

**SUMMARY REPORT
ON THE IMPLEMENTATION OF THE LAW ON FREE
ACCESS TO INFORMATION OF PUBLIC IMPORTANCE
AND THE LAW ON PERSONAL DATA PROTECTION
FOR 2018**

I. On the role and the activities of the Commissioner

This Summary Report on the Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2018 shows the state of affairs regarding the implementation of these laws, measures and activities of the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: the Commissioner) as well as obstacles and challenges in exercising the right to free access to information and the right to protection of personal data.

The key role of the Commissioner in accordance with the Law on Free Access to Information of Public Importance (hereinafter: the Law on Free Access to Information) and the Law on Personal Data Protection (hereinafter: LPDP) is to protect and promote the rights prescribed by these laws as well as to monitor the legality of personal data processing by the public authorities and all other entities dealing with personal data processing.

As regards the situation and events in 2018, including the treatment on the part of the competent state authorities and their representatives, the position of the Commissioner is that 2018 was the most challenging year in the fourteen years' existence of the Office of the Commissioner. By refusing to cooperate, the competent or supervised authorities often made it difficult and even impossible for the Commissioner to take legal measures, or for such measures to produce their intended effects. Additionally, the measures and actions taken by the Commissioner in accordance with the law that were seen as unfavourable by the public authorities were often met with unfounded public statements, including by persons in high state and political positions. For example, the Commissioner was personally exposed to unfounded comments and accusations by some of the MP's from the largest ruling party, including even being accused of misusing the budget funds, all of which was fully confuted after the control and the findings of the State Audit Institution.

At the same time, for the fourth year in a row the National Assembly acts contrary to the law and its own Rules of Procedure and fails to consider the Annual Reports of the Commissioner. Moreover, the Commissioner was not invited to attend the sessions of the relevant Parliamentary Committees at which the issues or regulations related to his scope of work were discussed. The overall attitude of the National Assembly has had a negative impact on the work of the Commissioner as a state body and on the relationship with other bodies subject to the Commissioner's control, all at the expense of the rights of citizens and the reputation of the National Assembly.

This 2018 Report also marks the last year of the term of the first Commissioner for Information of Public Importance and Personal Data Protection, Rodoljub Šabić, which ended on 22 December 2018; the new Commissioner has not been elected as at the time of submitting this Report.

Besides being marked by the greatest challenges in the work of the Commissioner so far, the year 2018 was a record year in terms of volume of work. Specifically, the Commissioner had a total of 17,700 cases, 13,591 of which were received in 2018 and in which he completed the proceedings in 14,388 cases. Of the aforementioned 14,388 cases, the procedure was completed in 5,562 cases concerning access to information and 7,616 cases concerning personal data protection, while 1,210 cases were related to both areas.

In 2018, the Commissioner mostly dealt with complaints concerning violations of the right to free access to information of public importance, supervision of the personal data processing and giving expert opinions regarding the adoption of and amendments to regulations or their application. In addition, a significant part of the activities was related to the provision of expert assistance and training in the implementation of the law, to the affirmation and exercise of the right to access information and the protection of personal data, to the cooperation with relevant bodies at the international and regional levels, and to the contribution to the state's activities related to the EU accession process.

At the same time, in 2018 the Commissioner continued working on the improvement of the operation of the Commissioner's Office. Most of the activities were carried out within a project approved on the basis of a bilateral agreement between the Government of the Republic of Serbia and the Ministry of Foreign Affairs of the Kingdom of Norway. Employee training and obtaining the highest degree of certification for the application of data security standard - SRPS ISO/IEC 27001 is of particular importance to the institution and broader. In addition to the previously certified 8 Information Security Auditors (the highest certification level for SRPS ISO/IEC 27001) and 10 Data Security Managers, another 7 employees have obtained Data Security Manager Certificates in 2018.

Also, in 2018 the Office of the Council for National Security and Protection of Classified Information issued, for the third time, the security certificate for the access to and use of classified information of the highest degree – "State Secret" to Rodoljub Šabić which implies a previous special security check, the most rigorous check envisaged by the Data Secrecy Law. In addition to that, the Commissioner's Office has a total of 24 employees with a certificate for access to classified information, which ensures a smooth conduct of affairs within its jurisdiction.

The ongoing task of increasing the visibility of the role and work of the Commissioner was realised in 2018 through the media, the Internet presentation, the Open Data Portal on the work of the Commissioner, social networks etc. Based on the results of the traditional research "Journalist - Your Friend" on the quality of relations between organizations and public figures in Serbia in 2018 with media and journalists, the Commissioner is in the group of state institutions with the best media relations, and Commissioner Šabić is among the most communicative state officials.

Adding to the numerous awards and acknowledgments received so far for their work, the Commissioner's Office and the then Commissioner received two awards in 2018 (from the City of Šabac and the House of Human Rights and Democracy).

