Phone	01	15	10,200.00	153,000.00
11	Portable Air Conditioner Beko Midea 12000 btu	01	2	49,000.00	98,000.00
12	HP LaserJet MFP M130FN	01	5	19,790.00	98,950.00
13	RICOH AFICIO MP 2555SP	01	1	336,000.00	336,000.00
14	HP LaserJet Pro MFP M227sdn	01	3	22,360.00	67,080.00
15	HP DeskJet 2630 All-in-One Printer V1N03B	01	2	5,490.00	10,980.00
16	USB microphone	01	1	78,928.42	78,928.42
17	HD 1080P video camera	01	1	164,434.20	164,434.20

18	Shelf	01	1	180,200.28	180,200.28
19	Floor TV Mount SBOX FS-224	01	1	21,996.00	21,996.00
20	Wall TV Mount 65	01	2	9,744.00	19,488.00
<b>Total</b>					<b>4,838,956.90</b>

***Table 17 - Overview of purchased intangible assets***

No.	Intangible asset	Source of financing	Quantity	Price per piece + VAT	Total
1	Basic Support Vmware License	01	1	110,922.00	110,922.00
1	Mdaemon Licence Renewal for 150 users	01	1	39,856.80	39,856.80
1	Mdaemon Antivirus Licence Renewal for 150 users	01	1	40,731.60	40,731.60
1	Mdaemon Connector for Outlook Licence Renewal for 150 users	01	1	24,644.40	24,644.40
1	Archive svr Mdaemon Licence for 150 users	01	1	42,804.00	42,804.00
1	ESET Endpoint Protection Standard 250-499 License	01	1	244,500.00	244,500.00
1	Annual Basic Maintenance Rnw Veeam Backup Essentials	01	1	168,188.40	168,188.40
1	ABBYY FineReader 16 Corporate Licence	01	1	35,962.80	35,962.80
1	Win svrSTD Core Licence	01	1	113,331.60	113,331.60
1	WinPro FPP 10P2 License	01	8	27,942.00	223,536.00
1	Annual TTS Server License	01	1	84,960.00	84,960.00
1	Annual license for TTS server sound system	01	1	84,960.00	84,960.00
1	Annual license for adding sound to documents in word, pdf and html format	01	1	56,640.00	56,640.00

1	Annual license for sound system of web portals on Android platform	01	1	113,280.00	113,280.00
<b>Total</b>					<b>1,384,317.60</b>

The Commissioner's Office had procured intangible assets in the total amount of RSD 1,384,317.60, which mainly refer to the renewal of licenses for increasing the security of the Commissioner's computer network in accordance with SRPS ISO/IEC 27001:2013, for renewal of licenses necessary for making adjustments in regards to the accessibility of the Commissioner's web portal for blind and partially sighted persons, as well as for the procurement of other software in order to improve the work of the service.

## **6. PROPOSALS OF THE COMMISSIONER**

In order to improve the current situation in the field of free access to information of public importance and personal data protection in the Republic of Serbia, all on the basis of and in accordance with the allegations in this Report, the Commissioner hereby presents the following proposals to the National Assembly of the Republic of Serbia and the Government of the Republic of Serbia.

### **6.1. THE COMMISSIONER'S PROPOSALS TO THE NATIONAL ASSEMBLY OF THE REPUBLIC OF SERBIA**

1. To adopt without delay the Draft Law on Amendments to the Law on Free Access to Information of Public Importance, prepared in cooperation and in accordance with the Commissioner's suggestions, in a text that would contribute to the improvement of the rights regulated by the Law;
2. That the competent committees of the National Assembly consider the Report of the Commissioner for 2020 and, based on the recommendations contained in the said Report, determine the proposed conclusions with recommendations and measures for improving the situation and submit them to the National Assembly for consideration;
3. To adopt amendments to the Law on Personal Data Protection in order to achieve efficient application of the said law and greater protection of personal data.
4. To open a discussion on the Report and proposed conclusions of the competent committees and adopt appropriate conclusions in order to exercise and further improve the right to free access to information of public importance and personal data protection and to remove obstacles identified in this Report;

5. To ensure continuous supervision over the implementation of its conclusions by the available mechanisms of control over the work of the Government of the Republic of Serbia, insisting on the responsibility for omissions in the work of government bodies;
6. In the process of adopting laws, the competent committees and expert services of the National Assembly shall duly consider the opinions and positions of the Commissioner regarding the possible effects of those laws on exercising the right to free access to information of public importance and the right to personal data protection;
7. By the end of 2020, to adopt laws whose provisions are related to the processing of personal data and are harmonised with the Law on Personal Data Protection;
8. To provide timely full support to the Commissioner as an independent state body in the exercise of his competence.
9. To adopt the Law on Ratification of the Council of Europe Convention on Access to Official Documents, which entered into force on 1 December 2020.

## **6.2. THE COMMISSIONER'S PROPOSALS TO THE GOVERNMENT OF THE REPUBLIC OF SERBIA:**

1. To adopt a new or to amend the existing Strategy on Personal Data Protection, harmonised with the current situation in the field of personal data protection, as well as the Action Plan for its implementation, all in cooperation and in accordance with the suggestions of the Commissioner;
2. To determine without delay the Draft Law on Amendments to the Law on Free Access to Information of Public Importance, in cooperation and in accordance with the Commissioner's suggestions, in a text that would contribute to the improvement of the rights regulated by the Law;
3. On the basis of the performed analysis, to determine the Draft Law on Amendments to the Law on Personal Data Protection in order to achieve efficient application of the said law and greater level of personal data protection.
4. To determine in a timely manner the draft laws on amendments to the laws whose provisions, related to the processing of personal data, are harmonised with the Law on Personal Data Protection, so that the National Assembly can adopt these laws by the end of 2021;
5. When considering draft laws and other regulations, to consider with due diligence the opinions and positions of the Commissioner regarding the possible effects of such regulations on exercising the right to free access to information of public importance and the right to personal data protection;

6. To establish, in accordance with its own obligations stipulated under the Law on Free Access to Information of Public Importance, an adequate mechanism for ensuring the enforcement of final, executive and binding decisions of the Commissioner;
7. To provide adequate conditions and financial resources for the smooth operation of the Commissioner as an independent state body, especially in regards to: broader competences of the Commissioner established by the new Law on Personal Data Protection; performing a supervisory function; conducting second-instance proceedings, as well as in regards to the growing volume of work whose untimely execution generates litigation costs at the expense of the budget;
8. To undertake measures in order to determine the responsibility of the authorities, especially officials, who have not performed their duties in accordance with the law;
9. To cooperate with the Commissioner in order to ensure that the competent ministries, as well as other authorities, improve their knowledge in the areas of the right to access information of public importance and the right to personal data protection, in order to improve the level of realization of these rights in the Republic of Serbia.
10. To prepare the Draft Law on Ratification of the Council of Europe Convention on Access to Official Documents, which entered into force on 1 December 2020.

COMMISSIONER

Milan Marinović

Belgrade, 22 March 2021

No. 073-10-2653/2020-01