S U M M A R Y O F T H E R E P O R T
ON IMPLEMENTATION OF THE LAW ON FREE ACCESS
TO INFORMATION OF PUBLIC IMPORTANCE AND
THE LAW ON PERSONAL DATA PROTECTION
FOR THE YEAR 2017

I About the Role and Activities of the Commissioner

The Summary of the Report on Implementation of the Law on Free Access to Information of Public Importance (hereinafter: "Law on Access to Information") and the Law on Personal Data Protection (hereinafter: "LPDP") for the year 2017 outlines the situation in the respective fields governed by these two laws, obstacles in exercising the right to free access to information, the right to personal data protection, and the activities and measures that were taken in 2017 within the mandate of the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: "the Commissioner").

In the past 13 years of existence and operation of the institution of the Commissioner, the year **2017 was probably the most difficult year for the work of this body.** In addition to recurrent and long-standing problems that were evaded from one year to another, this year saw some new, specific problems, which will be explained in more detail further in this Report. The whole atmosphere was added by 2017 presidential election, formation of a new Government, and scheduled local elections for the City Assembly of Belgrade, when the Commissioner's activities (namely, legal measures taken by the Commissioner), which the authorities did not find affirming, were exposed to entirely unfounded criticism. To make things worse, the competent authorities refused to cooperate with the Commissioner, thus preventing him to take legally prescribed measures.

The Commissioner's mandate is to protect and promote the right to free access to information of public importance and the right to personal data protection, and to supervise the lawfulness of personal data processing by public authorities and all other entities that process personal data.

Accordingly, **in 2017, the Commissioner mostly ruled** as the authority of second instance **on individual complaints relating to violations of the freedom of information and the right to personal data protection, and supervised personal data processing, both *ex officio* and pursuant to citizens' complaints.**

In addition to the above**,** the **Commissioner also provided expert assistance to public authorities in drafting of regulations in connection with data processing and freedom of information; he provided expert opinions on draft laws and other statutory instruments; he submitted legislative initiatives to state authorities and provided opinions on implementation of laws; he organised or participated in numerous seminars and lectures notably held for employees of public authorities and for personal data controllers; he**

published views from his professional practice; he maintained the Central Register of Data Files; he replied to citizens' petitions regarding the exercise of these two rights; he took part in the events relevant to the Commissioner's work at international and regional levels and in the state's activities relating to the European Union association process; and he worked on further enhancement of own capacities.

As in the previous years, the Commissioner **placed particular focus on the education of public authorities and other social entities** in the fields of free access to information and data protection. He organized several special trainings for the representatives of courts and prosecutor's offices, representatives of healthcare institutions and the institutions of social welfare, employees in educational institutions, and business entities. In addition, the employees of the Commissioner's Office were the lecturers at the trainings on implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection organized by the Human Resource Management Service of the Republic of Serbia. The Commissioner also took part in many other seminars, round tables, panel discussions, etc. which addressed the topics relevant for the improvement of right to free access to information of public importance and personal data protection.

In terms of statistical indicators, the total scope and expansion of the Commissioner's activities in 2017 can be illustrated as follows:

In 2017, the number of cases received by the Commissioner was almost the same as the number of cases he processed. More precisely, **10,832 new cases were received in 2017, which number was by a third higher than in 2016.** Out of those, 5,193 cases related to the free access to information, 4,607 cases related to the personal data protection, whereas 1,032 cases accounted for both areas of the Commissioner's activities. If we allow for the pending cases carried forward from the previous period (4,067), **in 2017, the Commissioner worked on 14,899 cases in total.**

In 2017, **the Commissioner closed 10,797 cases (by one third more than in the previous year)**, of which 5,150 in the field of access to information, 4,624 in the field of personal data protection, whereas 1,023 cases related to both fields. **The number of pending cases carried forward to the year 2018 was 4,107.** The reason for such a high number of pending cases lied in insufficient resources the Commissioner had available for his work, coupled with constant influx of new cases.

In addition to the activities within his mandate, in the past year, the Commissioner also worked **towards improving the functioning of his office**, primarily within the framework of a two-year project launched in 2015 under an agreement between the Government of the Republic of Serbia and the Ministry of Foreign Affairs of the Kingdom of Norway. **Of particular importance for this institution and other bodies were staff trainings and the obtaining of the highest certification level for the implementation of data safety standards – SRPS**

ISO/IEC 27001, as well as other activities that resulted in the introduction of a new standard in the Commissioner's work and granting of an appropriate certificate.[1]

The improved transparency of the role and work of the Commissioner is a permanent task, which is achieved through the media, the website, the Open Data Portal on the work of the Commissioner, social networks, and the like.

The institution of the Commissioner and the Commissioner personally received numerous awards of recognition for their work from the professional community and general public (16 formal recognitions and awards). In 2017, for his activities toward the transparency of public authorities and assistance to the media in their work, the Commissioner received the recognition of the online medium *Balkan Insight*, which brings together investigative journalists of all Western Balkan countries in the Balkan Investigative Reporting Network (BIRN). The Commissioner Šabić was also included in the annual list of *Heroes of the Balkans - People Who Saved 2017*.

II Commissioner's Activities in the Field of Access to Information

1. Current Situation in the Exercise and Protection of the Right of Access to Information

When it comes to the conduct of authorities and their attitude to citizens' requests, the situation in Serbia regarding the implementation of the Law on Access to Information did not considerably change in 2017 relative to the previous year. However, **the Commissioner encountered new hurdles in the protection and full exercise of the right to free access to information.**

Judging by a growing number of requests submitted to the authorities[2], in 2017, the right of free access to information of public importance was exercised more than in the previous year. At the same time, in 2017, the Commissioner received **5.5% more complaints relative to the year 2016, that is, 3,680 complaints in total**. The number of complaints had not decreased for several years and ranged between three and four thousand a year. In 2017, the largest number of complaints were lodged against the ministries and other Republic administration bodies and organisations (46.73%). **On the one hand, such a large number of complaints confirmed the conclusion that it is rather difficult to achieve the right of access to information without filing a complaint and involving the Commissioner,** and on the other, showed that citizens trust the work of this independent state body.

Since the adoption of the Law on Free Access to Information (2004) until 2015, a continuous progress was recorded in both the achievement of this right and the efficiency of the

[1] 18 employees hold information security certificates (8 auditors-the highest certification level for SRPS ISO/IEC 27001 and 10 information security managers). In addition, 24 employees underwent security clearance checks and were issued with the requisite certificates of the Office of the National Security Council for the access to classified data.