Notwithstanding the extensive activities of the Commissioner and the record number of completed cases, the year 2018 was marked by the fear of the employees as to whether they would receive all the salaries, since the funds for this purpose in the budget for 2018 were not sufficient even for the existing number of employees, despite the fact that the

strengthening of human resources of this institution is proclaimed in all programme documents of the Government and the National Assembly, as well as in the Action Plan for Chapter 23,. The funds were provided from budget reserves at the last minute, when their payment was due. In such a situation, the decision of the relevant Assembly Committee on the ability of the Commissioner to increase the number of employees in accordance with the budget funds is of no practical significance.

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

1. Overview of the Situation Concerning the Exercise and Protection of the Right of Access to Information

The opinion of the Commissioner is that the state of play concerning the exercise of the right to free access to information of public importance in 2018 cannot be described as satisfactory. The deterioration of the situation since 2016 regarding the implementation of the Law on Free Access to Information, is primarily reflected in the following: a decrease in acting of the authorities upon the Commissioner's decisions to make the information available; a lesser degree of responsibility for violating the law; interference with the work of the Commissioner in the application of his legal powers with regard to establishing facts of importance for the decision-making process on complaints; a complete blockade of mechanisms for enforcing the Commissioner's decisions imposing fines, and the absence of support from the Government to ensure the enforcement of the Commissioner's decisions by means of coercive measures.

In the field of freedom of access to information, the Commissioner had 8,437 ongoing cases related to the protection and improving of the right in 2018. Of that, 3,595 cases were carried over from 2017, and 4,842 cases were received during 2018. In 2018, the Commissioner decided on 5,562 cases, and the remaining 2,875 cases for which he did not complete the procedure were transferred to 2019.

The number of requests for free access to information of public importance in Serbia was also very high in 2018 (24,331). In 2018, the authorities rejected requests for access mostly on the grounds of confidentiality of information, abuse of rights and violation of privacy, even when the required information related to state contracts, public procurement, operating costs of state bodies, investments, official actions, criminal proceedings against officials, etc. The authorities frequently replied that they did not possess the requested information, which could only be verified in the procedure of on-site supervision by the Administrative Inspectorate, which, according to the Commissioner's knowledge, is conducted by way of written correspondence with the authorities.

It was rather difficult to exercise the right to access information without the intervention of the Commissioner, as evidenced by a large number of complaints (3,346). In 2018, the Commissioner decided on 3,974 complaints, which is 12.9% more than in 2017. In a majority of cases the complaints were grounded, namely 3,444 complaints, or 86.66%. 398 complaints, or 10.02% were rejected and 132, or 3.32%, were rejected for formal reasons.

The complainants were mostly individuals (66.94%), followed by non-governmental organisations and other associations of citizens (12.81%) and journalists and media representatives (11.53%). The most frequently requested information regarding the

complaints was the information on the acting of the authorities (46.68%), information on public expenditure (20.84%) and information on the work of courts and prosecutors' offices (11.98%). The complaints mostly concerned the (non)acting of the state bodies and other bodies and organisations (46.45%), of local self-government bodies (25.87%), of judicial bodies (14.75%) and of public enterprises (11.17%).

In 2018, the authorities continued to treat the Commissioner in the same manner as in the previous years: in 1,889 cases (54.85% of the total number of well-founded complaints) the authorities acted upon requests of the complainants following the submission of complaint and the request for a written reply submitted to them by the Commissioner, in which case the complaint procedure was terminated. This confirms that there was no substantial reason for denying access to information, and that the irresponsible and irrational attitude of the authorities towards citizens and public resources, as well as the mere filing of the complaints, could have been avoided.

The degree of execution of the Commissioner's decision has been visibly decreasing in the past few years and in 2018 it was at its lowest since the establishment of the Commissioner's Office (about 70%); additional concern is caused by the delicacy of the information that remain denied to the public. The authorities that most often failed to act on the binding, final and enforceable decisions of the Commissioner are the ministries (43.19%), bodies and organisations of local self-government (28.8%), other state bodies and organisations (10.47%).

Bearing in mind the ratio of the number of cases in which the claimants have exercised their rights in relation to the number of complaints, it is concluded that despite numerous obstacles to the implementation of the Law on Access to Information, the level of efficiency of the Commissioner's work remains high, at a level of 88.91%, although compared to 2017, it has dropped by 4.42%, or by about 7% compared to 2015.

In 2018, 101 lawsuits were filed with the Administrative Court against the Commissioner's decisions, out of which 49 were filed by the Republic Public Prosecutor and other authorities, and 52 by information seekers. In 2018, the Administrative Court decided in 89 lawsuits against the Commissioner, having confirmed a majority of the Commissioner's decisions; 13 of the Commissioner's decisions on complaints of the Republic Public Prosecutor's Office were repealed by the Administrative Court and returned for redetermination (12 cases on the complaints of the Humanitarian Law Centre against the Ministry of Defence and one case on the complaint of a journalist against the Higher Public Prosecutor in relation to the proceedings against Siniša Mali, Minister of Finance); the Administrative Court did not reverse any of the decision of the Commissioner. Six requests for a review of the final decisions of the Administrative Court were submitted to the Supreme Court of Cassation; two requests were discarded and four requests were rejected. At the same time, 18 lawsuits were filed before the Administrative Court against six public authorities against whom complaints to the Commissioner are not allowed; the Court decided on 8 of them, accepting two of the claims against the Government, and dismissing or rejecting the remaining ones.

Little progress has been made in the execution of legal obligations of the authorities regarding the implementation of the measures for improving the transparency of work as prescribed by the Law on Access to Information, primarily in the delivery of training on the implementation of this law, which were to a considerable extent organised or carried out by

the Commissioner. A large number of public authorities who are obliged by law to publish a Work Information Booklet, train their employees, maintain the information media and submit reports to the Commissioner on the implementation of this Law, did not do so for years without assuming any liability or suffering consequences, although the failure to perform any of these obligations is punishable as an infringement, and despite the Commissioner's regular notifications to the Administrative Inspectorate with the aim of initiating the accountability procedure.

As was the case in the previous years, the liability for violations of the law was symbolic in 2018, and it resulted exclusively from misdemeanour proceedings initiated on the basis of requests by citizens acting as injured parties whose requests for information were not granted. The Administrative Inspectorate did not submit any request for the initiation of misdemeanour proceedings in 2018, although the Commissioner took the necessary steps to have the proceedings initiated in all cases of non-compliance with the executive decisions of the Commissioner, as well as of non-execution of other legal obligations.

2. Lack of Possibility of Administrative Enforcement of the Commissioner's Decisions

In 2018, there was a problem with administrative enforcement of the Commissioner's decision, which dates back to the previous year. The reason for this is the rejection of jurisdiction and lack of cooperation by other authorities in the delivery of the data necessary for the enforcement, as well as different interpretation of the relevant enforcement standards. In fact, this problem was pronounced in relation to the implementation of the new Law on General Administrative Procedure, which prescribes very high fines that the Commissioner should impose in the form of penalties in the process of administrative execution against the authorities, as a measure for compelling them to act upon his decisions. The Ministry of State Administration and Local Government has concluded that the issue of enforcement of the Commissioner's decisions should be resolved through amendments to the Law on Access to Information in a "precise and applicable" manner. However, the Draft Law on Amendments to the Law on Free Access to Information of Public Importance that has been prepared by the Ministry and which was in public debate in 2018, does not adequately address the problem of administrative enforcement of the Commissioner's decision. The Commissioner has pointed this out to the Ministry in his written opinion on the Draft Law, as well as in subsequent communications on the same topic, and expects the Ministry to accept the Proposals of the Commissioner based on arguments and the long-standing practice.

Another mechanism that should lead to the enforcement of the Commissioner's decisions by obliging the public authorities to submit requested information to complainants, which is within the competence of the Serbian Government, also did not function in 2018. It is the legal obligation of the Government to ensure, at the request of the Commissioner, by direct compulsion, the enforcement of his decisions. The Government has not acted upon any of the total of 238 requests for ensuring the enforcement that the Commissioner has submitted to it since 2010, 65 of which were submitted in 2018.

This situation has resulted in the reduction of the extent of execution of Commissioner's decisions. Some of the cases in which the Government has failed to ensure the execution of the Commissioner's decision in 2018 concern, for example, the following information: the amounts of monetary state subsidies and written off liabilities of Air Serbia, bonuses given by this company, etc .; the act on the systematisation of jobs in the City

Administration of the City of Belgrade; the actions that the Public Prosecutor's Office has taken against Siniša Mali, the current Minister of Finance; the engagement of certain deputies and officials in the capacity of lecturers at the Medical College of Vocational Studies in Čuprija (V. Orlić, A. Martinović, I. Bošnjak, etc.); the Internal Control Report of the Ministry of the Interior in connection with the case from 2016 in Hercegovačka street in Belgrade, the so-called "Savamala case", etc.

3. Difficulties in Exercising the Authority of the Commissioner

In 2018, the Commissioner exercised his authority under Article 26 of the Law on Access to Information in the procedure for resolving complaints concerning violations of the right to access information in 17 cases, and requested the public authorities to provide the documents containing the information being the subject of the requests made by the complainant in order to examine them and determine whether the information contained therein can be made available at the request of the complainant or not. The public authorities acted in 12 cases and submitted the requested documents, which the Commissioner returned after examining them and applying the prescribed security measures in the cases where the documents were classified.