[2] In 2015, there were approximately two thousand requests, whereas in 2016 this number was about thirty thousand. This figure is based on 811 reports of the bodies (about 28%) which submitted their annual reports to the Commissioner, out of the total of 2,906 of authorities which are subject to mandatory reporting. In 2017, there were more than thirty one thousand requests (figure based on the reports of 786 bodies which submitted their reports to the Commissioner, presented as at 1 February 2018).

Commissioner's measures taken toward its protection, as evidenced by the number of cases in which the right of access to information was exercised, that is, by the number of provided information relative to the number of well-founded complaints (95.8% in 2015).

Such an upward trend in the attainment of the public's right to know was discontinued in 2016, whereas in 2017, according to the statistics, some slight improvements were recorded in 2017 relative to 2016.

Due to a so-called administrative silence, where in the majority of cases the authorities completely ignored the requests of applicants or rejected such requests without any arguments, the Commissioner received 3,006 complaints or 85.4% of the total number of complaints processed in 2017 (3,520), whereas against a decision or conclusion of authorities, the total of 514 complaints (13.6%) were lodged.

The citizens' complaints were largely well-founded. Out of 3,520 complaints processed by the Commissioner in 2017, 86.4**% or 3,041 complaints were well-founded.** Such a high percent of well-founded citizens' requests best illustrates an inadequate attitude of public authorities to human rights.

When compared to 2016, in 2017, the authorities more frequently received the requests referring to the confidentiality of information or invasion of privacy, even when the requested information related to public procurements, operating expenses of the bodies, investments, official duties, information about the property of public officials, and the like.

In the second half of 2017, already present problem of enforced execution of the Commissioner's decisions became even more complicated and rendered such decisions unenforceable due to the fact that the other state bodies disclaimed their competence and refused to cooperate, and due to the manner in which these bodies construed relevant regulations. The biggest obstacles were the inability of the Commissioner to implement the measures prescribed for the enforced execution of his decisions, the Government's omissions to ensure such enforcement, and the lack of adequate accountability for the violation of rights, which will be discussed in more details further in the text.

The number of unenforced decisions (203)[3] within the number of decisions issued in 2017 (917) was still unacceptably high, amounting to 22.14%, which not only spoke of an irresponsible attitude of authorities to the binding decisions of the Commissioner i.e. to the citizens entitled to receive the information, but also demonstrated conscious and intentional violation of the law.

In addition to generally concerning breach of the law by the public authorities, the nature of information withheld from citizens raised even greater concerns. The largest number of unexecuted decisions originated from the ministries and other Republic bodies, organisations, and public companies[4]. Upon parties' petitions for enforced execution and control of the

[3] Figure as at 1 February 2018.

[4] The Summary of unenforced decisions issued by the Commissioner in 2017 with the description of withheld information constitutes an integral part of the Report.

Administrative Inspection, this problem was slightly rectified by numerous measures taken by the Commissioner in the first half of the year, whereas compared to 2016, the number of decision enforcements went up.

The fact that public authorities had been displaying the same conduct for years was illustrative. Namely, after appeals and opinions requested from the Commissioner, **the authorities acted in 61.8% (1,878) of well-founded complaints**, and **the proceedings involving appeal were dismissed**. This confirmed that in 2017, the authorities continued to display an irresponsible and irrational attitude to citizens, since the citizens' requests could have been and ought to have been addressed without the Commissioner's intervention.

Bearing in mind the ratio between the number of cases where applicants exercised their right and the number of well-founded complaints, it can be concluded that in addition to numerous obstacles in the application of the Law on Access to Information, the efficiency level of the Commissioner's actions was still high and amounted to 93.33%.

None of the Commissioner's decisions issued in 2017 were annulled by the Administrative Court[5], although in 2017, 57 legal actions were filed against the decisions of the Commissioner, of which 54 were resolved. Four legal actions were filed by the Republic Public Prosecutor's Office upon the initiative of public authorities.

A particular progress was made regarding compliance with the statutory duty of public authorities to improve the transparency of their work, as required by the Law on Access to Information, notably in regard to the authorities against which the Commissioner took measures, including public prosecutor's offices. However, many public authorities which have a statutory duty to publish information booklets, organise staff trainings, maintain information media, and submit reports to the Commissioner on the implementation of this Law, have been refusing to do so for years, without assuming any liability or consequences, although a failure to comply with each of these duties is penalised as an infringement.

Again, in 2017, the liability for violations of the law was lacking or was merely symbolic in great many cases given the number of such violations; furthermore, most of the offence proceedings were instituted pursuant to petitions filed by applicants as injured parties, whereas the number of such cases was several-fold higher than the number of cases initiated by the Administrative Inspectorate. This lack of liability was a direct consequence of the divergent practice of misdemeanour courts and of the scope and quality of supervision of the Administrative Inspectorate over the compliance with the Law.

[5] In the course of preparing this Report, the Commissioner received two judgements of the Administrative Court annulling and returning to the repeated procedure the two decisions of the Commissioner issued in 2016 - judgemenets 15 U.7083/16 and U.7455/16 of 8 December 2017.

2. About Obstacles to Exercising the Right of Free Access to Information

In 2017, the right of free access to information and the protection of this right by the Commissioner saw a large number of obstacles in comparison to the previous period. **These obstacles mainly related to the lack of support by the competent authorities, as follows:**

2.1. Failure to consider the report and recommendations of the Commissioner

Notwithstanding its obligation under the Law and its Rules of Procedure[6], in the past three years, the National Assembly did not consider the reports of the Commissioner at its plenary sessions. As stipulated by the Law, since the beginning of his work (2005), the Commissioner has submitted to the National Assembly of the Republic of Serbia 13 reports on the implementation of the laws within his competence (12 regular reports and one extraordinary report). **Out of the total number of 13 reports submitted, only 3 Commissioner's reports (for the years 2010, 2012 and 2013) were considered at the plenary sessions of the National Assembly, which means that the reports of the Commissioner have not been the subject of debate in the National Assembly[7] for the past three years.**

According to the Rules of Procedure of the National Assembly, the reports of independent state bodies charged with protecting the rights of citizens are firstly considered by a competent parliamentary committee, which submits a report to the National Assembly together with the draft conclusion i.e. recommendation for improvement of the situation in these fields. The National Assembly, according to its Rules of Procedure, considers the report of an independent state authority and the report of the competent committee with the draft conclusion i.e. recommendation, and upon closing of the debate at the sitting attended by the majority of MPs, adopts by a majority vote a conclusion or a recommendation on the measures for improvement of the situation in the said fields.