Five public authorities refused to provide the Commissioner with the requested documents to examine. One of these cases of refusal was related to the complaints procedure of a journalist against the Ministry of Defence of the Republic of Serbia in connection with information on the value of the purchase of certain helicopters and aeroplanes from the Russian Federation and the Republic of Belarus. In this procedure, the Ministry failed to provide the requested documents for examination even after the Commissioner repeated the request three times. The Ministry first asked the Commissioner to "justify" his request to access the requested documents, in relation to which the Commissioner pointed out to the Ministry the authority of the Commissioner under Article 26 of the Law on Free Access to Information and the provisions of the Data Secrecy Law, stating that all the prescribed conditions for the handling of classified information were met by the Commissioner's Office, and that only the persons with appropriate certificates had access to classified information. Following this response, the Ministry again refused to submit the requested documents to the Commissioner, insisting that the documents should be examined on the premises of the Ministry. After that, the Commissioner once again, for the third time, called upon the Ministry to act upon his request in order to determine the facts of importance for deciding on complaints, which the Ministry has not yet done.

The second case relates to the Prosecutor's Office for Organised Crime, which refused to submit a report of the Security Information Agency dated 19 December 2015, regarding the allegations of a "*coup d'état*" by Dragan J. Vučićević, editor-in-chief of the Informer daily newspaper, broadcast in the morning programme of TV Pink on 21 November 2015, with the explanation that it is a document classified as "strictly confidential", i.e. that it requires removal of confidentiality tag by the Security Information Agency.

The third case concerns the Higher Public Prosecutor's Office in Belgrade, and its refusal to provide the official notes made by the prosecutor acting in the criminal case against Siniša Mali, which was opened on the basis of the report of the Anti-Corruption Agency, and the accompanying documentation, on the grounds that the records were classified as "strictly confidential" in accordance with the Data Secrecy Law, that another authority classified the information as secret, and that the provision of Article 26, paragraph 2 of the Law on Free

Access to Information relates exclusively to the form (information medium), and not to the content of information, challenging thus the Commissioner's ability to access classified information. Such a misinterpretation of the above-mentioned norm by the Prosecution would lead to an absurd situation in which every second-instance body, including the Commissioner, could only "look" without opening and reading the contents of the files submitted by the first-instance body in any form. In addition, the Commissioner's decisions made in the complaints procedures (both in access to information and data protection) constitute one of the possible legal bases for revoking the secrecy of data (Article 25 of the Data Secrecy Law), and consequently it is logical that he is entitled to an insight of all documents with classified information, since it is necessary for making legal decisions.

The fourth case relates to the Ministry of Finance of the Republic of Serbia, the Administration for the Prevention of Money Laundering, which did not act upon the Commissioner's request to be furnished with the memorandum of the Higher Public Prosecutor's Office in Belgrade submitted to the Administration in relation to the case against Siniša Mali based on the report of the Anti-Corruption Agency and the response of the Administration to that memorandum.

Finally, the fifth case relates to the Public Enterprise "Jugoimport-SDPR" which did not act upon the request of the Commissioner for the submission of the Donation Contract concluded between this company and the donation beneficiaries, in the period from 1 January 2012 to 26 July 2017.

4. Lack of Accountability

Violations of the right of free access to information, from the most drastic forms i.e. the complete ignoring of citizens' requests and failure to comply with the executive and binding decisions of the Commissioner to the failure to meet other legal obligations of the authorities, went almost completely unpunished in 2018 as well.

The state of responsibility regarding the violation of the right to access information is best illustrated by the fact that in 2018 the Administrative Inspectorate did not submit to the Misdemeanour Courts a single request for initiating misdemeanour proceedings, compared to almost 3,500 complaints resolved by the Commissioner in that same year. Also, the degree of execution of other legal obligations related to the publication of the Work Information Booklets, submitting reports to the Commissioner and delivering trainings is little over 20%, and more than 3,800 public authorities are subject to these obligations, which means that they are ignored by a vast majority of public authorities without any consequences.

The Administrative Inspectorate did not submit a request to institute misdemeanour proceedings as recommended by the Ombudsman in the case of Air Serbia, which refused to comply with as many as 20 final decisions of the Commissioner and provide the requested information to the complainant.

The lack of liability for violations of this right, not only in the form of misdemeanour, undoubtedly encourages those responsible within the public authorities to continue doing so, in the belief that they will not bear any consequences. Moreover, the long-term lack of full liability for violation of rights is the main cause of a very large number of complaints to the Commissioner. The Commissioner's objective inability to decide on all complaints within the legal deadline is often the reason for filing lawsuits and causing costs and unnecessary budget

expenditures. This justifies the dissatisfaction of citizens and places additional burdens on the work of the Commissioner's Office in terms of preventing costs of administrative disputes payable from the budget.

In 2018, the citizens whose right was violated, in their capacity as injured parties, filed 380 requests for initiating misdemeanour proceedings. Data on the amount of fines imposed by the misdemeanour courts who provided such information to the Commissioner indicate that the highest fine amounted to RSD 10,000, which means that it is closer to the bottom limit of the fines prescribed by the Law on Access to Information, which range from RSD 5,000 to 50,000. The problem of inconsistent jurisprudence by some of the misdemeanour courts is also present.

According to the Data of the Misdemeanour Court of Appeal, in 2018 this court decided in 169 cases on appeals against decisions of misdemeanour courts in the matter of the freedom to access information, as follows: 60 first instance acquittal verdicts were confirmed; 16 convictions were confirmed; 1 decision to terminate the proceedings was confirmed; 4 verdicts rejecting the application were confirmed; 10 decisions on termination of proceedings due to statutes of limitation were confirmed; 13 convicting verdicts were reversed; 1 decision to suspend the proceedings was reversed; 4 appeals against convictions were dismissed; the proceedings in 13 cases were terminated due to obsolescence in misdemeanour courts and the decision in 47 cases on appeal against decisions of misdemeanour courts were revoked. Another 34 cases are pending before the Misdemeanour Court of Appeal.

5. Amendments to the Law on Free Access to Information and other Laws

The amendments to the Law on Access to Information necessary to remove the biggest obstacles in its implementation, but also in order to promote the rights of citizens, have been in process for seven years.

In almost all of their strategic documents (on combating corruption, on the reform of the state administration, on the accession to the European Union, on integration - Chapter 23; on the implementation of the internationally accepted idea of the Open Government Partnership, etc.), the competent authorities have committed themselves to the adoption of amendments to the Law on Access to Information, emphasising the need for greater transparency of all processes of work of the authorities, extension of powers and resources granted to the Commissioner, the obligation to respect the decisions and instructions of the Commissioner. The last of the deadlines set for adoption of amendments to the Law on Access to Information is the second quarter of 2019.

The adoption of amendments to the Law on Access to Information is indispensable in order to increase the level of its implementation, to remove evident obstacles in the exercise of rights, primarily those related to the enforcement of the Commissioner's decisions, but also in order to promote proactive publication of information, greater transparency and accountability of the public authorities and strengthening the anti-corruption potential of this law.

However, the Draft Law on Amendments and Supplements to the Law on Free Access to Information of Public Importance, which was prepared by the Ministry of State Administration and Local Self-Government and which was publicly debated in 2018, if adopted in the proposed text, leads to a serious lowering of the attained level of the public's

right to know. In addition to some improvements, for example, extending the scope of the Law to some new entities and improving proactive disclosure of information, some of the proposed solutions will result in a reduction in transparency of work and the failure to remove obstacles to the implementation of the Law so far. This primarily relates to the exclusion of state-owned enterprises from the scope of the Law as well as the exemption of the National Bank of Serbia from the protection of rights before the Commissioner, along with the existing six bodies whose exclusion is seen as problematic by the expert community, the civil sector and SIGMA (Support for Improvement in Government and Management as a joint initiative of the European Union and the Organisation for Economic Cooperation and Development); state-owned enterprises operate as capital companies with large financial and material assets, due to which the information they hold has always been of great interest to the public. According to SIGMA, the proposed solution for state-owned enterprises "is not sustainable, it is contrary to the principles of openness and transparency, comparative law and it narrows the level of the right to access information," wherefore, as stated in its comments, it is necessary to consider the possibility of abandoning the proposed solution.

Regarding the legislation on the exercise of the right to access information, it is important to point out that by adopting certain sectoral laws, the problem of violating the unity of the legal order in relation to this matter has become more pronounced, and consequently leads to the lowering of the attained level of rights, contrary to the constitutional guarantees. For example, in 2018, the Law on Amendments to the Law on Defence was adopted, which, contrary to the Law on Access to Information, prescribes an absolute exception to the public's right to know in relation to a certain type of information, without the possibility of applying the public interest test. The Commissioner has therefore submitted to the Constitutional Court a proposal for the assessment of the constitutionality of the contested provision of Article 102 of the Law on Defence as well as the similarly controversial provisions on protected data under Article 45 of the previously adopted Law on Protection of Competition. According to the Commissioner, such solutions reduce the level of the rights prescribed by the Law on Free Access to Information.