The fact that the National Assembly did not consider ten out of thirteen reports submitted by the Commissioner, and thus did not adopt the proposed conclusions or other relevant conclusions regarding two important areas of human rights, speaks of a complete lack of supervisory function of the National Assembly relative to the Government, that is, to the executive power. In that way, the National Assembly missed the opportunity and did not honour the obligation to impact the elimination of obstacles to the exercise of human rights. Additionally, MPs missed the opportunity to learn about inappropriate regulations in the area of personal data protection and about the proposals and suggestions of the Commissioner regarding the access to information, thus failing to fulfil their obligation to participate in the improvement of legal regulations and protection of human rights in the process of decision-making or amending the laws.

In 2017, not only was the Commissioner left without support from the National Assembly (save for the fact that the Commissioner's report for 2016 was considered by the

[6] Article 58 of the Law on National Assembly („Official Gazette of RS" no. 9/10) and Article 238 of the Rules of Procedure of the National Assembly of the Republic of Serbia („Official Gazette of RS" no. 20/12).

[7] Six reports of the Commissioner were considered only by competent committees or one of the competent committees of the Assembly, whereas four reports were not considered at all.

committee in charge of human rights) but also the institution of the Commissioner and the Commissioner himself were exposed to a negative campaign in connection with an alleged and fabricated candidacy of the Commissioner for a Mayor of the City of Belgrade. Thus, for example, at one of the sessions of the Assembly, the Commissioner's salary was presented as twice the amount he receives. This information was incorrectly repeated even by its President, despite the fact that the Commissioner's salary is legally prescribed and adopted by the Assembly or the competent committee and is available on the website of the Commissioner.

2.2. Impossibility of administrative enforcement of the Commissioner's decisions

In 2017, it became impossible to enforce the Commissioner's decisions through administrative enforcement or enforced execution because in the submission of data necessary for enforced executions, the other bodies either refused to cooperate disclaiming their competence or differently interpreted relevant legal provisions. Such situation has been noticeable since the implementation of the new Law on General Administrative Procedure (LoGAP) which stipulates very high fines that in the procedure of administrative enforcement the Commissioner may pronounce to penalise authorities, as judgement debtors, and coerce them into executing decisions.

Under the Commissioner's conclusions on penalties and according to the former LoGAP, the fines in the maximum amount of two hundred thousand Dinars managed to produce particular effects on a case-by-case basis. However, these pronounced and uncollected fines are no longer collectable unless voluntarily paid by an authority.

The competence for the collection of fines pronounced by the Commissioner was also disclaimed by all authorities potentially in charge of enforcements or collections of public revenues, as follows: the Tax Administration of the Ministry of Finance[8], the National Bank of Serbia[9], the Misdemeanour Court in Belgrade[10], regular courts, and the Chamber of Public Enforcement Officers[11].

In the procedure of administrative enforcement, **the new Law on General Administrative Procedure (1 June 2017)** has considerably increased the fines (for a legal entity, they range from one half of monthly income up to ten percent of annual income earned in the Republic of Serbia in the previous year), and **created new problems. These problems were not only connected to the mentioned enforcement of the Commissioner's decisions on penalties but also to enabling the Commissioner to determine the base for a fine by using the data on an authority's annual income for the previous year, in accordance with the law. The Ministry of Finance kept refusing to deliver such data to the Commissioner.**

[8] Letter of the Tax Adminsitration of the Ministry of Finance, no. 037-00089/2010-08 of 27 January 2011.
[9] Letter of the National Bank of Serbia, no. IX-1353/17 of 24 August 2017.
[10] Letter of the Misdemeanour Court in Belgrade, VIII Su. no. 1/2017-1568 of 26 September 2017.
[11] Not no. 07-00-1/2017-04/71 of 18 September 2017.

For the purpose of determining the basis for pronouncing fines, the Commissioner wrote to the Treasury Administration of the Ministry of Finance and received the reply[12] that the Treasury did not have such data available and that those data should have been sought from the Ministry of Finance. On several occasions, the Commissioner repeated his request to the Treasury Administration and to the Ministry of Finance and eventually, in February 2018, the Ministry of Finance replied that such data did not exist and that the Budget System Law did not define the term „total income of the budget funds beneficiary".

Within the competence of the Government of Serbia, there was another fully non-functional mechanism which was supposed to lead to the enforcement of the Commissioner's decisions and fulfilment of the rights of applicants to receive requested information. Namely, it related to the legal obligation of the Government to, upon the request of the Commissioner, ensure the enforcement of his decisions by means of direct coercion (Article 28 paragraph 4 of the Law on Free Access to Information of Public Importance). Out of the total number of 173 requests for enforcement that the Commissioner had submitted to the Government since 2010, the Government failed to act in all of the cases. **In 2017 alone, the Commissioner requested the enforcement in 43 cases.**

For example, in 2017, the Government refused to ensure the enforcement of the decision and make available to the applicants the information about the contracts concluded between 2011 and 2013 by the Public Company Serbian Railways in connection with marketing, advertising, public relations, sponsorships/donorships and the like; the information contained in the contracts and annexes to the contracts for supply of raw materials concluded between Smederevo Steel Mill d.o.o. and the company Bremer International Limited in 2013 and 2015 with the data on effected payments; particular information of the Anti-Corruption Agency in connection with the control of property and income of the Mayor of the City of Belgrade in 2016; information contained in the public procurement contracts of the Public Company Srbijagas concluded with the company Energotehnika – Južna Bačka d.o.o. Novi Sad in the period from 2010 to 9 February 2015, etc.

2.3. Impeded exercise of the Commissioner's powers

In 2017, in the situations that required the Commissioner to act upon complaints for violation of the rights of access to information, in order to determine if such information may or may not be made available upon request, the Commissioner exercised the powers as per Article 26 of the Law on Access to Information and requested from authorities the perusal of the documents containing the information requested by the applicants. After perusal, the Commissioner returned the documents to the public authorities observing the prescribed security measures in cases where the documents were classified. In the previous years, those powers were exercised by the Commissioner without much problems. Upon his request, the public authorities would submit the requested documents for his perusal and he could establish the facts and make decisions upon complaints, except in one case. This case related to Smederevo Steel Mill[13] where

[12] Letter of the Ministry of Finance-Treasury Administration, no. 401-00-788-2/2017-001-007 of 31 October 2017.
[13] This case is described in the Report of the Commissioner for the year 2016, available at www.poverenik.rs

the Ministry of Economy withheld from the public the information contained in the contracts and, additionally, refused to submit the requested documents for perusal.