III. Activities of the Commissioner in the Field of Personal Data Protection

1. Legal Framework of Personal Data Protection

The key problem with personal data protection in Serbia over the last ten years has been the legal framework, which is primarily reflected in the incomplete harmonisation of the internal legal framework with relevant international standards, incomplete harmonization of laws, as well as laws and by-laws, lack of or inadequate regulation of certain issues in the laws, etc. Therefore, appropriate measures should be taken in order to systematically regulate the field of personal data protection, which implies the existence of a robust Personal Data Protection Law, a whole set of sectoral laws that properly and comprehensively regulate this matter, and a number of by-laws dealing with organisational and similar issues.

Ten years after the adoption of the Law on Personal Data Protection in 2008, a new Law on Personal Data Protection of 2018 was finally adopted (hereinafter: the new LPDP). This has finally fulfilled the obligation to adopt a new law that was being shifted from year to year, from one Action Plan for Chapter 23 to another. This event in the area of personal data protection in Serbia has, without any doubt, marked 2018, although the process of adopting the law unfortunately was not transparent enough, and the legal solutions can be seriously objected to.

As regards the sectoral laws, some of them still lack adequate provisions on the protection of personal data, because they are not harmonised with the Constitution of the Republic of Serbia or with the LPDP, while some issues have remained completely unregulated. A similar situation is with secondary legislation, as in certain cases such acts have not been adopted even though there is a clear legal obligation for this, as the Commissioner has repeatedly pointed out. Thus, for example, the LPDP provides for the obligation to adopt a document on the manner of archiving and measures for the protection of particularly sensitive data, with a period of six months from the date of entry into force of this law, which never happened, even though 10 years have elapsed. Similarly, according to the Personal Data Protection Strategy, the Government was obliged to adopt the Action Plan for the implementation of the Strategy by the end of 2010, which has also never happened, although over 8 years have passed.

From the point of view of international law and international relations, the harmonisation of national legislation in the field of personal data protection with the *acquis communautaire* is an international legal obligation that Serbia has accepted in the Stabilization and Association Agreement. Serbia, as well as the other states that have the status of EU membership candidate, is expected to lead foreign and domestic politics in line with the European Union's policies and the *acquis*.

Also, Serbia, as a member state of the Council of Europe, participates in the creation of a European human rights law, and the human rights standards are expressed, inter alia, in the judgments of the European Court of Human Rights, thus forming part of the internal legal order as generally accepted rules of international law.

For several years now, the activities of the European Union and the Council of Europe have been significantly intensified in the area of the right to the protection of personal data.

Thus, in the European Union, significant changes have occurred in the field of personal data protection. Most importantly, this area is one of the few areas in the jurisdiction of the European Union, and especially in the field of human rights, which is regulated in a unique way, with the possibility of minor deviations. This was achieved by Regulation 2016/679 of the European Parliament and the Council on the Protection of Persons with regard to the Processing of Personal Data and on the Free Movement of such Data (hereinafter: the General Regulation), which began to apply as of 25 May 2018. It provides for a significantly different, more complete and precise way of regulating the protection of personal data than was previously the case, and applies not only within the European Union, but almost globally. In addition to the said Regulation, Directive 2016/680 of the European Parliament and 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 (hereinafter: the "Police Directive") has been adopted. Both documents were adopted in May 2016, and due to their complexity and scope, a period of two years was given before the beginning of their application (May 2018), so as to allow the member states to harmonise their regulations, and the data controllers and processors to align their operations with them.

From the point of view of the activities of the Council of Europe, it is important to emphasise the adoption of the Protocol amending the Convention on the Protection of

Individuals with regard to Automatic Processing of Personal Data, the first binding international data protection document, in May 2018. The aim of this new document is to improve the protection of personal data and to harmonise the legal systems of a broad spectrum of countries, since it is open to non-member States of the Council of Europe. By the end of 2018, more than twenty States Parties to the Convention have signed this Protocol. Unfortunately, the Republic of Serbia is not among them.

The Commissioner, in accordance with his authorities and the position of an independent state body, expresses readiness at all times and provides assistance, support and opinions from his scope of work, to competent bodies in the process of stabilisation and accession of Serbia to the European Union. In this regard, during 2018, the Commissioner has submitted several documents to Serbian Government, relevant ministries and other bodies.

2. The New Law on Personal Data Protection

The event marking the year 2018 in the field of personal data protection in Serbia is the adoption of the new LPDP. The National Assembly of the Republic of Serbia adopted the new LPDP on 9 November 2018, the Law entered into force on 21 November 2018 to be applied as of 21 August 2019.

The procedure of adopting the new LPDP was not completely transparent despite the formal organisation of a public debate. The Commissioner repeatedly submitted to the Ministry of Justice his opinion on the Draft Law, and in August 2018 he did this in the procedure governed by the Rules of Procedure of the Government. The Commissioner's remarks primarily dealt with the generality of the provisions of the Draft Law and the lack of harmonisation with the legal system of the Republic of Serbia, as well as the lack of understanding of certain provisions of the General Regulation and the "Police Directive".