In 2017, six public authorities refused to submit the requested documents to the Commissioner.

A case which particularly attracted public attention was the procedure conducted upon the complaint of journalists against the ***Anti-Corruption Agency*** in connection with the information about the control exercised over the property and income of the Belgrade Mayor and about the enforcement of the decision issued upon the complaint. In that procedure, the Agency failed to deliver the requested documents to the Commissioner, for his perusal, despite the fact that the Commissioner repeated his request three times. The Agency conditioned the perusal of documents with the Commissioner's personal presence in the premises of the Agency[14]. The Commissioner warned the Agency[15] that such conduct was not in accordance with the Law and was unprecedented in the long-standing work of the Commissioner. The Commissioner also pointed out that he had quite a number of staff who held an appropriate certificate for the access to classified documents and, at the same time, expressed his doubts as to the strict confidentiality of the subject information. He invited the Agency to cooperate and submit the full text of requested documents in the manner prescribed by the Data Secrecy Law and by the regulations on handling classified documents. The Agency again refused to deliver the requested documents to the Commissioner, conditioning the perusal with his personal presence in the premises of the Agency.[16] Subsequently and for the third time[17], the Commissioner invited the Agency to comply with his request and enable him to establish the facts relevant for the decision enforcement procedure, but the Agency failed to do so.

The conduct of the Agency described above was completely problematic and additionally complicated by the fact that at that time, as in the years before, no person employed in the Agency held a certificate for the access to classified documents[18].

The aforementioned fact pointed out that the Agency had been able to access the classified documents for many years, beyond the prescribed procedure, namely, beyond the conditions defined in the Data Secrecy Law, meaning that numerous punishable offences and even criminal offences had been committed. The fact that this did not attract the attention of the Prosecutor's Office and of the Ministry of Justice in charge of supervision over the implementation of the Data Secrecy Law raised additional concerns.

In one of the cases, the ***Faculty of Law in Novi Sad*** informed the Commissioner that it did not possess particular documents. According to the circumstances of the case, that was almost impossible since the documents related to the official communication in connection with the title of a PhD conferred by that Faculty. Namely, this was about the doctor's degree of a

[14] Letter of the Anti-Corruption Agency no. 014-037-00-0503/16-05-02 of 27 March 2017.
[15] Letter of the Commissioner, no. 071-04-881/1/2017-03 of 4 April 2017.
[16] Letter of the Anti-Corruption Agency no. 014-037-00-0503/16-05/3 of 7 April 2017.
[17] Letter of the Commissioner, no. 071-04-881/2/2017-03 of 11 April 2017.
[18] Letter of the Office of the National Security Council and Classified Information Protection, no. 07-00-00005/2/2017-01 of 19 April 2017.

holder of a public and political office, a faculty professor and an MP and President of the ruling Parliamentary Group at the National Assembly.

The Ministry of Foreign Affairs refused to submit to the Commissioner the documents i.e. the report of the Working Group of the Ministry which investigated the circumstances surrounding the death of the officers of the Serbian Embassy in Libya. In connection with the aforementioned, the Ministry claimed that those were „strictly confidential "documents[19] and requested from the Commissioner to obtain the expert opinion of the Office of the National Security Council and Classified Information Protection and the opinion of the Ministry in charge of judicial affairs and supervision over the implementation of the Data Secrecy Law. Such reply was sent notwithstanding the fact that the Ministry[20] had been informed by the Commissioner that his Office meets all the conditions prescribed for handling and processing of classified information and thus, the access to classified information would be allowed only to the persons holding appropriate certificates.

The Ministry of Mining and Energy failed to submit the documents relating to the business relationship with the company that, according to the decision of the Court of Arbitration in Geneva, had a claim against the Republic of Serbia for the debt of the Mining and Smelting Basin Bor. Namely, the Ministry explained its failure to deliver the documents by the fact that it had asked the State Attorney's Office to provide the opinion on whether the request of the Commissioner could be complied with.[21] Suffice it to say, such conduct of the Ministry was fully unfounded and directly in contravention of the Data Secrecy Law.

There were also other cases. One related to the documents/contracts on donations concluded by the ***Public Company Jugoimport SDPR***. The Commissioner did not receive any reply from that Public Company. The other case related to the ***Ministry of Defence – Military Security Agency*** and the documents on an incident occurred during the Pride March in 2014. The Ministry –MSA requested the Commissioner to inspect the documents in the premises of the MSA. In his reply, the Commissioner repeated the request, however, the Ministry –MSA again failed to submit the requested documents and repeated that the Commissioner may inspect the documents in the premises of the MSA.

In the inspection of the original documents containing the requested information, the exercise of the Commissioner's powers in the premises of public authorities was unacceptable for many reasons. Firstly, that was impracticable when had in mind that couple of thousands of Serbian public authorities[22] are subject to the Law on Access to Information and that the capacities of the Commissioner cannot match such number. Even if that were possible, such procedure on the territory of Serbia would render the exercise of the said powers completely irrational. More importantly, it is almost impossible to prepare a decision upon complaint without considering the content of a confidential document and deciding which information or parts of the document should be excluded from access.

2.4. Inadequate accountability or lack of accountability

[19] Letter of the Ministry of Foreign Affairs I no. 44-3/2017 of 11 December 2017.
[20] Letter of the Commmissioner no. 071-01-2148/2017-03 of 22 November 2017.
[21] Letter of the Ministry of Mining and Energy no. 011-00-128/2017-02 of 24 November 2017.
[22] According to the Catalogue of Bodies, eleven thousand www.poverenik.rs

In 2017, the violations of the right to free access to information largely went unpunished.

When evaluating the situation regarding the accountability for the violation of the right of access to information, it should be taken into account that in 2017, the Commissioner processed more than three thousand well-founded complaints, whereas the law was blatantly breached in majority of those cases. The data on the level of fulfilment of other legal obligations were also relevant (e.g. publishing of information booklets, submitting reports to the Commissioner, organising trainings) and in total accounted for **less than thirty percent.** Almost three thousand public authorities were subject to these obligations, which means that a large majority of them kept ignoring this obligation and remained unpunished.

The information that the Administrative Inspection[23] filed to the misdemeanour courts only 11 requests for initiation of offence proceedings is in a complete and highly concerning discrepancy with the aforementioned.

The lack of misdemeanour and other liability for the violation of this right undoubtedly encouraged those responsible within the public authorities to continue with violations believing that they would not bear any consequences. In addition, a perennial lack of accountability for the violation of rights was the main cause of a large number of complaints lodged to the Commissioner. Objective impossibility of the Commissioner to process all the complaints within a legally prescribed period often rightfully provoked citizens' dissatisfaction and additionally burdened the work of the Commissioner's Office.

The fact that in 2017, the **citizens** whose rights were violated, independently **submitted**, as injured parties, **401 requests for the initiation of offence proceedings[24] was undoubtedly affirmative in terms of their willingness to become personally involved in the implementation of accountability and legality principle. However, the fact that the number of their requests was 40 times higher than that of the Administrative Inspectorate was quite concerning when it came to the readiness of the state to advocate the application of those principles.**

In addition to the lack of accountability, there was also a problem of divergent practices and different penal policies of particular misdemeanour courts. Particular misdemeanour courts still did not adhere to the position taken by the Supreme Court of Cassation on 6 December 2016, upon the initiative of the Commissioner II Su-17157-16, regarding the right of the injured parties to commence an action and file a request for initiation of the offence proceedings (particularly in the cases when they failed to lodge a complaint to the Commissioner in the administrative procedure). Namely, the Court found that a failure to provide an adequate answer to the applicant constitutes the violation of personal rights and thus, the applicant, as an injured party, is always authorised to personally file the request for initiation of the offence proceedings, which was also advocated by the Commissioner, even before the Court took such position.

[23] Letter of Administrative Inspectorate number 011-00-00031/2017-06 of 18 January 2018.
[24] Data obtained from the misdemeanor courts in Serbia submitted upon the request of the Commissioner.

The fact that even the Misdemeanour Appellate Court did not take a unique position on the right of action of legal entities, raised additional concerns. Thus, in two cases, the Court in Belgrade took the opinion that the association of citizens did not have a capacity of an injured party, namely, that it failed to prove such capacity[25]. On the other hand, the Division of the same Court in Novi Sad confirmed, in its three decisions, the position that the capacity of a legal entity as injured party arises from the very Law on Access to Information[26].

Despite the position of the Supreme Court of Cassation and the official letter of the Commissioner sent to the Misdemeanour Appellate Court[27], the misdemeanour courts continued to request from the Commissioner the information about particular complaints regarding the conduct of the offence proceedings. Although that was irrelevant for the right of applicants to file requests for initiation of the offence proceedings, it produced unnecessary administration and delays to the detriment of the injured parties, and quite often led to the statute of limitations.

The rare penalties that were pronounced were closer to the legally prescribed minimum, whereas the proceedings involving appeal were quite often dismissed as statute-barred.[28] Accordingly, it is worth noting that in the process of amending the Law on Misdemeanours, the Ministry of Justice did not accept the Commissioner's initiative to take into account the anti-corruption potential of the Law on Access to Information and extend the statute of limitations for the offences stipulated therein.

2.5. Long-standing delay of amendments to the Law on Access to Information

For six years, namely since 2012, when the Draft Law on Amendments and Supplements to the Law on Free Access to Information of Public Importance was withdrawn from the parliamentary procedure, **the Government of Serbia kept postponing much needed amendments to the Law on Access to Information, although such amendments would eliminate the biggest obstacles to its implementation and to the exercise of citizens' rights.** Since then, the amendments and supplements to that Law have become a prerequisite for ensuring an adequate protection of rights.

The competent authorities have committed themselves to adopting the amendments to the Law on Access to Information in all of their strategic documents (on combating corruption, state administration reform, accession to the European Union (Chapter 23), implementation of the internationally accepted idea of Open Government Partnership etc.) and stressed the need for enhanced transparency of all processes conducted by the public authorities, broader powers and resources available to the Commissioner, and compulsory compliance with the Commissioner's decisions and instructions. The deadline determined for the adoption of the Law on Access to Information was the last quarter of 2017. [29]

[25] Judgement 20-no.5321/17 and 7- no.10956/17.
[26] Judgements III-305 Prž. no. 1824/17, III-308 Prž. no. 17028/17 III-308 Prž. no. 14033/17.
[27] Letter of the Commissioner no. 071-02-1267/2017-03 of 12 April 2017.
[28] Data provided by the misdemeanour court upon the request of the Commissioner are shown in the text of the Report.
[29] Report no. 3/2017 on implementation of the Action Plan for chapter 23, November 2017.
https://www.mpravde.gov.rs/tekst/17033/izvestaj-br-32017-o-sprovodjenju-akcionog-plana-za-poglavlje-23.php

A fast adoption of the Law on Amendments and Supplements to the Law on Free Access to Information of Public Importance[30] is necessary so that evident obstacles in the exercise of rights can be eliminated and, in particular, to ensure unimpeded execution of the Commissioner's decisions. In addition, the amendments to this Law are expected to improve the standards of proactive information publishing and enhance the transparency and accountability of public authorities, thus boosting the anti-corruption potential of this Law.

III Personal Data Protection

1. Legal Framework

The legal framework in Serbia remained the main obstacle to ensuring an adequate personal data protection. This area is not fully and adequately regulated. In individual situations, particular laws stipulating personal data processing were contradictory to one another. Consequently, this resulted in the violation of right to personal data protection and the right to privacy. As the adoption of a new law on Personal Data Protection was continually delayed, such cases of violation may be perceived as usual.

In addition, no systematic approach to resolving problems in personal data protection was applied. A systematic approach would mean that the Serbian society should take a stand on the right to privacy and its values for society and human dignity. A systematic approach would also involve the **formulation of personal data protection strategy**, as an official document, and accordingly, the formulation of the **Action Plan**.

The effective Law on Personal Data Protection is neither in conformity with particular general principles, concepts and practice in the area of data protection (notably those applied on the territory of Europe) nor can it respond to the challenges posed by the development of information technologies. For example, this Law neither recognizes nor regulates the consent of internet users for processing of personal data. Numerous provisions of the Law on Personal Data Protection are inappropriate, some are incomplete, whereas particular matters were not included in the LPDP (e.g. video surveillance, biometric data processing, etc.), despite the fact that they were not subject to any other, special laws.

Inadequate internal legal framework for personal data protection was also reflected in the **inappropriate sectoral laws**. Namely, while as a rule, numerous sectoral laws incompletely regulate personal data processing in a given sector and require amendments or supplements, particular sectoral laws do not regulate these matters at all.

In addition, it should be pointed out that a larger number of laws, particularly those adopted before the enactment of the LPDP, do not contain the provisions which adequately (legally) regulate the constitutional obligation to collect, keep, process and use personal data (Article 42 paragraph 2 of the Constitution of the Republic of Serbia). Instead, this subject matter

[30]Close to the completion of this Report, the Ministry of State Government and Local Self-Government started the process of amending the Law on Access to Information.

is quite often subject to by-laws. Despite the fact that the purpose of these by-laws is to regulate technical and similar issues concerning data processing, they often do so in an insufficient or incomplete fashion.