The Commissioner also pointed out that the adoption of an important law should not only be the fulfilment of obligations towards an international organization, but also the re-examination of society's need for this matter to be regulated. Hence, the adoption of this law should have been used to regulate the issues that proved to be significant in practice and were either unregulated or inadequately regulated. However, the Ministry of Justice adopted only a small number of suggestions by the Commissioner.

The new LPDP contains translation of a number of provisions of an international document - the General Regulation, which, as a European Union regulation, is directly applied in the Member States, and of the Police Directive, a regulation that implies a harmonisation process and represents only a minimum set of standards. As a result, the new LPDP abounds with exemption provisions, general-purpose provisions that are too vague and often descriptive, and several provisions that are repeated. Apart from lacking purpose, direct transposition of the provisions of the General Regulation into the new LPDP is in conflict with the principle of this regulation. Due to all this, the new LPDP is difficult to understand and difficult to apply, and some of its provisions are inconsistent with the legal system of the Republic of Serbia.

After the adoption of the Draft Law and the initiation of the procedure for the adoption of law in the National Assembly, the Commissioner sent a special letter to the MP's, noting, *inter alia*, the problematic provision of Article 40 of the Draft Law that opens the

scope of excessive limitation of this human right in a manner that, in the opinion of the Commissioner, seems inconsistent with the Constitution of the Republic of Serbia. Without a significant debate and following a summary dismissal of all the proposed amendments, the new LPDP was quickly adopted by the National Assembly.

As expected, the new LPDP prescribes a lot of novelties in this area. For example, the law provides for new rights of data subjects, and thereby for new obligations of controllers and processors, in particular of business entities. The new LPDP also contains very important provisions that vest an unspecified circle of bodies, as well as legal persons, with great powers to interfere with the constitutionally guaranteed right to the protection of personal data, leaving a great deal of space for different understanding and interpretation. Also, a number of new obligations are established for the Commissioner. The law does not clearly and precisely regulate the issues related to the exercise of supervision, as well as the procedure for protecting rights before the Commissioner, and this also leaves room for different interpretations, which is very dangerous from the point of view of legal certainty.

The new LPDP leaves unregulated the area of video surveillance, which is why abuse in this area is commonplace. The Ministry of Justice argued for non-regulation of video surveillance on the grounds that it was a matter that should be regulated by a special law, and that the General Regulation did not contain provisions on video surveillance. However, the fact that something that needs to be regulated in an internal legal order, and not as an obligation explicitly stated in the General Regulation, is not an obstacle for the state to properly regulate it in national law, as has been done in some EU Member States.

Although the new LPDP has transposed numerous provisions from the General Regulation, it did not take the provisions on the imposition of administrative measures, which in the EU countries, in accordance with the General Regulation, can be imposed in an absolute amount of EUR 20 million, or up to 4% of the total global revenue of the data controller or processors. The practice in Serbia, unfortunately, indicates that the sanctions for violations of the LPDP are largely absent or symbolic.

Due to all of the above, the time ahead will show how and how much the new LPDP is applicable in practice, i.e. whether it will eliminate obvious deficiencies through the necessary amendments to the text until the beginning of its application (21 August 2019). The Commissioner's experience suggests that there will certainly be many challenges in the application of this law, which could have been avoided by the willingness of the authorities to carefully consider numerous and repeatedly submitted suggestions and proposals of the Commissioner or, better still, to accept the proposed model of the Law that the Commissioner has prepared.

3. Activities of the Commissioner in the Field of Personal Data Protection

Considering the existing legal framework, as well as the absence of strategic measures and the support of other competent authorities in the field of personal data protection, the activities of the Commissioner, regardless of how numerous they have been, could not lead to any significant improvement in this area, i.e. they could not prevent numerous cases of unauthorised, excessive or unprotected processing of data, which marked the year 2018, including the cases of misuse of data for political purposes. Unfortunately, state bodies were among those who have violated the law in dealing with data.

In the field of personal data protection, the Commissioner completed the procedure in 7,616 cases in 2018, an increase of about 60% in comparison to 2017 and a significant indicator of unlawful conduct of data controllers. Of the cases completed in 2018, the Commissioner completed 1,452 supervision procedures, which represents an increase of 65% compared to 2017. In cases where he found that the provisions of the LPDP (792) were violated, the Commissioner has issued 760 warnings, 7 decisions, and submitted 19 requests for initiation of misdemeanour proceedings due to the violation of the LPDP and has filed 6 misdemeanour charges. By the end of the reporting period, after 760 warnings issued by the Commissioner, 675, or around 89% were acted upon fully or partially, and of the 7 decisions, 5 were acted upon fully and 1 was acted upon partially. The percentage of the execution of the warnings and decisions of the Commissioner is still relatively high, but still with a slight drop by 1% compared to 2017.