From the perspective of international law and international relations, **harmonization of national legislation with the Community law represents an international and legal obligation of the Republic of Serbia** defined in the Stabilization and Association Agreement (Article 81.)[31]. Accordingly, it should be borne in mind that in the European Union, the field of personal data protection has been subject to considerable changes, and that this field, allowing for slight deviations, is one of the rare fields within the competence of the European Union to be uniformly regulated, particularly when human rights are concerned. **To that extent, one of the most significant legal acts is the Regulation[32] 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.** This Regulation not only repeals the Directive 95/46/EC but also **regulates personal data protection in a considerably different, more complete and more precise fashion, and not just on the territory of the European Union but almost globally.** This will also produce a considerable impact on the Serbian economy and foreign investments.

Personal data represent value for all business entities which make profit through data processing. This requires all business entities to be responsible for such data. There is no doubt that business entities cannot be satisfied with an inadequate legal framework in view of the fact that such framework causes legal uncertainty.

In view of the deficiencies of the Serbian legal system in terms of personal data protection, on the one hand, and of the global significance of a new European legal framework for data protection, on the other, it seems that the **Serbian economy will face considerable losses**. Such losses will also affect **the citizens of Serbia, to whom the state of Serbia will not provide the same level of protection as that to be enjoyed by all EU citizens as of May 2018.** Finally, by missing the deadlines determined by the Government and defined in the Action Plan for Chapter 23 *Judiciary and Fundamental Rights,* the **state of Serbia** will face the loss and **risk to be adversely evaluated by the European Commission.**

2. (Non)enactment of the New LPDP

In the past years, on several occasions, the Commissioner called for the attention of the Government and particularly of the Ministry of Justice and proposed concrete solutions for numerous inadequate or incomplete provisions of the Law on Personal Data Protection which completely omitted to regulate particular issues.

It has been a long time now since the Commissioner offered concrete solutions relating to video surveillance and submitted to the Ministry the provisions on video surveillance as possible

[31]The Law on Ratification of the Stabilization and Accession Agreement between European Communities and Their Member States of the One Part, and the Republic of Serbia, of the Other Part ("Official Gazette of RS – international treaties ", no. 83/2008).
[32] https://www.poverenik.rs/sr/pravni-okvir-zp/medjunarodni-dokumenti/2502-uredba-2016679.html

amendments to the Law on Data Protection. Failure of the competent authorities, notably of the Government of Serbia, to take appropriate actions, forced the Commissioner to independently draft a new Model Law on Personal Data Protection in October 2014. The Commissioner submitted that Model Law to the Ministry of Justice and it was not until one year after that the Ministry of Justice prepared the Draft Law on Personal Data Protection. Unfortunately, that Draft Law did not have anything in common with the Commissioner's Model, despite the fact that the Action Plan for Negotiating Chapter 23 defined it as obligation.

As **meantime the General Data Protection Regulation (GDPR) was adopted, the Commissioner prepared a new Model Law on Personal Data Protection and submitted it to the Ministry of Justice in April 2017,** and on two occasions, to the President of the Government, since the Prime Minister was not aware of the fact that the Commissioner had prepared the Model Law nor was she familiar with the content of that Model.

By the end of 2017, the Ministry of Justice prepared the Draft Law on Personal Data Protection where, according to the Conclusion of the Committee on Legal System and State Bodies of the Government of Serbia 05 no. 011-11658/2017 of 28 November 2017, a public debate was conducted in the period between 1 December 2017 and 15 January 2018. In the beginning of 2018, the Commissioner provided his preliminary opinion and opinion on the individual provisions of the Draft Law wording, with the conclusion that the most rational solution would be to include in the formal adoption procedure the Model Law on Personal Data Protection prepared by the Commissioner based on experiential facts and analysis of the effective Law on Personal Data Protection. Such Law would be in line with the provisions of the GDPR and, if necessary, supplemented with any acceptable solutions of the Draft Law that the Model Law may not contain. Such proposal was in line with the formalized obligation of the Ministry of Justice to prepare the Draft Law on Personal Data Protection according to the Model provided by the Commissioner.

Unfortunately, the new Law is still not adopted, even though the deadline for its adoption was defined in the Action Plan, after being delayed for many years. The failure to adopt the new Law on Personal Data Protection will produce manifold adverse consequences on the Serbian citizens and economy, as well as on the state in its European integration process.

3. Commissioner's Activities relating to Personal Data Protection

In 2017, the Commissioner closed **4,624** cases relating to personal data protection.

In 2017, 898 opinions were provided on the implementation of the Law on Personal Data Protection; 39 instructions were given for actions according to the LPDP; 392 controllers maintaining 1,338 data files were registered in the Commissioner's Central Register. Activities of the Commissioner in the course of supervision or upon complaints are provided in items 3.1. and 3.2, respectively.

3.1. Supervision

In 2017, **the number of initiated and completed supervisions over the implementation and enforcement of the Law on Personal Data Protection went up**. Unfortunately, that was the consequence of the fact that long-standing problems only continued to accumulate due to anachronousness, obsoleteness, and inadequacy of the Law on Personal Data Protection; due to an inadequate legal framework in general; due to the lack of the Action Plan for the implementation of the Personal Data Protection Strategy which, in the course of time, has also become obsolete; and due to an inappropriate conduct of other competent authorities, notably courts and prosecutor's offices.

In 2017, the Commissioner **initiated 936 supervisions** as follows: 187 upon citizens' complaints, 72 at his own initiative, and 603 in connection with personal data files. The Commissioner performed 603 prior verifications of personal data processing activities and established no irregularities in 271 cases. Irregularities were identified in 332 cases, whereafter the Commissioner issued Warnings to the controllers pursuant to Article 50 of the LPDP.

In 2017, the Commissioner **completed the total of 953 supervisions,** as follows: 600 cases were closed upon establishing that the previous supervision was complied with; no irregularities were established in 271 cases and they were closed with the notification as per Article 50, 60 cases were closed with an official note as no violations of the LPDP were established, namely, no elements for inspection supervision were found, 19 cases were closed upon the request for initiation of the offence proceedings, and 3 cases were closed by bringing criminal charges.

In the cases when the violations of the provisions of the LPDP (462) were established, the Commissioner:

- issued **435 warnings** (332 as per Article 50 of the LPDP and 103 as per Article 56 of the LPDP),
- issued **5 decisions**,
- submitted **19 requests for initiation of the offence proceedings due to the breach of the LPDP,** and
- brought **3 criminal charges**.

In the reporting period, out of 332 warnings issued **as per Article 50 of the LPDP,** 289 were complied with, 11 were partly complied with, namely, the **compliance percent was 90.4%**, and 26 warnings were not complied with (7.8%). The compliance with the remaining 6 warnings was underway.

Out of 103 warnings issued **as per Article 56 of the LPDP,** 84 warnings were complied with, 8 warnings were partly complied with i.e. the **compliance percent was 89.3%**, whereas 10 warnings were not complied with (9.7%). The compliance with the 1 remaining warning was underway.

In the reporting period, the Commissioner issued 5 decisions, as follows: 2 decisions on the deletion of the collected data or anonymisation, 1 decision on the deletion of collected data, elimination of irregularities within a particular period, and temporary prohibition of processing,

and 2 decisions on the elimination of irregularities within a particular period. The controllers **fully complied with 4 and partly with 1 decision of the Commissioner.**

Irregularities established by the Commissioner in the course of supervision were mostly the same as in the previous period, and those were: data were processed without legal grounds therefor, that is, without legal authorisation or consent of a person; the processed data were unnecessary and /or unfit for the processing purpose; the processed data were not commensurate to the processing purpose; and appropriate organisational and technical measures for personal data protection were not taken.

The fact that the most blatant violations of the right to personal data protection were committed by the public authorities raised particular concerns. For example, the Ministry of Interior requested from the general hospital in Kikinda to deliver the data on citizens who were treated on the basis of the "F" health code, explaining that those data were required for the compliance with the Instruction on the method of organizing and conducting the internal affairs on security sector and for updating of the Dossier of Kikinda Police Department. The said Instruction was issued in 1997, by the then Minister of Interior Vlajko Stojiljkovic. The Commissioner warned the Ministry of Interior that such processing was unlawful and that the Instruction may not constitute legal grounds for data processing, particularly when borne in mind that those were extremely sensitive personal data. Accordingly, complying with the Commissioner's Warning, in the period from 28 November 2017 to 7 December 2017, in all its police administrations, at the level of police stations/offices, the Ministry of Interior deleted personal data (by incineration and complete destruction) that were processed in the Department's dossiers without legal grounds and purpose.

There was also an extreme and illustrative example of the violation of rights in the National Employment Service, when the data on persons whose benefits were incorrectly calculated and paid „leaked" due to inadequate organisational and technical data protection measures. An attorney, Nemanja Kovačević, was given those data for representation. The Commissioner warned the National Employment Service about the measures to be taken in accordance with Article 47 of the LPDP and filed the lawsuit to the First Basic Public Prosecutor's Office on the grounds of indications that an NN staff member, in the capacity of an authorised official employed in the National Employment Service, disclosed to a third party and used out of the designated purpose the personal data relating to the use of the unemployment benefits, thus committing a criminal act of unauthorised collection of personal data as per Article 146 paragraph 3 in connection with paragraph 1 of the Criminal Code.

3.2. Actions of the Commissioner upon complaints

In 2017, the Commissioner received 285 complaints and **processed 332, including the complaints that were received in 2016 and carried forward to 2017.**

The most common reason for lodging complaints to the Commissioner was that **the controllers did not present the data, did not issue a copy of the data, or did not issue a copy of the data within the period or in the manner stipulated in the LPDP (46.3% of the total number of complaints).** This only continued a negative trend of controlles' conduct identified in

the previous period. **The second most common reason for lodging complaints to the Commissioner was a so-called "administrative silence ", namely, the fact that the controllers failed to act upon the request of the applicants within a prescribed period (40%),** which further indicated a high percent of wrongful conduct of data controllers[33].

In 2017, **the Commissioner received 39 complaints (13.7% of the total number of complaints)** due to **a controller's rejection (33) or dismissal (6) of the applicants' requests.** These two reasons for lodging complaints to the Commissioner were present almost at the same level as in 2016, when within the total number of received complaints, 12.3% were lodged to the Commissioner.

Complaints lodged to the Commissioner related to the data from: police records, HR records, records of banks, records kept by educational institutions, records relating to pension, disability and health insurance, court files, files of the social welfare centres, different Registries, medical records, call list records, etc.

The requests after which complaints were lodged due to the failure of the controllers to act related to the exercise of: the right to a copy (64.6%); the right of perusal (16.2%); the right to notification of data processing (14.9%) and to the deletion, updating, correction, suspension and termination of data processing (4.3%). **The largest number of complaints** lodged to the Commissioner in 2017 and in the previous years related to the **right to a copy (64.6%),** which showed that such requests were most commonly sent to the controllers, whereas **the lowest number of complaints related to the deletion, updating, correction and termination of data processing,** showing the lack of citizens' interest in the correction of their incorrect personal data processed by the controllers.

The largest number of complaints, as many as 251, were still lodged **due to the inaction of authorities or the bodies and organisations entrusted with public powers, and of the public companies.**

Within the decisions issued upon complaints, the Commissioner established that **complaints were well-founded in 120 cases or 36.1%.** In **59 cases or 17.8%,** the Commissioner issued the conclusion of **procedure dismissal** because, prior to the Commissioner's decision upon complaint, the controller either acted upon the request or the applicant withdrew the complaint. Other complaints, or **46.1% of the total number of processed complaints** within the total number of 99 cases or **29.8%,** the Commissioner resolved by **rejecting complaints** (98) **as unfounded or by rejecting requests as unfounded** (1), **and in 54 cases or 16.3%, the Commissioner rejected complaints for formal reasons**.

In the reporting period, the Commissioner issued the total of **86 binding and final decisions instructing controllers** to act upon the request or to provide the applicants with the requested data, and ordering the controllers to notify him of the enforcement of such decision. The decisions of the Commissioner **were fully complied with by 80 controllers, and partly by 1 controller, and those controllers informed the Commissioner thereof (94.2%)**. **Three**

[33]In 2016, within the total number of complaints received, 44.8% accounted for administrative silence.

controllers failed to act upon the decision of the Commissioner, whereas the actions upon 2 Commissioner's decisions were underway.

4. Actions of Judicial Authorities in the Area of Personal Data Protection

In 2017, the Commissioner **submitted 19 requests for initiation of the offence proceedings** due to the infringements of the provisions of the LPDP.