A vast majority of criminal complaints filed by the Commissioner so far has been dismissed, although the Commissioner believes that he has provided sufficient elements for their further processing in order to have the offenders detected and punished accordingly. As regards requests for the initiation of misdemeanour proceedings for violation of the provisions of the LPDP, the misdemeanour courts generally enter convictions and a number of proceedings are suspended. Nevertheless, it must be noted that the penal policy of misdemeanour courts is rather lenient, especially in relation to responsible natural persons who are, as a rule, fined at the legal minimum. All of this does not stimulate observance of law, and falls short of promoting the rule of law.

Regarding the individual exercise of citizens' rights to the protection of personal data, 232 complaints were submitted to the Commissioner in 2018. Combined with the submitted complaints from the previous year, the Commissioner decided on 261 complaints in the administrative procedure in 2018. The largest number of complaints cited (non) actions by the ministries (48), of which 42 complaints were filed against the Ministry of Interior (MoI). By the end of the reporting period, of a total of 95 binding and final decisions made by the Commissioner 83, or approximately 87%, were acted upon by the controllers. Although the percentage of implementation of the Commissioner's decisions remains relatively high, the decline in relation to 2017, when this percentage was about 94%, is noticeable. The legitimacy of the Commissioner's acting upon complaints was confirmed by the Administrative Court, which in 2018 made a total of 8 judgments in administrative disputes against Commissioner's decisions by rejecting the complaint in 5 cases, and dismissing it in 3 cases.

In 2018, the Commissioner also made 14 decisions on submitted requests for transfer of personal data outside Serbia, namely 7 decisions allowing the transfer of data, 1 decision allowing partial transfer of the data and 6 conclusions on rejecting the request. The countries from which transfer of personal data was requested are: USA, New Zealand, India, Philippines and Israel.

IV. Giving Opinions and other Activities of the Commissioner

The growth trend of the number of cases is also reflected in the number of opinions that the Commissioner provided in 2018. Namely, the Commissioner gave 59 opinions on the drafts and proposals of the law, which in many cases were unfortunately not taken into consideration by the competent authorities. In addition, the Commissioner gave 24 opinions on by-laws and other general acts.

In 2018, the Commissioner submitted to the Constitutional Court proposals for assessing the constitutionality of four laws, two of which relate to constitutional guarantees for free access to information of public importance, and two to non-compliance with constitutional guarantees on the protection of personal data.

A significant part of the Commissioner's activities in 2018 concerned the provision of assistance to natural and legal persons and authorities or data controller, giving opinions on the proper application of the Law on Free Access to Information of Public Importance and the LPDP, as well as clarifying ambiguous issues and procedures. The more frequent addressing of citizens to the Commissioner in 2018 reporting illegal data processing or to obtain an opinion as to whether such processing is involved, is a confirmation of a positive change in citizens' attitudes towards their privacy and their data, and they are the result of the work of the Commissioner on raising awareness of the risks of neglect of personal data and on individual cases of massive violation of the right to data protection.

In 2018, the Commissioner organised and conducted a number of trainings in the field of free access to information of public importance and personal data protection. Numerous activities have been carried out within the project "Capacity Building of the Commissioner for Information of Public Importance and Protection of Personal Data for Effective and Adequate Execution of His Legislative Authorities and Ensuring the Exercise of the Right to Free Access to Information and Rights to Data Protection in Accordance with European Standards", which was financed from the grant funds of the Bilateral Program of the Kingdom of Norway, based on the Agreement with the Government of the Republic of Serbia.

This project lasted from 18 September 2015 to 30 November 2018 and total amount of RSD 47,945,267.14 was spent, of which RSD 41,903,622.60 were non-repayable funds from the Bilateral Program and RSD 6,041,644.54 were from the Commissioner's Office own budget. At its session held on 22 November 2018, the Project Steering Committee adopted the Final Report and the Independent Auditor's Report on the conducted audit of the financial part of the Final Report of the Project, which were submitted to the Ministry of European Integration. The project was formally completed on 30 November 2018.

V. Considering the Reports and Implementing the Commissioner's Proposals

The Commissioner expresses his belief that after a four-year interruption, the Report on the Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection in 2018 with the submitted proposals of the Commissioner will be discussed at the plenary session of the National Assembly and that conclusions will be adopted that will contribute to the creation of better conditions and a more responsible attitude of all the competent bodies towards exercising the right to free access to information of public importance and the right to protection of personal data.

The failure to consider the Commissioner's Report by the National Assembly results in the absence of the controlling function of the National Assembly towards the Government, and in the failure to improve the situation in the exercising of human rights covered by the Commissioner's Report, which is burdened with numerous normative and factual obstacles.