In connection with the mentioned requests filed in 2017 and before, the Commissioner received 18 decisions of the misdemeanour courts. Out of that number, there were **8 convictions** in the court of first instance, whereas **in 10 cases, the prosecution of offences became subject to absolute statute of limitations** (9 decisions on the dismissal of proceedings and one decision on the rejection of the request for initiation of the offence proceedings).

In their convictions, the misdemeanour courts pronounced the fines in the total amount of 221,000 Dinars and issued 4 warnings. **The fines pronounced against the controllers** ranged **between 50,000 and 80,000 Dinars**, whereas against the **persons responsible** in the controller's organisations the fines were pronounced in the amounts ranging **between 5,000 and 10,000 Dinars.**

In the past five years, **the share of cases subject to absolute statute of limitations compared to the proceedings judged on their own merits rose** from, for example, one third of all cases in 2015 to more than a half of all cases in the past two years.

In addition, the **pronounced penalties were unusually mild** even in the cases of blatant violations of personal rights i.e. when the Mental Health Clinic delivered particularly sensitive personal data to the Ministry of Health without any legal grounds therefor (data from medical records relating to mental health). Namely, the court pronounced only a warning against a responsible person. In connection with the very same case, the Ministry of Health delivered the same data to the Ministry of Interior, without any legal grounds therefor, and the proceedings were terminated after the offence prosecution had become subject to absolute statute of limitations.

In 2017, the Administrative Court ruled on 16 lawsuits against the decisions of the Commissioner by rejecting 15 and accepting 1 lawsuit.

IV Initiatives and Opinions of the Commissioner in connection with Regulations

In 2017, the Commissioner provided 79 opinions on the draft laws, legislative proposals, and other by-laws and regulations. Out of that number, 60 opinions were provided on the draft laws and legislative proposals.

When the opinions provided on the draft laws, legislative proposals, and other acts are analysed, it can be concluded that, as in the previous year, the objections to such texts most commonly related to the following:

The texts of the draft laws often stipulated that by-laws should regulate personal data processing, which was contrary to the provisions of Article 42 of the Constitution of the Republic of Serbia. The purpose of data processing regulated by the Law was often insufficiently clear and defined, and in particular cases even wrongful. When prescribing the types of data to be processed, the principle of proportion was not observed. The definition of the periods for storing the processed data was omitted. Almost no attention was paid to the stipulation of responsibility for a failure to take organizational and technical measures toward personal data protection. In the course of preparation of the law wordings regulating personal data processing and prescribing the processing on a large scale or the introduction of new information technologies, the persons authorised for legislative proposals did not evaluate the impact that such processing could have on privacy. Particular texts of draft laws and legislative proposals contained attempts to prescribe absolute limitations of the right to free access to information of public importance, which was contrary to Article 8 of the Law on Free Access to Information of Public Importance.

Particularly concerning was the fact that when preparing the regulations, the authorised law proposers did not sufficiently take into account the opinions of the Commissioner. This may produce devastating consequences on the citizens' rights in the area of both personal data protection and free access to information of public importance. The most illustrative examples of the above are the Draft Law on the National DNA Registry and the Draft Law on Amendments and Supplements to the Law on Defence.

In his opinion on the **Draft Law on the National DNA Registry,** the Commissioner stressed that such law may produce a considerable impact on the personal data protection and the rights of data subjects in connection with personal data processing. The data that can be obtained by analysing the samples of biological materials, including DNA profiling, are the data which should be treated as particularly sensitive personal data because they are unique and unchangeable and may be used to obtain the information on health and ethnic origin of a person. The purpose of DNA registry must be clearly defined and it should be reconsidered whether the data processing, which is planned to be performed in the Registry on a large scale, is proportionate to the processing objective.

The Commissioner raised particular concerns about the solutions outlined in the Draft Law stipulating that the data contained in the Registry could be processed without any limitations or deadlines. According to the Draft Law, not only that the Registry would keep the data on the persons suspected, accused or convicted of a crime but also of the victims of such crimes, including the data on minors i.e. children whose DNA profiles are processed for the purpose of establishing whether the traces of biological material found on victims match the DNA profile of crime suspects. The Draft Law provided neither for the conditions under which data processing was to be performed in the Registry nor did it stipulate clear rules and conditions under which data and indisputable samples were to be recorded and entered therein. Additionally, it prescribed neither the conditions for the deletion from the Registry nor the periods for keeping the data.

With regard to the **Draft Law on Amendments and Supplements to the Law on Defence** submitted to the Commissioner by the Ministry of Defence, the Commissioner repeated his opinion on the then Draft Law on Amendments and Supplements to the Law on Defence submitted to the Ministry by the end of 2016. This opinion was also mentioned in the Commissioner's Report for the year 2016.

Namely, the Draft Law stipulated the amendment to Article 102 of the Law on Defence that was supposed to define: classified data which are considered important for the system of defence, complete denial of the public access to such data and to the data classified as those of interest for the national security of the Republic of Serbia, and the authorisation of the Government to, among other things, define in more detail the data which were to be stored and protected as the data relevant for the system of defence. In his opinion on the Draft Law on Amendments and Supplements to the 2016 Law on Defence, the Commissioner pointed out that such solution was absolutely unacceptable from the perspective of a unique legal system, namely, from the concept of the Law on Free Access to Information of Public Importance and the Data Secrecy Law.

In view of the fact that one year after, the Ministry requested the opinion on almost identical provisions which prejudiced the unity of the legal system in the area of free access to information and in the area of data secrecy (both of which are uniquely regulated by the Law on Free Access to Information of Public Importance and by the Data Secrecy Law), and of the fact that the proposed special solutions represented encroachment on the express competence of another Ministry (contrary to the provisions of the Law on Ministries), the Commissioner submitted his opinion to the competent ministries and to the Government of the Republic of Serbia for their further consideration, believing that the proposed solutions of the Ministry of Defence exceeded the Commissioner's competence.

V Consideration and Implementation of Recommendations

The Commissioner trusts that the 2017 Report on Implementation of the Law on Free Access to Information of Public Importance and of the Law on Personal Data Protection, with Commissioner's recommendations, will be the subject of a debate at the session of the National Assembly and that the adopted conclusions will help improve the conditions and foster a more responsible attitude towards human rights among public authorities. The Commissioner believes that such actions are necessary when taken into account that the National Assembly adopted its last conclusions in connection with the annual reports of the Commissioner in 2014, after considering the Report for the year 2013, and that the last three reports of the Commissioner were not considered at the plenary sessions. Such attitude produces a complete lack of controlling function of the National Assembly in relation to the Government in two important fields of human rights, and thus results in a missed opportunity to rectify such situation which cannot and must not be regarded as satisfactory.